



**Board of Commissioners
Agenda Packet**

January 3, 2017

Work Session

5:00 PM Letendre Text Amendment Discussion

6:00 PM Call to Order

- A) Invocation & Pledge of Allegiance-Reverend Walter Gallop, Air Force Chaplain, Retired
- B) Approval of Agenda

Public Hearings

- A) **Public Hearing and Action: PB 16-15 Elizabeth Letendre:** Request to amend the Unified Development Ordinance Chapter 10: Definitions and Measurement, to remove the structural portion of the Dwelling, Single-Family Detached definition.
- B) **Public Hearing and Action: PB 14-16 Lake View at Currituck:** Request to amend the use permit to modify the sidewalk/trail setback for Lake View at Currituck. The property is owned by Lake View Land Development, LLC and located in Moyock on Survey Road, Tax Map 15, Parcels 83A, 83B, 83C, 83D and 83E, Moyock Township.
- C) **Public Hearing & Action: PB 16-22 Barnhill Contracting Co.:** Request for conditional rezoning of 25 acres located in Powells Point approximately .25 miles south of South Bayview Road on the east side of Caratoke Highway, Tax Map 111, Parcel 3, Poplar Branch Township.

New Business

- A) **An Ordinance of the Currituck County Board of Commissioners Imposing a Moratorium on the Acceptance, Processing or Consideration of Applications for Solar Arrays Pursuant to N.C. Gen. Stat. Section 153A-340(h)**
- B) **An Ordinance of the Currituck County Board of Commissioners Amending Section 2-65 of the Currituck County, North Carolina Code of Ordinances Providing for the Location of Public Comments on the Agenda and Time Allotted for Public Comments.**
- C) **Board Appointments**
 - 1. Nominations of Commissioners to Advisories
 - 2. Planning Board-Amended Agenda Item
 - 3. Recreation Advisory-Amended Agenda Item
 - 4. Historic Preservation Commission-Amended Agenda Item
- D) **Consent Agenda**
 - 1. Approval Of Minutes for December 5, 2016
 - 2. Budget Amendments
 - 3. Surplus Resolution-Animal Quarantine Building

4. Surplus Resolution - 2008 Nissan Titan (EMS)
5. EIC-Community Services Block Grant Funding Submission

E) Commissioner's Report

F) County Manager's Report

Public Comment

Please limit comments to matters other than those appearing on this agenda as a Public Hearing. Public comments are limited to 5 minutes.

Closed Session

Closed Session pursuant to G. S. 143-318.11(a)(3) to consult with the county attorney in order to preserve the attorney-client privilege related to the following matters: R.F. London and Mermaids, Inc. v. Currituck County and Currituck County Board of Adjustment; Swan Beach Corolla, LLC v. Currituck County; Ocean Hill Commercial, LLC and others v. James Bickford, Midlantic Builders, Ocean Hill 1 Property Owners Association and Currituck County; Ocean Hill Commercial, LLC and others v. Currituck County; Moyock Commercial Properties, LLC and Charles S. Friedman v. Currituck County; Coastland Corporation and James E. Johnson, Jr. v. Currituck County and Ocean Sands Water and Sewer District; Ecoplexus, Inc., Fresh Air Energy II, LLC and Currituck Sunshine Farm, LLC v. Currituck County and Teresa Wheeler v. Currituck County.

Adjourn



Currituck County Agenda Item Summary Sheet

Agenda ID Number – (ID # 1739)

Agenda Item Title

5:00 PM Letendre Text Amendment Discussion

Brief Description of Agenda Item:

Board Action Requested

Information

Person Submitting Agenda Item

Leeann Walton, Clerk to the Board

Presenter of Agenda Item

Ben Woody



Currituck County Agenda Item Summary Sheet

Agenda ID Number – (ID # 1655)

Agenda Item Title

Public Hearing and Action: PB 16-15 Elizabeth Letendre:

Brief Description of Agenda Item:

Request to amend the Unified Development Ordinance Chapter 10: Definitions and Measurement, to remove the structural portion of the Dwelling, Single-Family Detached definition.

Board Action Requested

Action

Person Submitting Agenda Item

Susan Tanner, Administrative Assistant

Presenter of Agenda Item

Ben Woody



Currituck County

Planning and Community Development Department
Planning and Zoning Division
 153 Courthouse Road, Suite 110
 Currituck, North Carolina 27929
 252-232-3055 FAX 252-232-3026

To: Board of Commissioners
 From: Planning Staff
 Date: December 28, 2016
 Subject: PB 16-15 Elizabeth Letendre Text Amendment

The enclosed text amendment submitted by Ms. Elizabeth Letendre is intended to amend the definition of Single-Family Detached Dwelling to remove the structural portion of the definition (Attachment A).

Background

Ms. Letendre has substantially constructed a residential project on an oceanfront lot in the Ocean Beach subdivision in the off-road area of Currituck County. Prior to applying for a building permit, in 2013 the Planning Director determined the proposed project was a single-family detached dwelling; the Board of Adjustment affirmed the Planning Director's decision; the Superior Court agreed with the decision and affirmed the Order of the Currituck County Board of Adjustment.

Following the decision of the Superior Court entered on December 8, 2014, and while an appeal was pending before the North Carolina Court of Appeals, Ms. Letendre proceeded with construction of the residential project. The county issued a building permit on February 25, 2015 for the project; however, county staff verbally advised Ms. Letendre's representatives that an appeal was pending which could adversely affect the project as permitted. Additional correspondence regarding the construction of the project while an appeal was pending occurred between Mr. George Currin, representing the plaintiffs, and Mr. Greg Wills, representing Ms. Letendre (Attachments B and C).

On August 21, 2015 the North Carolina Building Code Council overturned an interpretation of the North Carolina Department of Insurance and ordered that the Letendre project meets the definition of a one family dwelling as required by the North Carolina Residential Code (Attachment D).

In its decision entered on June 21, 2016, the North Carolina Court of Appeals reversed the Superior Court, holding that the Letendre project is not a single-family dwelling as defined by the UDO (Attachment E).

Ms. Letendre petitioned the North Carolina Supreme Court for discretionary review. The petition for review was denied resulting in the finality of the Court of Appeals decision.

The project currently has temporary power approval, is under a stop work order issued by the Planning Director, and has not received a certificate of occupancy.

A detailed timeline of the Letendre project is enclosed (Attachment M).

Amendment Request

According to the applicant, the amendment is necessary in light of the decision rendered by the North Carolina Court of Appeals in the case of *Long v. Currituck County*. In its decision the Court found that the Letendre project does not fit within the plain language of the single-family dwelling definition. Further, the Court found that any determination that this project fits within the current definition of single-family dwelling requires disregarding the structural elements of the definition, including the singular “a” at the beginning of the definition to describe “building” and allowing multiple attached “buildings” to be treated as a single-family dwelling in clear contravention of the Unified Development Ordinance (UDO).

The applicant concludes that if the definition, as outlined in the Opinion of the Court, is applied throughout the county it will be overly restrictive, particularly for pile constructed dwellings or additions to existing dwellings. The applicant also expresses concern that the Opinion of the Court requires planning staff to evaluate construction methods instead of focusing on the intended function or use of a dwelling.

Benchmarking

The staff reviewed definitions from other North Carolina coastal communities, both counties and municipalities, to determine how consistent the Currituck County UDO is with defined terms from other jurisdictions. During this review process, staff found terms within the UDO that were unclear or undefined. The benchmarking matrix includes the following defined terms: Accessory Structure, Addition, Building, Single-Family Dwelling, and Structure (Attachment F).

Most of the surveyed definitions of Single-Family Dwelling include the reference to “[a]” building, which is one of the structural elements included in Currituck County’s current definition. Two of the jurisdictions, Brunswick County and Holden Beach, appear to define Single-Family Dwelling based only upon the function of the project by referencing “[a]” dwelling unit.

Most of the jurisdictions specifically define Building except Currituck County and Emerald Isle, although several jurisdictions cross reference Structure in the definition.

While many of the jurisdictions do not define Addition, among those that do, Currituck County is the only locale that references connection by a common load bearing wall; even the North Carolina Residential Building Code does not include this structural element in its definition.

The definitions of Accessory Structure and Structure are generally consistent among the surveyed communities.

Land Use Plan Consistency

The UDO requires that the Board of Commissioners adopt a statement of consistency and reasonableness that describes whether the decision on the amendment is consistent with county adopted plans that are applicable and why the decision is reasonable and in the public interest. The 2006 Land Use Plan is the controlling plan and the following policy statements are relevant to this request:

LUP POLICY OB3: Currituck County recognizes that, on the Outer Banks in particular, “single-family” homes are being built that accommodate 15, 20, 25 or more people. Thus, these LARGE RESIDENTIAL STRUCTURES are circumventing existing zoning laws that could not anticipate the advent of these building forms. Development regulations and project

approvals shall therefore be based upon the actual nature of the structure rather than the label (e.g. single-family) that may be attached to it.

LUP POLICY OB9: LARGE HOMES ON OCEANFRONT LOTS IN THE OFF-ROAD AREA should be located as far west as possible. Structures should not be built forward of protective dunes, thereby impeding dune recovery. County minimum setbacks may exceed CAMA minimum setback in the ocean erodible areas.

The applicant also included a consistency statement referencing the 2006 Land Use Plan Housing and Neighborhood Development Policies (Attachment A). Staff does not consider these policies relevant to the proposed amendment.

When considering the Land Use Plan in the context of the Letendre project, or other oceanfront development in the off-road area, the amendment **appears to have a consistency conflict with LUP POLICY OB9**. By applying only a functional element of the single-family dwelling definition, oceanfront development is able to utilize the least restrictive CAMA Ocean Hazard setback and not locate large residential structures as far west as may otherwise be required.

The amendment has no obvious consistency conflicts when applying only a functional element of the single-family dwelling definition in a broader county-wide context.

Text Amendment Review Standards

Staff note: The suggested finding for each review standard is organized by the applicant's proposed amendment (Option A) and the staff's revised amendment (Option B).

The advisability of amending the text of the UDO is a matter committed to the legislative discretion of the Board of Commissioners and is not controlled by any one factor. In determining whether to adopt or deny the proposed text amendment, the Board of Commissioners may weigh the relevance of and consider whether and the extent to which the proposed text amendment:

- (1) Is consistent with the goals, objectives, and policies of the Land Use Plan and other applicable county-adopted plans;
 - a. *Option A: for oceanfront parcels in the off-road area (Single Family Remote Zoning District), removal of the structural component from the definition of Single Family Detached Dwelling will allow new development of any size to use the least restrictive CAMA Ocean Hazard setback and not locate a large house as far west as required.*
 - b. *Option B: for oceanfront parcels in the off-road area (Single Family Remote Zoning District), including the definitional reference to "[a]" building may allow new development of any size to use the least restrictive CAMA Ocean Hazard setback and not locate a large house as far west as required, depending on how the Division of Coastal Management permits the development.*
- (2) Is not in conflict with any provision of this Ordinance or the County Code of Ordinances;
 - a. *Option A: eliminates the structural component of the single family dwelling definition and is not in conflict with the other definitions or standards in the UDO.*
 - b. *Option B: revises current terms and addresses undefined terms and is not in conflict with the other definitions or standards in the UDO.*
- (3) Is required by changed conditions;
 - a. *Option A: due to the North Carolina Court of Appeals decision in the case of Long v. Currituck County, the applicant is not able to use the improvements on their property.*

- b. *Option B: due to the North Carolina Court of Appeals decision in the case of Long v. Currituck County, the county may no longer be able to permit single-family dwellings, and additions, as it has historically.*
- (4) Addresses a demonstrated community need;
 - a. *Option A: the applicant's interpretation of the NC Court of Appeals decision will be overly restrictive on building methods and too onerous on planning staff to evaluate construction methods.*
 - b. *Option B: this revised language is consistent with how staff has interpreted and applied the UDO in the past and how staff issues development permits.*
- (5) Is consistent with the purpose and intent of the zoning districts in this Ordinance, or would improve compatibility among uses and ensure efficient development within the county;
 - a. *Option A: is consistent with the intent of residential zoning districts because it only allows one single-family dwelling on a lot*
 - b. *Option B: is consistent with the intent of residential zoning districts because it only allows one single-family dwelling on a lot*
- (6) Would result in a logical and orderly development pattern; and
 - a. *Option A: only allows one single-family dwelling per lot in residential zoning districts, whatever construction methods are used.*
 - b. *Option B: only allows one single-family dwelling per lot in residential zoning districts, whatever construction methods are used.*
- (7) Would not result in significantly adverse impacts on the natural environment, including but not limited to water, air, noise, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment.
 - a. *Option A: does not adversely impact the natural environment.*
 - b. *Option B: does not adversely impact the natural environment.*

Staff Recommendation

As prepared and presented by the applicant (Option A), the amendment modifies the definition of single-family dwelling to rely upon the function or use of a project. By removing the structural components of the definition, the construction method of a project is no longer a matter of review. The North Carolina Court of Appeals decision in *Long v. Currituck County* even states the respondents (Currituck County and Elizabeth Letendre) would be correct if the UDO defined single-family dwelling based only upon the function of the project. The applicant's request uses this statement as a basis for their proposed text amendment.

The Letendre project is the obvious focal point for this amendment; however, the Board must consider this request in the broader context of the entire county. There are instances when the planning and inspections staff has permitted multiple structural elements under a common roof as a single-family dwelling (Attachment G). While it is correct that most of the single-family dwellings permitted in this manner could also be permitted as separate structures (principal and accessory), there is still precedent for approving these "buildings" as single-family dwellings.

Notwithstanding the required statement of consistency and reasonableness, a central question for the Board is how much flexibility in construction and design methodology should be allowed when applying the defined term of Single-Family Detached Dwelling. The applicant has submitted an amendment (Option A) that provides maximum flexibility – the review of a single family dwelling would be predicated only upon the use of the property, with no limits on how structural elements are attached or configured. Possible unintended outcomes of not including a structural element in the definition include occupying multiple structures that are more similar to group housing than a traditional single-family dwelling or avoiding a more restrictive CAMA Ocean Hazard setback.

As an alternative, Staff has developed a revised amendment (Option B) that better aligns the UDO definitions with the benchmarking matrix as well as how the planning and inspection staff has historically permitted single-family dwellings. This approach broadly provides flexibility in construction and design methodology, but also establishes parameters for how this flexibility can occur, thereby minimizing unintended outcomes. While this option may not directly cure the issue for the Letendre project, it is staff's opinion it is the most reasonable approach from a county-wide perspective.

In subsequent meetings to discuss this text amendment, the applicant indicated they are able to comply with Option B. **While the original staff interpretation viewed the Letendre project as a single principal structure for permitting purposes, the Court of Appeals held this interpretation was incorrect.** Similar to the current UDO standard, Option B requires a single-family dwelling to be a single building. This single building (or principle structure) standard must be met under Option B for the Letendre project to comply with the Unified Development Ordinance. It is unclear how the Division of Coastal Management (DCM) would view such a change to the Letendre project with respect to the existing CAMA Major Permit – it is logical to assume that at least part of the justification for the Court of Appeals decision remains if Ms. Letendre describes the project as three buildings to the DCM,.

The Board must also consider the consistency and reasonableness statement that is required for their approval or denial of a text amendment. Staff's review of the Land Use Plan found no explicit policy direction for developing UDO definitions related to the function, use, construction, or design methodology of single-family dwellings. There are policies that include clear direction on limiting the size and impact of large residential structures; however, as of the date of this staff report, the county has been unwilling to implement these policies. It is important to remember that this amendment request is not about the size or use of a single-family dwelling, but rather how UDO definitions are applied to these projects.

As referenced above in the staff report, when considering Option A in the context of oceanfront development in the off-road area, the amendment appears to have a consistency conflict with LUP POLICY OB9. By applying only a functional element of a single-family dwelling definition, oceanfront development is able to utilize the least restrictive CAMA Ocean Hazard setback and not locate large residential structures as far west as may otherwise be required. Option B has no obvious consistency conflicts when applying the proposed single-family dwelling definition in a broader county-wide context.

Considering the request from a county-wide context, Staff recommends adoption of a revised text amendment (Option B) because it complies with all applicable review standards of the UDO and is consistent with the 2006 Land Use Plan.

Planning Board Recommendation (Attachment J)

Mr. Craddock motioned to deny the proposed text amendment both A and B of the applicant's and the staff's options since this text amendment conflicts with current land use and will cause a negative affect with surrounding houses and also since it would cause a problem countywide.

Ms. Overstreet seconded the motion and the motion carried unanimously.

Attachments

- Attachment A: Text Amendment Application, including Proposed Consistency Statement
- Attachment B: Mr. George Currin email and letter correspondence
- Attachment C: Mr. Greg Wills email and letter correspondence
- Attachment D: North Carolina Building Code Council Order: Elizabeth Letendre appeal
- Attachment E: Court of Appeals Decision: *Long v. Currituck County*

Attachment F: Benchmarking: defined terms from other North Carolina coastal communities
Attachment G: Photographs of single-family dwellings
Attachment H: November 22, 2013 Letter of Determination
Attachment I: April 12, 2013 Letter of Determination
Attachment J: Planning Board meeting minutes
Attachment K: Mr. Bobby Sullivan letter correspondence (in support of text amendment)
Attachment L: Mr. George Currin letter correspondence (in opposition of text amendment)
Attachment M: Timeline for the Letendre project

**UDO AMENDMENT REQUEST
PB 16-15 Elizabeth Letendre
OPTION A**

Amendment to the Unified Development Ordinance Chapter 10: Definitions and Measurement, to remove the structural portion of the Dwelling, Single-Family Detached definition.

BE IT ORDAINED by the Board of Commissioners of the County of Currituck, North Carolina that the Unified Development Ordinance of the County of Currituck be amended as follows:

Item 1: That Section 10.5 Definitions is amended by adding the following underlined language and deleting the strikethrough language:

DWELLING, SINGLE-FAMILY DETACHED

A single dwelling unit on its own lot ~~residential building containing not more than one dwelling unit to be occupied by one family, not physically attached to any other principal structure. For regulatory purposes, this term does not include~~ but excluding manufactured homes, recreational vehicles or other forms of temporary or portable housing. Manufactured buildings constructed for use as single-family dwelling units (manufactured home dwellings) are treated similar to single-family detached dwellings.

Item 2: The provisions of this Ordinance are severable and if any of its provisions or any sentence, clause, or paragraph or the application thereof to any person or circumstance shall be held unconstitutional or violative of the Laws of the State of North Carolina by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions which can be given effect without the invalid provision or application.

Item 3: This ordinance amendment shall be in effect from and after the day of , 2016.

Board of Commissioners' Chairman
Attest:

Clerk to the Board

DATE ADOPTED: _____
MOTION TO ADOPT BY COMMISSIONER: _____
SECONDED BY COMMISSIONER: _____
VOTE: _____AYES _____NAYS _____

PLANNING BOARD DATE: 10/11/2016
PLANNING BOARD RECOMMENDATION: Denial
VOTE: 7 AYES 0 NAYS

ADVERTISEMENT DATE OF PUBLIC HEARING: 11/20/2016 and 11/30/2016
BOARD OF COMMISSIONERS PUBLIC HEARING: 12/05/2016
BOARD OF COMMISSIONERS ACTION: _____
POSTED IN UNIFIED DEVELOPMENT ORDINANCE: _____
AMENDMENT NUMBER: _____

Attachment: 16-15 Elizabeth Letendre Staff Report (BOC 1.3.17) (1655 : PB 16-15 Elizabeth Letendre)

**UDO AMENDMENT REQUEST
PB 16-15 Staff Alternate Version
OPTION B**

Amendment to the Unified Development Ordinance Chapter 10: Definitions and Measurement, to remove the structural portion of the Dwelling, Single Family Detached definition.

BE IT ORDAINED by the Board of Commissioners of the County of Currituck, North Carolina that the Unified Development Ordinance of the County of Currituck be amended as follows:

Item 1: That Section 10.5 Definitions is amended by adding the following underlined language and deleting the strikethrough language:

ADDITION

An extension or increase in floor area or height of a building or structure ~~Any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load-bearing wall other than a fire wall. Any walled and roofed addition that is connected by a fire wall or is separated by an independent perimeter load-bearing wall is new construction.~~

BUILDING

See "Structure" Any structure having a roof supported by columns or walls and intended for supporting or sheltering any use or occupancy.

DWELLING, SINGLE-FAMILY DETACHED

A residential building containing not more than one dwelling unit to be occupied by one family, ~~not physically attached to any other principal structure. For regulatory purposes, this term does not include but excluding~~ manufactured homes, recreational vehicles or other forms of temporary or portable housing. Manufactured buildings constructed for use as single-family dwelling units (manufactured home dwellings) are treated similar to single-family detached dwellings.

Staff commentary: the following definition of single-family dwelling was used by the county from April 2, 1992 until December 31, 2012. This is included as an alternative and to provide context for how single-family dwellings were previously permitted. A residential use consisting of a single detached building containing one dwelling unit and located on a lot containing no other dwelling units. Attachment F includes all relevant definitions from the previous UDO.

STRUCTURE

Anything constructed, installed, or portable, the use of which requires a location on the ground or attachment to something having location on the ground or water. ~~on a parcel of land. This includes a fixed or movable building which can be used for residential, business, commercial, agricultural, or office purposes, either temporarily or permanently.~~ "Structure" also includes, but is not limited to, swimming pools, tennis courts, signs, cisterns, sewage treatment plants, sheds, docks, mooring areas, and similar accessory construction.

Item 2: The provisions of this Ordinance are severable and if any of its provisions or any sentence, clause, or paragraph or the application thereof to any person or circumstance shall be held unconstitutional or violative of the Laws of the State of North Carolina by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions which can be given effect without the invalid provision or application.

Item 3: This ordinance amendment shall be in effect from and after the day of , 2016.

 Board of Commissioners' Chairman
 Attest:

 Clerk to the Board

DATE ADOPTED: _____
 MOTION TO ADOPT BY COMMISSIONER: _____
 SECONDED BY COMMISSIONER: _____
 VOTE: _____AYES _____NAYS _____

PLANNING BOARD DATE: 10/11/2016
 PLANNING BOARD RECOMMENDATION: Denial
 VOTE: 7AYES 0NAYS
 ADVERTISEMENT DATE OF PUBLIC HEARING: 11/20/2016 and 11/30/2016
 BOARD OF COMMISSIONERS PUBLIC HEARING: 12/05/2016
 BOARD OF COMMISSIONERS ACTION: _____
 POSTED IN UNIFIED DEVELOPMENT ORDINANCE: _____
 AMENDMENT NUMBER: _____

Attachment: 16-15 Elizabeth Letendre Staff Report (BOC 1.3.17) (1655 : PB 16-15 Elizabeth Letendre)

**UDO AMENDMENT REQUEST
PB 16-15 Elizabeth Letendre
OPTION A**

Amendment to the Unified Development Ordinance Chapter 10: Definitions and Measurement, to remove the structural portion of the Dwelling, Single-Family Detached definition.

BE IT ORDAINED by the Board of Commissioners of the County of Currituck, North Carolina that the Unified Development Ordinance of the County of Currituck be amended as follows:

Item 1: That Section 10.5 Definitions is amended by adding the following underlined language and deleting the strikethrough language:

DWELLING, SINGLE-FAMILY DETACHED

A single dwelling unit on its own lot ~~residential building containing not more than one dwelling unit to be occupied by one family, not physically attached to any other principal structure. For regulatory purposes, this term does not include~~ but excluding manufactured homes, recreational vehicles or other forms of temporary or portable housing. Manufactured buildings constructed for use as single-family dwelling units (manufactured home dwellings) are treated similar to single-family detached dwellings.

Item 2: The provisions of this Ordinance are severable and if any of its provisions or any sentence, clause, or paragraph or the application thereof to any person or circumstance shall be held unconstitutional or violative of the Laws of the State of North Carolina by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions which can be given effect without the invalid provision or application.

Item 3: This ordinance amendment shall be in effect from and after the day of , 2016.

Board of Commissioners' Chairman
Attest:

Clerk to the Board

DATE ADOPTED: _____
MOTION TO ADOPT BY COMMISSIONER: _____
SECONDED BY COMMISSIONER: _____
VOTE: _____AYES_____NAYS_____

PLANNING BOARD DATE: _____
PLANNING BOARD RECOMMENDATION: _____
VOTE: _____AYES_____NAYS_____
ADVERTISEMENT DATE OF PUBLIC HEARING: _____
BOARD OF COMMISSIONERS PUBLIC HEARING: _____
BOARD OF COMMISSIONERS ACTION: _____
POSTED IN UNIFIED DEVELOPMENT ORDINANCE: _____
AMENDMENT NUMBER: _____

Attachment: 16-15 Elizabeth Letendre Staff Report (BOC 1.3.17) (1655 : PB 16-15 Elizabeth Letendre)

**UDO AMENDMENT REQUEST
PB 16-15 Staff Alternate Version
OPTION B**

Amendment to the Unified Development Ordinance Chapter 10: Definitions and Measurement, to remove the structural portion of the Dwelling, Single Family Detached definition.

BE IT ORDAINED by the Board of Commissioners of the County of Currituck, North Carolina that the Unified Development Ordinance of the County of Currituck be amended as follows:

Item 1: That Section 10.5 Definitions is amended by adding the following underlined language and deleting the strikethrough language:

ADDITION

An extension or increase in floor area or height of a building or structure ~~Any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load-bearing wall other than a fire wall. Any walled and roofed addition that is connected by a fire wall or is separated by an independent perimeter load-bearing wall is new construction.~~

BUILDING

See "Structure" Any structure having a roof supported by columns or walls and intended for supporting or sheltering any use or occupancy.

DWELLING, SINGLE-FAMILY DETACHED

A residential building containing not more than one dwelling unit to be occupied by one family, ~~not physically attached to any other principal structure. For regulatory purposes, this term does not include but excluding~~ manufactured homes, recreational vehicles or other forms of temporary or portable housing. Manufactured buildings constructed for use as single-family dwelling units (manufactured home dwellings) are treated similar to single-family detached dwellings.

STRUCTURE

Anything constructed, installed, or portable, the use of which requires a location on the ground or attachment to something having location on the ground or water. ~~on a parcel of land. This includes a fixed or movable building which can be used for residential, business, commercial, agricultural, or office purposes, either temporarily or permanently.~~ "Structure" also includes, but is not limited to, swimming pools, tennis courts, signs, cisterns, sewage treatment plants, sheds, docks, mooring areas, and similar accessory construction.

Item 2: The provisions of this Ordinance are severable and if any of its provisions or any sentence, clause, or paragraph or the application thereof to any person or circumstance shall be held unconstitutional or violative of the Laws of the State of North Carolina by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions which can be given effect without the invalid provision or application.

Item 3: This ordinance amendment shall be in effect from and after the day of , 2016.

Board of Commissioners' Chairman
Attest:

Clerk to the Board

DATE ADOPTED: _____

MOTION TO ADOPT BY COMMISSIONER: _____

SECONDED BY COMMISSIONER: _____

VOTE: _____AYES_____NAYS_____

PLANNING BOARD DATE: _____

PLANNING BOARD RECOMMENDATION: _____

VOTE: _____AYES_____NAYS_____

ADVERTISEMENT DATE OF PUBLIC HEARING: _____

BOARD OF COMMISSIONERS PUBLIC HEARING: _____

BOARD OF COMMISSIONERS ACTION: _____

POSTED IN UNIFIED DEVELOPMENT ORDINANCE: _____

AMENDMENT NUMBER: _____

Attachment: 16-15 Elizabeth Letendre Staff Report (BOC 1.3.17) (1655 : PB 16-15 Elizabeth Letendre)



Text Amendment Application

OFFICIAL USE ONLY:

Case Number: PB 16-15
 Date Filed: 6.28.16
 Gate Keeper: SNJ
 Amount Paid: \$150.00

Contact Information
APPLICANT:

Name: Elizabeth Letendre
 Address: c/o Attorney Gregory E. Wills, PC
6541 Caratoke Highway, Grandy, NC 27939
 Telephone: 252-491-7016
 E-Mail Address: gwills@obxlaw.com

Request

I, the undersigned, do hereby make application to change the Currituck County UDO as herein requested.

Amend Chapter(s) 10 Section(s) 10.5 Definitions as follows:

To change the definition from L Dwelling, Single Family Detached

Dwelling, Single Family Detached- A residential building containing not more than one dwelling unit to be occupied by one family, not physically attached to any other principal structure. For regulatory purposes, this term does not include manufactured homes, recreational vehicles, or other forms of temporary or portable housing. Manufactured buildings constructed for use as single-family dwelling units (manufactured homes) are treated similar to single-family detached dwelling.

TO: "Dwelling, Single-family detached means a single dwelling unit on its own lot, but excluding manufactured homes, mobile homes, recreational motor vehicle or trailers."

*Request may be attached on separate paper if needed.

E. Letendre
 Petitioner

6/24/16

Date

Text Amendment Submittal Checklist

Staff will use the following checklist to determine the completeness of your application. Only complete applications will be accepted.

Text Amendment Submittal Checklist

Date Received: 6.24.16

Project Name: _____

Applicant/Property Owner: E. J. J. J.

Text Amendment Submittal Checklist

1	Complete Text Amendment application	
2	Application fee (\$150)	
3	3 hard copies of ALL documents	
4	1 PDF digital copy of all documents (ex. Compact Disk – e-mail not acceptable)	

For Staff Only**Pre-application Conference**

Pre-application Conference was held on 6/23/16 and the following people were present:

GREG WILLS, BERNIE MANCUSO, JOHN CRONIN, IKE McREE, LAURIE LOCICERO,
JENNIS TURNER, BEN WOODY

Comments

Proposed Consistency Statement:

The amendment is necessary in light of the Decision rendered by the North Carolina Court of Appeals in the case of Michael P. Long and Marie C. Long, Petitioner-Appellants v. Currituck County and Elizabeth Letendre: Currituck County File 14 CVS 228, COA15-376, Filed 21 June 2016 which found that there is a "structural component" to the existing UDO definition of "Dwelling, Single-Family Detached" which the county staff did not believe existed but which the courts have inferred or implied and which, if uniformly applied throughout the county, will be overly restrictive to the individual residential design criteria of owners, architects, and builders throughout the county. This is especially true of all homes constructed on pylons and to any remodels of existing homes which contemplate an expansion of the dwelling unit upon a newly laid or different foundation.

Application of the existing definition as mandated by this court decision, imposes upon the Planning staff an obligation to evaluate the type of foundations used in new residential construction and remodels instead of focusing exclusively upon the intended function or use of the home and leaving the Building inspector to deal with issues dealing with construction methods in conformity with the North Carolina Residential Code.

The amendment proposed is more consistent with the existing UDO's delegation to the Planning Director and Planning Staff those issues regarding land use and occupancy while delegating to the duly licensed building inspector issues regarding the construction methods and foundational requirements in conformity with the Residential Building Code.

The text amendment is consistent with the applicable plans because it is consistent with the goals, objectives and policies of the Land Use Plan regarding residential development, including by not limited to:

- It will enable to the staff and building inspector to appropriately process and oversee the anticipated expansion of residential construction and development with increased efficiency.
- It will ensure consistency with all HN1- HN10 housing and neighborhood development policies by having the Planning Director oversee use and occupancy standards while having construction methods, practices and procedures are overseen by the Building Inspector with reference to the residential Building Code.

2006 Land Use Plan

HOUSING AND NEIGHBORHOOD DEVELOPMENT POLICIES

POLICY HN1: Currituck County shall encourage development to occur at densities appropriate for the location. LOCATION AND DENSITY FACTORS shall include whether the development is within an environmentally suitable area, the type and capacity of sewage treatment available to the site, the adequacy of transportation facilities providing access to the site, and the proximity of the site to existing and planned urban services. For example, projects falling within the Full Services areas of the Future Land Use Map would be permitted a higher density because of the availability of infrastructure as well as similarity to the existing development pattern. Such projects could be developed at a density of two (2) or more dwelling units per acre. Projects within areas designated as Limited Service would be permitted a density of one (1) to one and one half (1.5) units per acre depending upon the surrounding development pattern and availability of resources. Projects within areas designated as Rural or Conservation by the Future Land Use Plan would be permitted a much lower density of 1 dwelling unit per 3 acres because of the lack of infrastructure in the area, the existing low density development pattern, and presence of environmentally sensitive natural areas.

POLICY HN2: Currituck County recognizes that large-lot mini-estates (i.e. 5 to 10 acres) consume large amounts of land, often without economic purpose. Estate lots having no relationship to agriculture or other resource-based activities promote sprawl and make the provision of infrastructure and services very costly. The County shall therefore encourage alternatives to large lot developments through INNOVATIVE DEVELOPMENT CONCEPTS AND CORRESPONDING ZONING techniques.

POLICY HN3: Currituck County shall especially encourage two forms of residential development, each with the objective of avoiding traditional suburban sprawl:

1. OPEN SPACE DEVELOPMENTS that cluster homes on less land, preserving permanently dedicated open space and often employ on-site or community sewage treatment. These types of developments are likely to occur primarily in the Conservation, Rural, and to a certain extent the Limited Service areas identified on the Future Land Use Map.
2. COMPACT, MIXED USE DEVELOPMENTS or DEVELOPMENTS NEAR A MIXTURE OF USES that promote a return to balanced, self-supporting community centers generally served by centralized water and sewer. The types of development are contemplated for the Full Service Areas identified on the Future Land Use Map.

POLICY HN4: Currituck County shall discourage all forms of housing from “LEAPFROGGING” INTO THE MIDST OF FARMLAND and rural areas, thereby eroding the agricultural resource base of the county.

POLICY HN5: Currituck County recognizes that there are many types of housing, in addition to manufactured housing (i.e. mobile homes), that are often overlooked in meeting the AFFORDABLE HOUSING NEEDS of young families, workers of modest income, senior citizens and others. To encourage affordable housing other than just manufactured housing, Currituck County may reserve appropriate areas of the county for stick-built housing forms only, and other areas of the county for accessory units in association with a principal structure.

POLICY HN6: Currituck County recognizes the diversity of HOUSING NEEDS FOR SENIOR CITIZENS including, but not limited to, active adult retirement communities, assisted living facilities, nursing homes, granny flats, and accessory apartments within the principal structure of a home. The County shall encourage a range of housing forms and costs to meet a broad income spectrum.

POLICY HN7: The County shall encourage development patterns and housing choices that allow for more COST-EFFECTIVE TRANSPORTATION OPTIONS for those citizens who cannot or choose not to drive, including senior citizens, lower wage workers, handicapped persons, and the young. Such a policy will also work to reduce traffic congestion on the county's already overburdened primary road system.

POLICY HN8: To protect the County's tax base and to ensure the long-term viability of the County's neighborhoods and housing stock, the County will continue to enforce appropriate CONSTRUCTION AND SITE DEVELOPMENT STANDARDS for residential developments. Such standards may include, for example, that all homes have a permanent masonry foundation (except where flood levels require elevation) and a pitched roof and overhang, and that local roads must be built to meet NCDOT acceptance standards. (See Transportation Policies for details concerning requirements for paved roads.)

POLICY HN9: Proposed residential development that would expose residents to the harmful effects of INCOMPATIBLE LAND USES or to ENVIRONMENTAL HAZARDS shall be prohibited. This would include, for example, residential development in locations adversely impacted by proximity to the airport or to activities involving excessive noise, light, odors, dust, fertilizers and insecticides (e.g. certain farm operations, mining activities, etc.).

POLICY HN10: Currituck County shall not allow the INAPPROPRIATE USE OF MANUFACTURED OR SITE BUILT HOMES for storage, illegal occupancy or their abandonment without proper disposal.

Att.
1

Attachment B

From: lfelas <lfelas@aol.com>
To: George Currin <georgecurrin@aol.com>
Subject: Fwd: Marie and Michael Long v. Currituck County, Elizabeth Letendre
Date: Tue, Aug 2, 2016 12:50 pm

From: georgecurrin@aol.com
Date: March 11, 2015 at 2:48:47 PM EDT
To: gwillis@obxlaw.com, ike.mccree@currituckcountync.gov
Cc: lfelas@aol.com
Subject: Marie and Michael Long v. Currituck County, Elizabeth Letendre

Dear Greg: I have been informed that your client, Elizabeth Letendre, intends to begin construction of the proposed project while the litigation over this project remains pending in the North Carolina Court of Appeals. On behalf of my clients, Michael and Marie Long, I am writing to formally request that your client, and/or her agents or representatives, refrain from any construction on the lot until such time that the appeal, now pending in the North Carolina Court of Appeals, has been finally decided. We have not requested any extensions of deadlines with respect to the appeal and do not plan on doing so. We will continue to try to have this appeal heard as expeditiously as possible. Given the current posture of the appeal, I would hope all briefing could be completed and the case submitted to the Court of Appeals' panel for decision within the next 90 days, or sooner. Moreover, I have no objection to asking the Court of Appeals to expedite the appeal. In any event, I would deem it unwise to advise a client to start construction of a multi-million dollar project, which may ultimately have to be torn down if such client did not prevail on appeal. My clients have asked me to ask you to please convey this request directly to your client. Thank you for your attention to this request. Best regards,

George B. Currin
Attorney at Law
Tele: (919) 832-1515
Fax: (919) 640-8686
www.currinandcurrin.com
georgecurrin@aol.com
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P.O. Box 8594
Asheville, NC 28814

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GEORGE B. CURRIN
ATTORNEY AT LAW

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2

RALEIGH OFFICE
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TELEPHONE (919) 832-1515

EMAIL: GEORGECURRIN@AOL.COM
WWW.CURRINANDCURRIN.COM

April 2, 2015

VIA US MAIL

Gregory E. Wills
6541 Caratoke Hwy
Grandy, NC 27939

RE: Michael & Marie Long v. County of Currituck, et al.
14 CVS 228

Dear Mr. Wills:

I am writing with regard to the assertion in your email of March 20, 2015 that your client is allowed to rely at this juncture on the issuance of the building permit and commence construction. I am not sure exactly what you mean by that statement, but I want to emphasize that this litigation is not over and you and your client are on notice that construction of the project while the litigation is ongoing is done with the risk that the appellate court will reverse the Superior Court, and that such reversal would result in the revocation of the building permit. While it may be true that your client can begin construction (provided there is no other prohibition from the Department of Insurance) your client will nonetheless be required to tear down, dismantle or otherwise remove such construction if the Court of Appeals reverses the Superior Court and revokes the zoning approval and attendant building permit. I understand that your client has elected to proceed with construction despite knowledge of the aforementioned risks.

With best regards, I remain

Sincerely,



George B. Currin

GBC/ja

cc: Ike McRee
Marie Long

Ben Woody

From: Greg Wills <gwills@obxlaw.com>
Sent: Friday, March 20, 2015 2:25 PM
To: georgecurrin@aol.com
Cc: Holly Dalton; Mr. Bernard Mancuso, Jr.
Subject: RE: Marie and Michael Long v. Currituck County, Elizabeth Letendre
Attachments: 3-20-15 Ltr to Currin Re Objections to ROA.pdf

George- I passed on your email to my clients. I let them know that it should be accepted as what you represented it to be. A request from Mr. and Mrs. Long not to build. While they understand that your clients are appealing the Judge's affirmation on the narrow issue of connectivity between the bedrooms and the kitchen per the language of the UDO, they also understand that your client's real objection relates to the size of the approved home and its potential use as a vacation rental. Your client's objections as to the size and use as a vacation rental simply have no merit under the law. The issue of connectivity was thoroughly litigated and affirmed by a superior court judge prior to the permit being issued. I believe the county was required to abide by the court's decision when issuing the permit after the Judge's order was entered. My clients, in turn, are entitled to rely upon the validity of that permit. I also told my clients that, in my experience, it may be a year before we get a ruling from the COA, and up to two years if the matter is successfully appealed to the supreme court. Even obtaining a ruling on a petition for cert takes 6 months to a year. These timelines apply regardless of how fast the attorneys submit their written briefs. My clients are simply following the law by building in conformity with the permit issued by the county, and have directed me to defend the appeal. Attached, please find my objections to your proposed record that will enable us to press on with the appeal.

In response to the Long's request to refrain from building, my clients have authorized me to again extend an invitation for them to call the contractor, Mr. Mancuso, and sit down with him to see if there are any reasonable accommodations that can be made. Mr. Mancuso tried to reach out to them back when this all started. Rather than have your folks spend money on a fruitless appeal, I would encourage them to accept certain facts. They had very competent lawyers, they put up a good fight, and they lost. They do not have a right to dictate the size of their neighbors house, nor can they prevent it being used for vacation rental purposes. Under the law as it exists today, they cannot shoe-horn the connectivity issue to obtain the outcome they want. For all these reasons, they will likely lose this appeal as well.

There may still be minor modifications that can be made in the design of the home so as keep peace in the neighborhood. The time to explore that is now, after they lost the litigation but before the foundation is laid. If they want to press on with the appeal and ignore this invitation- so be it. My clients will defend the appeal while acting in good faith reliance upon a Superior Court Judge's ruling.

I look forward to working with you no matter which way this goes.

Sincerely,

Greg

Gregory E. Wills, P.C.
6541 Caratoke Highway
Grandy, NC 27939
Telephone: (252) 491-7016
Fax: (252) 491-7019

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Email: gwills@obxlaw.com

NCDRC Certified Superior Court Mediator

March 20, 2015

George B. Currin
PO Box 86
Raleigh, North Carolina 27602

Re: Michael P. Long and Marie C. Long v. Currituck County et. al.
Currituck County File Number: 14-CVS-228

Dear Mr. Currin:

I am in receipt of your letter of February 26, 2015 enclosing the proposed Record on Appeal and thank you for the same. I have had an opportunity to review the proposed Record and object to the following documents being included:

1. Petitioner's Brief in Support of Petition for Writ of Certiorari and the Amended Affidavit of Michael P. Long and the Affidavit of Marie C. Long attached thereto;
2. Respondent Letendre's Memorandum in Opposition to Petition for Writ of Certiorari; and
3. Respondent Currituck County's Brief in Opposition to Petitioner's Writ of Certiorari.

I have enclosed a copy of my correspondence to the Clerk enclosing my formal objections. In the event you will agree to remove the above referenced documents please let me know and forward me a copy of the revised index and amended stipulation and I will sign the same. Thank you for your attention in this matter and I look forward to hearing from you.

Sincerely,


Gregory E. Wills

Enclosures

Cc: Mr. Donald I. McRee, Jr.
Clients

Attachment: 16-15 Elizabeth Letendre Staff Report (BOC 1.3.17) (1655 : PB 16-15 Elizabeth Letendre)

**BEFORE THE NORTH CAROLINA BUILDING CODE COUNCIL
RALEIGH, NORTH CAROLINA**

Docket No. 2015-02

IN THE MATTER OF AN APPEAL BY ELIZABETH LETENDRE REGARDING THE NORTH CAROLINA BUILDING CODE OCCUPANCY CLASSIFICATIONS)))))	ORDER
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This matter came on for hearing before a quorum of the North Carolina Building Code Council ("Council") on August 11, 2015 in Raleigh, North Carolina pursuant to an appeal noted by Elizabeth Letendre ("owner") from the formal interpretation of Chief Code Consultant of the North Carolina Department of Insurance ("NCDOI") Barry Gupton and Chris Noles, also of the NCDOI, regarding the construction of a 24 bedroom home at 1441 Ocean Pearl Road, Currituck County, North Carolina ("project"). Appearing on behalf of the Appellant-Plaintiff was attorney Gregory E. Wills. Appearing on behalf of NCDOI was attorney Daniel Johnson from the North Carolina Department of Justice. Said attorneys stipulated to the admissibility of exhibits identified as DOI-1 through DOI-62 and a packet of photographs and documents identified as Plaintiff's Exhibit 1. Said exhibits were received into evidence, distributed to all Council members and used by the witnesses. The Council heard sworn testimony from the owner's general contractor, Bernard Mancuso, Jr., Currituck County Chief Building Inspector Bill Newns and Mr. Gupton. After listening to the testimony from witnesses, reviewing the stipulated documents admitted into evidence, and listening to the arguments from the attorneys, the Council hereby makes the following:

FINDINGS OF FACT

1. On behalf of the owner, Mr. Mancuso submitted building plans to the Currituck County Planning Department for the construction of a 24 bedroom home, three stories or less, that was designed to serve as a "single family" detached dwelling for the owner within the meaning of the Currituck County Unified Development Ordinance ("UDO") and a one family dwelling within the meaning of the North Carolina Residential Code ("NCRC").
2. The stipulated documents show that the owner's neighbors objected to the plans and petitioned the County Planning Director to issue a formal opinion as whether the plans met the requirements for Single Family Residential Zoning under the UDO. Litigation before the Currituck County zoning authority ensued, culminating in an order from a Superior Court Judge that the project constituted a single family detached dwelling within the meaning of the UDO.
3. As Chief Building Inspector, Mr. Newns would normally have issued a building permit for the project as a single family detached dwelling and mandated construction methods and standards for the project under the NCRC.

4. After entry of the Superior Court order but prior to issuance of a building permit, Mr. Newns solicited the opinion of Mr. Gupton on the occupancy classification of the project. On January 22, 2015, Mr. Newns received an email from Mr. Gupton stating that his review of the building plans, coupled with his review of the Coastal Area Management Agency ("CAMA") permit application for the project, led him to conclude that the proposed occupancy more closely resembles a "hotel" and should be constructed in compliance with R-1 type occupancy as mandated in the North Carolina Building Code ("NCBC").
5. Mr. Mancuso, Mr. Newns and other members of the County's staff met and discussed Mr. Gupton's opinion and an agreement was reached wherein Mr. Newns issued a residential building permit for the project with various modifications to construction standards and methods normally called for only in projects meeting R-3 occupancy standards found in the NCBC, but not in the NCRC. The additional requirements included sprinkler systems, handicap access, increased fire protection, emergency exits and the like. Said additional items were referred to as "tweaks" to the NCRC by some of the witnesses at the hearing of this matter. The additional requirements would add approximately \$150,000 to the cost of the project.
6. Mr. Mancuso, on behalf of the owners, accepted the permit with the mandated "tweaks" and began construction with the express understanding that the owners would solicit a formal interpretation from NCDOT regarding the occupancy classification and petition the County to remove all additional requirements not expressly mandated by the NCRC in the event that Mr. Gupton's e-mail opinion on occupancy classification was reversed.
7. By letter dated April 2, 2015, Mr. Gupton provided a formal interpretation confirming his earlier email and noting that, if the property is "used as a house," it can be built according to NCRC standards, but if it were rented out as a "vacation rental," as shown in the CAMA application, it most closely resembles a Group R-1 occupancy and must be constructed in accordance with the NCBC. As stipulated by NCDOT's attorney, the subsequent NCDOT Decision issued by Deputy Commissioner Noles, dated May 28, 2015, approved and agreed with the opinion of Mr. Gupton.
8. The testimony established that the standard term for a vacation rental of a residential home in Currituck County is one week and that the entire home is typically rented. There is no evidence that individual rooms within residential dwellings are being rented.
9. The Council finds as a fact that the NCDOT opinion issued by Mr. Gupton and Mr. Noles to the effect that the occupancy classification for this project most closely resembles R-1 under the NCBC is not warranted or supported by the evidence presented at the hearing. To the contrary, the Council finds as a fact that nothing in the record before this body warrants an occupancy classification for this project beyond that of a one and two family dwelling, as defined in R101.2 of the NCRC.

Based on the foregoing FINDINGS OF FACT, the Council hereby makes the following:

CONCLUSIONS OF LAW

1. This matter is properly before the Council, and the Council has jurisdiction over the parties and the subject matter pursuant to Article 9 of Chapter 143 of the North Carolina General Statutes and Article 3A of Chapter 150B.
2. This project meets the definition of a one family dwelling not more than three stories above grade plane in height with a separate means of egress, as required in NCRC section R101.2. Accordingly, the NCRC applies to this project.
3. This project is exempted from the standards set forth in the NCBC by virtue of the language contained in 101.3.2.1 of the Administrative Code regarding one family dwellings.
4. The alternative methods set forth in Section 105.1 of the Administrative Code do not apply to the facts in this case specifically because the construction methods to be utilized for this project are those set forth in the NCRC and not those for Residential Group R found in the NCBC. Accordingly, any reference in the formal interpretation of Mr. Gupton or the NCDOT Decision issued by Mr. Noles that suggest or require additional requirements beyond those of the NCRC are not justified for the project.
5. The occupancy classification for a structure is not changed from that of a one and two family dwelling under section 101.2 of the NCRC because of the size or square footage of the structure proposed.
6. The occupancy classification for a structure is not changed from that of a one and two family dwelling under section 101.2 of the NCRC because of the number of bedrooms for the structure proposed.
7. The occupancy classification for a structure is not changed from that of a one and two family dwelling under section 101.2 of the NCRC because of the proposed use of the home as a vacation rental in which the entire house, and not individual rooms, is rented.

Based on the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the Council hereby enters the following:

ORDER

The formal interpretation of Mr. Gupton as set forth in his email of January 22, 2015 (DOI-54, Page 70) and in his formal interpretation of April 2, 2015 (DOI-54, Page 64) and as subsequently affirmed by the NCDOT Decision of Mr. Noles dated May 28, 2015 (DOI-54, Page 53-56), are hereby overturned, reversed and rescinded.

The Council affirms the assertions made by the owner that the NCRC must be applied to this project. The Council specifically finds that the proper occupancy classification for the project is that of "one and two family dwelling" as defined in Section 101.2 of NCRC.

The Council instructs the NCDOI to transmit a copy of this Order immediately upon its issuance to the Chief Building Inspector for Currituck County.

Additionally, the Council instructs the NCDOI to post this Order prominently on its website(s) within 10 days by following the standards of 2015 N.C. Sess. Law 145 (effective October 1, 2015), which reads in pertinent part:

SECTION 6.1. G.S. 143-141 is amended by adding a new subsection to read:

"(c1) Posting on Department Web Site. -- The Department of Insurance shall post and maintain on that portion of its Web site devoted to the Building Code Council all appeal decisions, interpretations, and variations of the Code issued by the Council within 10 business days of issuance."

SECTION 6.2. G.S. 143-138.1(b) reads as rewritten:

"(b) The Department of Insurance shall post and maintain on its Web site that portion of its Web site devoted to the Building Code Council written commentaries and written interpretations made and given by staff to the Council and the Department for each section of the North Carolina Building Code within 10 business days of issuance."

Finally, the Council instructs the NCDOI to remove its interpretation underlying this appeal from its website(s) within 10 days.

This the 21st day of August, 2015.

By: 
Dan Tingen, Chairman
NORTH CAROLINA BUILDING CODE COUNCIL

NOTICE OF APPEAL RIGHTS

This Order may be appealed to Superior Court within 30 days of receipt of the same as set out in Chapter 150B of the North Carolina General Statutes.

CERTIFICATE OF SERVICE


The undersigned hereby certify that the foregoing pleading or paper was served upon the following parties via certified mail, return receipt requested, first class postage prepaid, addressed as follows:

Gregory E. Wills
6541 Caratoke Highway
Grandy, N.C. 27939-9621

Daniel S. Johnson
Special Deputy Attorney General
North Carolina Department of Justice
P.O. Box 629
Raleigh, N.C. 27602

This the 25th day of August, 2015.

ROY COOPER
ATTORNEY GENERAL

By: 
Terence D. Friedman
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N.C. State Bar No. 25088
tfriedman@ncdoj.gov

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-376

Filed: 21 June 2016

Currituck County, No. 14-CVS-228

MICHAEL P. LONG and MARIE C. LONG, Petitioner-Plaintiffs

v.

CURRITUCK COUNTY, NORTH CAROLINA and ELIZABETH LETENDRE,
Respondents

Appeal by petitioner-plaintiffs Michael P. Long and Marie C. Long from decision and order entered 8 December 2014 by Judge Cy A. Grant in Superior Court, Currituck County. Heard in the Court of Appeals 23 September 2015.

George B. Currin, for petitioner-plaintiff-appellants Michael P. Long and Marie C. Long.

Donald I. McRee, Jr., for respondent-appellee Currituck County.

Gregory E. Wills, P.C., by Gregory E. Wills, for respondent-appellee Elizabeth Letendre.

STROUD, Judge.

Petitioner-plaintiffs Michael Long and Marie Long appeal a Superior Court (1) “DECISION AND ORDER” affirming the Currituck County Board of Adjustment’s decision “that a structure proposed for construction on property owned by Respondent Elizabeth Letendre is a single family detached dwelling under the Currituck County Unified Development Ordinance and a permitted use in the Single Family Residential

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Outer Banks Remote Zoning District” and dismissing petitioners’ petition for writ of certiorari and (2) “ORDER” denying petitioners’ petition for review of the Currituck County Board of Adjustment’s decision and again affirming the Currituck County Board of Adjustment’s decision. For the following reasons, we reverse and remand.

I. Background

Respondent Ms. Letendre owns an ocean-front lot in Currituck County and planned to build a project of approximately 15,000 square feet on the lot. The project consisted of “a three-story main building that includes cooking, sleeping, and sanitary facilities” and two “two-story side buildings that include sleeping and sanitary facilities.” The main building and side buildings are connected by “conditioned hallways” so that all three may be used together as one unit, and each of the three buildings is approximately 5,000 square feet. Petitioners, who are adjacent property owners, challenged the construction of respondent Letendre’s project claiming that the project as proposed was not a permitted use in the Single Family Residential Outer Banks Remote District (“SF District”) because it is not a “single family detached dwelling” (“Single Family Dwelling”) as defined by the Currituck County Unified Development Ordinance (“UDO”).

The Currituck County Planning Director determined that respondent Letendre’s project was a “single family detached dwelling,” the Currituck County Board of Adjustment (“BOA”) affirmed the Planning Director’s decision. Petitioners

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then appealed the BOA's decision to the Superior Court, and the Superior Court agreed, concluding that the "structure proposed for construction on property owned by Respondent Elizabeth Letendre is a single family detached dwelling under the Currituck County Unified Development Ordinance and a permitted use in the Single Family Residential Outer Banks Remote Zoning District" and therefore denied "Petitioner's Petition for Review of the Currituck County Board of Adjustments Order" and affirmed "[t]he Order of the Currituck County Board of Adjustments dated May 9, 2014[.]" Petitioners appealed the Superior Court's orders to this Court, and for the reasons discussed below, we reverse and remand.

On appeal, there is no real factual issue presented but only an issue of the interpretation of the UDO. The parties have made many different arguments, with petitioners focusing upon the applicable definitions and provisions of the UDO, and respondents focusing upon the intended use and function of the project. This case ultimately turns upon the definition of a "single family detached dwelling[.]" Currituck County, N.C., Unified Development Ordinance of Currituck County, North Carolina § 10.1.7 ("UDO").

II. Single-Family Residential Outer Banks Remote District

Petitioners first contend that "the Superior Court erred in affirming the Currituck County Board of Adjustment's decision to uphold the planning director's determination that the proposed structures met the definition of the term 'single

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family detached dwelling,’ as that term is used and defined in the Currituck County Unified Development Ordinance.” (Original in all caps.) The parties agree on the background underlying this appeal and one of the most salient facts is that the project is comprised of multiple buildings.¹ The project “plans indicate a three-story main building that includes cooking, sleeping, and sanitary facilities; as well as two-story side buildings that include sleeping and sanitary facilities.” Each building is approximately 5,000 square feet.² The main building and side buildings are connected by “conditioned hallways[.]”³ The hallways were originally proposed as uncovered decking but the Currituck County Planning Director determined that the uncovered decking did not comply with the ordinances, and thus the project plans were revised to connect the buildings via “conditioned hallways” which the Planning Director determined would make the entire project “a single principal structure”

¹ We have had difficulty determining what noun to use to describe the buildings which are the subject of this litigation. In this opinion, we will refer to the entire group of buildings, variously described in the record and briefs as three or four separate buildings, as the “project.” Since the words “building” and “structure” have definitions in the ordinance which are somewhat different than the common use of these words, we will place these words in quotation marks if we are using them as terms defined in the ordinance; if these words are not in quotes, we are using them colloquially. *See* Currituck County, N.C., Unified Development Ordinance of Currituck County, North Carolina §§ 10.43, .83.

² In addition to the county’s approval, the project required a Coastal Area Management Act (“CAMA”) permit. Generally speaking, CAMA regulations require a greater set-back from the ocean for larger buildings; in other words, a 15,000 square foot building would need to be “set back further” than a 5,000 square foot building.

³ The Planning Director defined “conditioned space” as “[a]n area or room within a building being heated or cooled, contained uninsulated ducts, or with a fixed opening directly into an adjacent conditioned space[.]”

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based upon the functioning of the three buildings as one dwelling.

In this appeal, the issue is the county's classification of the project as a "single principal structure" based upon the use or function of the project. The parties agree that (1) the classification of the project is governed by the UDO; (2) pursuant to the UDO the lot is zoned as SF District; and (3) this project must fit within the definition of Single Family Dwelling in order to comply with the UDO. Both the BOA and the Superior Court determined that the project did constitute a Single Family Dwelling, but on appeal, interpretation of a municipal ordinance requires this Court to engage in *de novo* review. See *Morris Commc'ns Corp. v. City of Bessemer City Zoning Bd. of Adjust.*, 365 N.C. 152, 155, 712 S.E.2d 868, 870-71 (2011) ("We review the trial court's order for errors of law. . . . Reviewing courts apply *de novo* review to alleged errors of law, including challenges to a board of adjustment's interpretation of a term in a municipal ordinance.")

In reviewing a decision of the Board of Adjustment for errors of law in the application and interpretation of a zoning ordinance, the superior court applies a *de novo* standard of review and can freely substitute its judgment for that of the board. Similarly, in reviewing the judgment of the superior court, this Court applies a *de novo* standard of review in determining whether an error of law exists and we may freely substitute our judgment for that of the superior court. Questions involving the interpretation of ordinances are questions of law. . . .

In determining the meaning of a zoning ordinance, we attempt to ascertain and effectuate the intent of the legislative body. Unless a term is defined specifically within the ordinance in which it is referenced, it should be

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assigned its plain and ordinary meaning. In addition, we avoid interpretations that create absurd or illogical results.

Ayers v. Bd. of Adjust. for Town of Robersonville, 113 N.C. App. 528, 530-31, 439 S.E.2d 199, 201 (1994) (citations and quotation marks omitted). We therefore review “the application and interpretation of [the] zoning ordinance” *de novo*. *Id.*

Before turning to the specific applicable ordinances, we note that the UDO itself provides that “[w]ords and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases that may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.” UDO § 10.1.7. The UDO provides that the SF District

[i]s established to accommodate very low density residential development on the portion of the outer banks north of Currituck Milepost 13. The district is intended to accommodate limited amounts of development in a manner that preserves sensitive natural resources, protects wildlife habitat, recognizes the inherent limitations on development due to the lack of infrastructure, and seeks to minimize damage from flooding and catastrophic weather events. *The district accommodates single-family detached homes* Public safety and utility uses are allowed, while commercial, office, and industrial uses are prohibited.

UDO § 3.4.4 (emphasis added). The UDO defines “DWELLING, SINGLE-FAMILY DETACHED” as follows: “A *residential building* containing not more than one dwelling unit to be occupied by one family, not physically attached to any other

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principal structure.” UDO § 10.51 (emphasis added).⁴ Thus, the definition of a Single Family Dwelling has five elements: (1) A building, (2) for residential use, (3) containing not more than one dwelling unit,⁵ (4) to be occupied by one family, and (5) not physically attached to any other “principal structure.”⁶ The definition of a Single Family Dwelling includes portions that address the physical structure of the proposed dwelling: “a building[,]” “containing not more than one dwelling unit[,]” and “not physically attached to any other principal structure.” *Id.* But portions of the definition of a Single Family Dwelling also address the use and function of the proposed dwelling, requiring the building be for “residential” use and “occupied by

⁴ Many of the ordinance provisions in our record are identified by a clear subsection number. An example is “Subsection 3.4.4: Single-Family Residential Outer Banks Remote (SFR) District.” UDO § 3.4.4. However, in Chapter 10 of the UDO, at least for the pages in our record, definitions of terms appear in alphabetical order without specific subsection numbering for each term. Our citations in this opinion are thus based upon the large bold number in the bottom right-hand corner of each page of the UDO. We also have to rely solely upon the ordinance provisions as provided in the record since this Court cannot take judicial notice of municipal ordinances. *See Surplus Co. v. Pleasants*, 263 N.C. 587, 592, 139 S.E.2d 892, 896 (1965) (“[W]e do not take judicial notice of a municipal ordinance or resolution.”)

⁵ The UDO defines “dwelling unit” as “one room or rooms connected together, constituting a separate, independent housekeeping establishment for owner or renter occupancy, and containing independent cooking and sleeping facilities, and sanitary facilities.” UDO § 10.51.

⁶ Although the term “structure” is defined by the UDO, the term “principal structure” is not. *See* UDO § 10.83. The UDO does define “accessory structure” as “[a] structure that is subordinate in use and square footage to a principal structure or permitted use.” UDO § 10.34. In his testimony before the BOA on 13 March 2014, the Planning Director described his understanding of the term: “I would consider the building that contains all the components of a single-family detached dwelling as the principal structure. I consider the other structures to be accessory structures that weren’t consistent with the ordinance or did not meet the requirements of the ordinance.” The Planning Director went on to clarify that he considered all the buildings of the project as one “principal structure”: “I think collectively the buildings are connected with the conditioned space, and I think they function as a principal structure.”

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one family[.]” *Id.* To qualify as a Single Family Dwelling, a project must fulfill each element of the definition, including both structural and functional provisions. The parties’ briefs have addressed each part of the definition at length, but the structural portion of the definition, and particularly the first element -- a building -- is controlling in this case.

Petitioners argue that the project is not “[a] residential building[.]” but rather multiple buildings. *Id.* (emphasis added). Respondent Currituck County barely addresses that the project must be “a residential building” but focuses mainly on the use of the project and meaning of “one dwelling unit[.]” *Id.* Respondent Elizabeth Letendre contends that “*the characterization of a ‘building’ and the methods used to lay a foundation does [(sic)] not matter under the UDO.*” The connection of the rooms so as to ensure that it will ‘function’ as a ‘dwelling unit’ is what counts.” (Emphasis added.) Respondent Letendre further argues that that petitioners’ arguments based upon the word “building” being singular is “a complete red herring” which “only works if one ignores the UDO definitions, ignores what [the Planning Director] wrote when analyzing two different sets of plans, and ignores what he said under oath at the BOA hearing.” Respondent Letendre would be correct if the UDO defined a Single Family Dwelling based only upon the function of the project -- whether it has a “residential” use as “one dwelling unit” for “one family” -- but again, the use argument fails to address the structural portion of the definition: “[a] building.” *Id.* We have

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considered the Planning Director's interpretations of the UDO and his testimony, which focused upon the use and function of the three buildings, but this Court is required to perform a *de novo* interpretation of the UDO, a municipal ordinance. *See Morris Commc'ns Corp.*, 365 N.C. at 155, 712 S.E.2d at 871.

We therefore turn to the applicable ordinance provisions and definitions. The UDO definition of "BUILDING" provides, "See 'Structure.'" UDO § 10.43. The definition of "STRUCTURE" provides that anything that "requires a location on a parcel of land" is a "structure" and thereby, apparently, also a "building":

[a]nything constructed, installed, or portable, the use of which requires a location on a parcel of land. This includes a fixed or movable building which can be used for residential, business, commercial, agricultural, or office purposes, either temporarily or permanently. "Structure" also includes, but is not limited to, swimming pools, tennis courts, signs, cisterns, sewage treatment plants, sheds, docks, mooring areas, and similar accessory construction.

UDO § 10.83. Thus, pursuant to the UDO, a "building" is a "structure[.]" since a "building" is "constructed [or] installed" and it "requires a location on a parcel of land." *Id.* As all of the "buildings" in the project are constructed on a "location on a parcel of land" each is both a "building" and a "structure[.]" *Id.* There is no dispute that this project includes multiple "buildings" or "structures." The ordinance allows only for a singular "building[.]" UDO § 10.51, although a project may include other structures such as "swimming pools, tennis courts, signs, cisterns, sewage treatment plants, sheds, docks, mooring areas, and similar accessory construction[.]" all of

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which are obviously not buildings in the colloquial sense. UDO § 10.83. These other “structures” instead serve the needs of residents of the “building” which is the dwelling. *See generally id.*

Thus far, at each level of review, the focus has been on the residential use of the project and the definition of “one dwelling unit” based upon the intended function of the project, while overlooking the essential element that such dwelling unit must be within “a residential building[.]” UDO § 10.51. Even if we assume that the use of the project is residential and that the multiple buildings will be used as “one dwelling unit” for “one family,” the project still includes three “buildings.” *Id.* The 22 November 2013, LETTER OF DETERMINATION from the Planning Director describes the project as follows: “The plans indicate a three-story main building that includes cooking, sleeping, and sanitary facilities; as well as two-story side buildings that include sleeping and sanitary facilities. The building plans also show two conditioned hallways connecting rooms within the proposed single family detached dwelling.” This is an accurate and undisputed description of the project. The BOA affirmed the Planning Director’s description, and the Superior Court affirmed the BOA’s decision. The description is not challenged on appeal. Thus, the Planning Director, BOA, and the Superior Court all have found that this project includes a main building and two side buildings, each of approximately 5000 square feet. No one has ever described this project as a single “building[.]” and they simply did not

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address the structural portion of the plain definition of a Single Family Dwelling. *See generally* UDO § 10.51.

Our interpretation of the definition of Single Family Dwelling is also consistent with the definitions of other types of dwellings in the ordinances. *See generally* UDO §§ 10.50-51. The UDO provides eleven distinct definitions regarding dwellings, including: duplex dwelling, live/work dwelling, mansion apartment dwelling, manufactured home dwelling – class A, manufactured home dwelling – class B, manufactured home dwelling – class C, multi-family dwelling, single-family detached dwelling, townhouse dwelling, upper story dwelling, and dwelling unit. UDO §§ 10.50-51. The other definitions are primarily functional, and the definition of the Single Family Dwelling is the *only* definition which includes “a residential building” or in fact, *any* reference to a “building” in the definition. *Contrast* UDO §§ 10.50-51. Thus, “a residential building” -- singular -- is a necessary and not merely superfluous part of the definition a Single Family Dwelling. *Contrast* UDO §§ 10.50-51.

Yet the definition of Single Family Dwelling clearly allows more than one “building” or “structure” to be constructed on the same lot, so the presence of three “buildings” alone does not disqualify the project. However, the remainder of the definition does disqualify the project. The last element in the definition of a Single Family Dwelling is “[n]ot physically attached to *any other* principal structure.” UDO § 10.51. (emphasis added). In other words, the Single Family Dwelling is

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“detached[,]” which is part of the title. *Id.* The UDO provides that “[w]ords used in the singular number include the plural number and the plural number includes the singular number, unless the context of the particular usage clearly indicates otherwise.” UDO § 10.1.11. In the definition of Single Family Dwelling, the context does clearly indicate otherwise. We cannot substitute the word “buildings” for “a building” without rendering the last phrase of the definition, “not physically attached to any other principal structure” either useless or illogical. The Planning Director determined that the multiple buildings together function as a principal structure, but even if they are functionally used as one dwelling unit, each individual building is itself a “structure.” *See* §§ 10.43, .83. Thus, each building is necessarily either an “accessory structure” or a principal structure. And respondents do not argue that the side buildings are “accessory structures;” they argue only that the entire project *functions* as one “principal structure.” Although the ordinance does not define principal structure, it does define “accessory structures” as “subordinate in use *and square footage*” to a principal structure. UDO § 10.34 (emphasis added).⁷ Even assuming that the two side “buildings” or “structures” are subordinate in use to the center “building,” it is uncontested that all of the buildings are approximately 5,000 square feet. No building is subordinate in square footage to another so none can meet

⁷ Again, “principal structure” is not defined, but it is clear a principal structure cannot be a structure that is “subordinate in use and square footage” as that would make it an “accessory structure.” UDO § 10.34

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the definition of an “accessory structure.” *See id.* This would mean that each building is a principal structure, however a Single Family Dwelling only allows for one. *See* UDO § 10.51. In addition, the ordinary meaning of “principal” is in accord. *See* Webster’s Seventh New Collegiate Dictionary 676 (1969). “Principal” is defined as “most important[.]” *Id.* There can be only one “principal structure” on a lot in the SF District and that principal structure can be attached only to “accessory structures[.]” *See generally* UDO § 10.51.

Respondent Currituck County argues that to interpret the UDO to allow only one “building” would create “absurd consequence[s]” because this would mandate that “nowhere in Currituck County could a property owner construct a single-family residential dwelling with wings, supported by their own foundation, connected by conditioned space or connect a main house to a garage with bedroom or other habitable space located above by way of conditioned space.” But these hypotheticals are not comparable to this project, since both include one building, the main house, which is a principal structure and is physically attached to “accessory structures,” the wings or the garage with a bedroom above the garage. *See* UDO § 10.34. In the hypotheticals, the accessory structures are “subordinate in use and square footage” to a principal structure. *Id.* Perhaps a more “absurd” result would be if we were to read the ordinances to focus only upon the “use” portion of Single Family Dwelling definition, as respondents argue, while ignoring the structural portion, since it would

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not matter how many “buildings” are connected by “conditioned hallways” if they are *functioning* as one dwelling for one family. Were we to adopt respondent Currituck County’s interpretation, a project including ten 5,000 square foot buildings, all attached by conditioned hallways, which will be used as a residential dwelling for one family with a kitchen facility in only one of the buildings would qualify as a Single Family Dwelling. Respondents’ interpretation would also be contrary to the stated purpose of the zoning, which calls for “very low density residential development” and “is intended to accommodate limited amounts of development in a manner that preserves sensitive natural resources, protects wildlife habitat, recognizes the inherent limitations on development due to the lack of infrastructure, and seeks to minimize damage from flooding and catastrophic weather events.” UDO § 3.4.4.

In summary, this project includes multiple “buildings,” none of which are “accessory structures,” *see* UDO § 10.34. Any determination that this project fits within the definition of Single Family Dwelling requires disregarding the structural elements of the definition, including the singular “a” at the beginning of the definition to describe “building” and allowing multiple attached “buildings,” none of which are accessory structures, to be treated as a Single Family Dwelling in clear contravention of the UDO. UDO § 10.51. The project does not fit within the plain language of the definition of Single Family Dwelling, and thus is not appropriate in the SF District. *See* UDO §§ 3.4.4; 10.51. We therefore must reverse the Superior Court order and

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remand for further proceedings consistent with this opinion.

III. Conclusion

For the foregoing reasons, we reverse and remand.

REVERSED AND REMANDED.

Judges CALABRIA and INMAN concur.

Attachment: 16-15 Elizabeth Letendre Staff Report (BOC 1.3.17) (1655 : PB 16-15 Elizabeth Letendre)

Benchmarking Matrix

	Previous UDO	Current UDO	Residential Building Code	Dare County	Brunswick County	Pender County	Onslow County	Kill Devil Hills	Kitty Hawk	Nags Head	Duck	Emerald Isle	Holden Beach	North Topsail Beach
ACCESSORY STRUCTURE	ACCESSORY STRUCTURE: A structure, which is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building	ACCESSORY STRUCTURE: A structure that is subordinate in use and square footage to a principal structure or permitted use. In the case of agricultural uses, accessory uses such as barns may exceed the size of the principal structure.	ACCESSORY STRUCTURE: Accessory structure is any structure not roofed over and enclosed that is not considered an accessory building located on one- and two-family dwelling sites which is incidental to that of the main building. Examples of accessory structures are, but not limited to, fencing, decks, gazebos, arbors, retaining walls, barbecue pits, detached chimneys, tree houses, playground equipment, yard art, etc. Accessory structures except decks, gazebos, and retaining walls as required by Section R404.4, are not required to meet the provisions of this code.	ACCESSORY USE: A use, which is clearly incidental to and customarily found in connection with the principal use and located on the same lot with such principal use. This shall include such uses as swimming pools, tennis courts, private piers and docks, private boathouses, and garages.	ACCESSORY STRUCTURE/USE: A use of structure that is customarily or typically subordinate to and serves a principal use or structure; is clearly subordinate in area, extent, or purpose to the principal use or structure served; and is located on the same lot as the principal use or structure.	ACCESSORY STRUCTURE: (Appurtenant Structure): a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.	ACCESSORY STRUCTURE: A structure detached from a principal building on the same zoning lot, the use of which is customarily incidental to the principal building. This includes freestanding satellite dishes, any other devices which access satellites and amateur radio antennae. Items excluded include doghouses, fences, and other minor personal property.	STRUCTURE, ACCESSORY: A building or other structure, the use of which is clearly incidental to and customarily found in conjunction with the principal structure or use located on the same lot. All setbacks shall be measured from the furthest projection, from the ground upward, of the accessory structure.	ACCESSORY STRUCTURE/BUILDING: means a subordinate building consisting of walls and a roof, the use of which is clearly incidental to that of a principal building on the same lot. The term "accessory building or structure" shall not include a mobile home, trailer, or existing structure previously used as a mobile home, and mobile homes, trailers, or structures previously used as mobile homes shall not be used as accessory structures	ACCESSORY STRUCTURE: means a building or other structure, the use of which is clearly incidental to and customarily found in conjunction with the principal structure or use.	ACCESSORY BUILDING: A subordinate building consisting of walls and a roof, the use of which is clearly incidental to that of a principal building on the same lot.	ACCESSORY STRUCTURE: A structure that is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures.	ACCESSORY USE/STRUCTURE: A use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure. Accessory uses and structures are permitted in any district but not until their principal structure is present or under construction. Accessory uses shall not involve the conduct of any business, trade, or industry except for home and professional occupations as defined herein. Structures used for accessory uses shall be of comparable color and material of the primary structure.	ACCESSORY STRUCTURE: a structure that is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common accessory structures
ADDITION	Previous UDO ADDITION: (to an existing building) An extension or increase in the floor area or height of a building structure	Current UDO ADDITION: Any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load-bearing wall other than a fire wall. Any walled and roofed addition that is connected by a fire wall or is separated by an independent perimeter load bearing wall is new construction. For purposes of Section 7.4, Flood Damage Prevention, addition (to an existing building) means an extension or increase in the floor area or height of a building or structure.	Residential Building Code ADDITION: An extension or increase in floor area or height of a building or structure.	Dare County N/A	Brunswick County N/A	Pender County ADDITION: A structure added to the original structure at some time after the completion of the original.	Onslow County N/A	Kill Devil Hills ADDITION: Any construction that increases the size of a building or site features in terms of site coverage (parking, walkways, structures, etc.), height, length, width, or gross floor area	Kitty Hawk N/A	Nags Head N/A	Duck N/A	Emerald Isle ADDITION (TO AN EXISTING BUILDING): An extension or increase in the floor area or height of a building or structure.	Holden Beach N/A	North Topsail Beach ADDITION (TO AN EXISTING BUILDING): an extension or increase in the floor area or height of a building or structure.
BUILDING	Previous UDO BUILDING: A structure having a roof and designed to be used as a place of occupancy, indoor employment, storage, or shelter	Current UDO See "Structure".	Residential Building Code BUILDINGS: Any structure used or intended for supporting or sheltering any use or occupancy.	Dare County BUILDINGS: Any structure enclosed and isolated by exterior walls and constructed or used for residence, business, industry or other public purposes. The word "building" includes the word "structure."	Brunswick County BUILDING: A temporary or permanent structure having a roof supported by columns or walls and which can be used for the shelter, housing, or enclosure of person, animals, or goods. Mobile homes and modular homes are buildings.	Pender County BUILDING: Any structure having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of any persons, animals, processes, equipment, goods or materials of any kind.	Onslow County BUILDING: Any structure having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of any person, process, equipment, or goods	Kill Devil Hills BUILDING: Any structure built for the support, shelter or enclosure of persons, animals, chattels or property of any kind which has enclosing walls for 50% of its perimeter. The term BUILDING shall be construed as if followed by the words "or part thereof." (For the purposes of this chapter, each portion of a building separated from other portions by a fire wall shall be considered as a separate unit.) For the purpose of area and height limitations this definition shall be applicable to sheds and open sheds.	Kitty Hawk BUILDING: any structure enclosed and isolated by exterior walls constructed or used for residence, business, industry or other public purposes. The term "building" includes the term "structure."	Nags Head BUILDING: any structure enclosed and isolated by exterior walls constructed or used for residence, business, industry or other purposes	Duck BUILDING: Any structure enclosed and isolated by exterior walls and constructed or used for residence, business, industry or other public purposes. The word BUILDING includes the word STRUCTURE.	Emerald Isle See "Structure"	Holden Beach BUILDING: Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. Among other things, structures include buildings, mobile homes, walls, fences, and poster panels.	North Topsail Beach BUILDING: a structure with walls and a roof, e.g. a house or shed. See also "Structure."
SINGLE FAMILY DWELLING	Previous UDO SINGLE FAMILY DWELLING: A residential use consisting of a single detached building containing one dwelling unit located on a lot containing no other dwelling units (Residence, Single-Family Detached, One Dwelling Unit Per Lot)	Current UDO SINGLE FAMILY DWELLING: A residential building containing not more than one dwelling unit to be occupied by one family, not physically attached to any other principal structure. For regulatory purposes, this term does not include manufactured homes, recreational vehicles, or other forms of temporary or portable housing. Manufactured buildings constructed for use as single-family dwelling units (manufactured home dwellings) are treated similar to single-family detached dwellings.	Residential Building Code SINGLE FAMILY DWELLING: Any building that contains one or two dwelling units used, intended, or designed to be built, used, rented, leased, let or hired out to be occupied, or that are occupied for living purposes.	Dare County SINGLE FAMILY DWELLING: A detached building designed for or occupied exclusively one family	Brunswick County SINGLE FAMILY DETACHED: A dwelling unit located on a single lot with private yards on all four sides	Pender County DWELLING, SINGLE-FAMILY: A structure, not including manufactured homes, arranged or designed to be occupied by one household.	Onslow County SINGLE FAMILY DWELLING: A residential building constructed completely on-site for occupancy by one single family.	Kill Devil Hills DWELLING, SINGLE-FAMILY: A detached building other than a mobile home designed for or occupied exclusively by one family	Kitty Hawk SINGLE FAMILY DWELLING: a detached building designed for or occupied exclusively by one family	Nags Head SINGLE FAMILY DWELLING: a detached building designed for or occupied exclusively by one family.	Duck SINGLE FAMILY DWELLING: A detached building designed for or occupied exclusively by 1 family.	Emerald Isle SINGLE FAMILY DWELLING: A building used or designated as a residence for a single family	Holden Beach SINGLE FAMILY DWELLING: A detached residential dwelling unit, other than a mobile home, designed for and occupied by one family only.	North Topsail Beach SINGLE FAMILY DWELLING: a building containing one (1) dwelling unit only, where the building is designed to be occupied by one (1) family.
STRUCTURE	Previous UDO STRUCTURE: A walled and roofed building, a manufactured home, or a gas or liquid storage tank that is principally above ground (at least 51% of the actual cash value of the structure is above ground). Any form or arrangement of a building or construction materials involving the necessity or precaution of providing proper support, bracing, tying, anchoring, or other protection against the pressure of the elements. It also means any substantial structure which, by reason of its size, scale, dimensions, bulk, or use tends to constitute a visual obstruction or generate activity similar to that usually associated with a building.	Current UDO STRUCTURE: Anything constructed, installed, or portable, the use of which requires a location on a parcel of land. This includes a fixed or movable building which can be used for residential, business, commercial, agricultural, or office purposes, either temporarily or permanently. "Structure" also includes, but is not limited to, swimming pools, tennis courts, signs, docks, mooring areas, and similar accessory construction.	Residential Building Code STRUCTURE: That which is built or constructed.	Dare County STRUCTURE: Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.	Brunswick County STRUCTURE: Anything, excluding paving, constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground. Among other things, structures include buildings, walls, screened enclosure, fences, advertising signs, billboards, poster panels, swimming pools, mobile houses, modular houses, and underground shelters.	Pender County STRUCTURE: 1. Any man-made object having an ascertainable stationary location on or in land or water, whether or not it is affixed to the ground. All buildings are "structures."	Onslow County STRUCTURE: Anything constructed or erected which is above grade including a manufactured home and a storage trailer. For purposes of this Ordinance structure does not include landscape features, such as ornamental pools, planting boxes, sculpture, birdbaths, open terraces, at-grade bridges and walkways, at-grade slab patios, driveways, recreational equipment, flagpoles, underground fallout shelters, air-conditioning compressors, pump houses, wells, malboxes, outdoor fireplaces, burial vaults, cemetery markers or monuments, bus shelters and parking lots.	Kill Devil Hills STRUCTURE: Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.	Kitty Hawk STRUCTURE: means anything constructed or erected, including parking lots, the use of which requires location on the ground, or attachment to something having location on the ground	Nags Head STRUCTURE: means anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.	Duck STRUCTURE: Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.	Emerald Isle STRUCTURE: Anything that is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner. Includes without limitation a walled and roofed building, a manufactured home, a gas or liquid storage tank that is principally above ground, any construction enclosed and isolated by exterior walls, lunch wagons, dining cars, trailers, and unattached carports consisting of a roof and supporting members, and similar built items, whether stationary or movable, but shall not include fences or signs	Holden Beach STRUCTURE: Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. Among other things, structures include buildings, mobile homes, walls, fences, and poster panels.	North Topsail Beach STRUCTURE: Anything, excluding paving, constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground. Among other things, structures include buildings, walls, screened enclosure, fences, signs, billboards, poster panels, swimming pools, manufactured homes and modular homes.







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COUNTY OF CURRITUCK

Planning and Community Development Department
Planning and Zoning Division
153 Courthouse Road, Suite 110
Currituck, North Carolina 27929
Telephone (252) 232-3055 / Fax (252) 232-3026

LETTER OF DETERMINATION

November 22, 2013

Mr. Bernie Mancuso
Mancuso Development Inc.
608 Cottage Lane
Corolla, NC 27927

RE: 1441 Ocean Pearl Road; Ocean Beach Subdivision; Corolla, North Carolina

Dear Mr. Mancuso:

This letter is in response to an October 14, 2013 letter from Mr. Gregory E. Wills requesting a determination regarding the use of the property and proposed structures located at 1441 Ocean Pearl Road, Corolla, North Carolina. The letter was accompanied by building plans dated October 10, 2013, prepared by Beacon Architecture + Design, PLLC and House Engineering, P.C. (Enclosed).

A letter of determination was previously issued for this project on April 12, 2013 specifying that decking does not constitute attachment of buildings for purposes of permitting a single family detached dwelling and therefore the project as proposed did not comply with the Currituck County Unified Development Ordinance (Enclosed). Following multiple meetings between Mancuso Development, Inc. and county staff, the above referenced building plans were submitted for a determination as a single family detached dwelling. The following definitions included in the Unified Development Ordinance (UDO) or 2012 North Carolina Residential Code are used in making the requested determination:

1. *Dwelling, Single Family Detached*: A residential building containing not more than one dwelling unit to be occupied by one family, not physically attached to any other principal structure (UDO Section 10.5).
2. *Building* (See "Structure"): Anything constructed, installed, or portable, the use of which requires a location on a parcel of land. This includes a fixed or moveable building which can be used for residential, business, commercial, agricultural, or office purposes, either temporarily or permanently. "Structure" also includes, but is not limited to, swimming pools, tennis courts, signs, cisterns, sewage treatment plants, sheds, docks, mooring areas, and similar accessory construction (UDO Section 10.5).
3. *Dwelling Unit*: One room or rooms connected together, constituting a separate, independent housekeeping establishment for owner or renter occupancy, and containing independent cooking and sleeping facilities, and sanitary facilities (UDO Section 10.5).

4. *Conditioned Space*: An area or room within a building being heated or cooled, containing uninsulated ducts, or with a fixed opening directly into an adjacent conditioned space (2012 North Carolina Residential Code).

In making this determination I reviewed the above referenced building plans. The plans indicate a three-story main building that includes cooking, sleeping, and sanitary facilities; as well as two-story side buildings that include sleeping and sanitary facilities. The building plans also show two conditioned hallways connecting rooms within the proposed single family detached dwelling.

In the application of the UDO, a single family detached dwelling is a residential building (singular form), that contains not more than one dwelling unit and is not physically attached to any other principal structure. In reference to the enclosed building plans, the main building and side buildings are connected through conditioned hallways thereby establishing a single principal structure for permitting purposes. The conditioned hallways allow unrestricted owner or renter passage between cooking, sleeping, and sanitary facilities as is common in a single family detached dwelling. The proposed connection of rooms through conditioned space is also representative of an independent dwelling unit.

For the foregoing reasons, it is my determination that the proposed single family detached dwelling located at 1441 Ocean Pearl Road, Corolla, North Carolina as represented by building plans dated October 10, 2013, prepared by Beacon Architecture + Design, PLLC and House Engineering, P.C. complies with the county's UDO. More specifically:

- The main building and side buildings are connected using conditioned hallways that allow unrestricted owner or renter passage between cooking, sleeping, and sanitary facilities thereby establishing a single principal structure for permitting purposes.
- The use of conditioned space must be consistent with the requirements of the 2012 North Carolina Residential Code and must include fixed openings from the connecting hallways directly into adjacent conditioned spaces.

If you or an aggrieved party believes this determination represents an error in the application of the UDO, an appeal may be filed with the Currituck County Board of Adjustment. The appeal must be filed with my office within 30 days of the date of this determination. You may obtain a copy of the required appeal application from the Clerk for the Board of Adjustment, Stacey Smith, by calling 232-3055.

Sincerely yours,



Ben E. Woody, AICP
Planning Director

cc: Mr. Michael P. Long
Ms. Elizabeth Letendre
Mr. Ronald Renaldi, Division of Coastal Management
Mr. Ike McRee, County Attorney
Planning File

Attachment: 16-15 Elizabeth Letendre Staff Report (BOC 1.3.17) (1655 : PB 16-15 Elizabeth Letendre)



COUNTY OF CURRITUCK

Planning and Community Development Department
 Planning and Zoning Division
 153 Courthouse Road, Suite 110
 Currituck, North Carolina 27929
 Telephone (252) 232-3055 / Fax (252) 232-3026

LETTER OF DETERMINATION

April 12, 2013

Mr. Michael P. Long
 1437 Ocean Pearl Road
 Corolla, NC 27927

RE: 1441 Ocean Pearl Road; Ocean Beach Subdivision; Corolla, North Carolina

Dear Mr. Long:

This letter is in response to your September 27, 2012 email request for a determination regarding the use of the property and proposed structures located at 1441 Ocean Pearl Road, Corolla, North Carolina which is located in the Single Family Remote (SFR) Zoning District. Following your review of plans attached to a CAMA minor permit application for the subject property, you asked if the proposed "project is a single family dwelling and meets the definition of a single family dwelling as per the county's UDO" [September 27, 2012 email from Michael P. Long]. The following definitions are included in the Unified Development Ordinance (UDO) and will be used in making the requested determination:

1. *Dwelling, Single Family Detached*: A residential building containing not more than one dwelling unit to be occupied by one family, not physically attached to any other principal structure.
2. *Building (See "Structure")*: Anything constructed, installed, or portable, the use of which requires a location on a parcel of land. This includes a fixed or moveable building which can be used for residential, business, commercial, agricultural, or office purposes, either temporarily or permanently. "Structure" also includes, but is not limited to, swimming pools, tennis courts, signs, cisterns, sewage treatment plants, sheds, docks, mooring areas, and similar accessory construction.
3. *Dwelling Unit*: One room or rooms connected together, constituting a separate, independent housekeeping establishment for owner or renter occupancy, and containing independent cooking and sleeping facilities, and sanitary facilities.
4. *Deck*: A structure, without a roof, directly adjacent to a principal building which has an average elevation of 30 inches or greater from finished grade.

5. *Accessory Structure*: A structure that is subordinate in use and square footage to a principal structure or permitted use.

In making this determination I reviewed a site development plan dated June 24, 2012, prepared by Creative Engineering Solutions, PLLC and building plans dated April 26, 2012, prepared by Beacon Architecture + Design, PLLC (Enclosed). The site development plan indicates four separate buildings. The common area located between the buildings includes uncovered decking and a swimming pool. Associated parking and wastewater disposal areas are located westward of the buildings. The building plans indicate that buildings #1 and #3 are two stories in height and include sleeping and sanitary facilities. Building #2 is three stories in height and includes cooking, sleeping, and sanitary facilities. Building #4 is a pavilion that includes cooking and sanitary facilities.

In the application of the UDO, a single family detached dwelling is a residential building (singular form), that contains not more than one dwelling unit and is not physically attached to any other principal structure. In reference to the enclosed site plan, there are four buildings that are not physically attached to any other principal structure. The buildings are attached by uncovered decking; however, a deck is defined as structure, without a roof, that is directly adjacent to a principal building. Therefore, uncovered decking is not considered part of a principal building and is ancillary in nature.

A property located in the SFR Zoning District is limited to residential use classifications of a single family detached dwelling and family care home. No other residential use classifications are permitted. In reference to the enclosed site plan, one of the four detached buildings must serve as the single family detached dwelling and include not more than one dwelling unit. Building #2 appears to meet this requirement as it includes independent cooking, sleeping, and sanitary facilities. If one of the other detached buildings is modified to also include independent cooking, sleeping, and sanitary facilities, it would then meet the definition of a dwelling unit and the development proposed for the property would no longer qualify as an allowable use in the SFR Zoning District. The single family detached dwelling use is limited to a residential building (singular form), that contains not more than one dwelling unit and is not physically attached to any other principal structure.

In reference to the enclosed site plan, buildings #1, #3, and #4 are not attached to a principal structure and are not permitted as part of a single family detached dwelling. The UDO permits accessory uses and accessory structures. However, the proposed buildings do not meet the definition of an accessory structure or the general Accessory Use Standards (UDO Section 4.3.2.B – Enclosed). In order to be permitted as accessory structures (plural form), the buildings must be customarily accessory and clearly incidental and subordinate to the principal use or structure; and be subordinate in area, extent, and purpose to the principal use or structure. The dining area, meeting area, and other assembly areas included in building #2 cannot be reasonably supported by the single bedroom included in the structure. The scale and number of bedrooms included in buildings #1 and #3 are therefore necessary to support the assembly areas in building #2, and for this reason, buildings #1 and #3 are not incidental and subordinate in area, extent, and purpose to building #2.

For the foregoing reasons, it is my determination that the proposed structures and use of the property located at 1441 Ocean Pearl Road, Corolla, North Carolina does not comply with the county's UDO. More specifically:

- The proposed decking does not constitute attachment of buildings for purposes of permitting a single family detached dwelling. One of the four detached buildings must serve as the principal structure, and the remaining detached buildings as accessory structures.
- The proposed accessory structures are not customarily accessory and clearly incidental and subordinate to the principal use or structure; and are not subordinate in area, extent, and purpose to the principal use or structure.

If you or an aggrieved party believes this determination represents an error in the application of the UDO, an appeal may be filed with the Currituck County Board of Adjustment. The appeal must be filed with my office within 30 days of the date of this determination. You may obtain a copy of the required appeal application from the Clerk for the Board of Adjustment, Stacey Smith, by calling 232-3055.

Sincerely yours,



Ben E. Woody, AICP
Planning Director

cc: Ms. Elizabeth Letendre
Mr. Bernie Mancuso, Mancuso Development
Mr. Ronald Renaldi, Division of Coastal Management
Mr. Ike McRee, County Attorney
Planning File

Attachment: 16-15 Elizabeth Letendre Staff Report (BOC 1.3.17) (1655 : PB 16-15 Elizabeth Letendre)

Planning Board Discussion (10/11/2016)

Public Hearing and Action: PB 16-15 Elizabeth Letendre:

Vice Chairman Bell announced PB 16-15 Elizabeth Letendre would not be a public hearing tonight. The item was continued from the last meeting for staff to answer questions from the Planning Board.

Mr. Woody presented the following answers to the questions from the Planning Board:

- 1) Is a load bearing wall essential to an addition? No, additions can also be self-supporting and not attached to the house.
- 2) Can you double the size of a house through an addition? Yes, however, the addition cannot be considered an accessory structure or separate building. If the addition is considered part of the house, there is no restriction on the size. If the structure is a separate building, it must meet the accessory building codes of the Unified Development Ordinance (UDO). To be considered an addition two tests must be met: 1) Building plans have to show the primary structure and the addition as being a single building. 2) The building must have a load bearing wall. If it does not have a load bearing wall it is considered a second building under the current UDO.
- 3) How does the Court of Appeals (COA) decision affect other additions (provide examples)? The court's decision only affects additions that are considered separate buildings. The Planning staff reviews the use and function of the single-family dwelling, and they also look at the physical characteristics of the structure. The focus of the court's decision was for new construction projects and not additions.

Ike McRee, County Attorney, and Bill Newns, Chief Building Inspector, appeared for additional questions from the Planning Board.

Mr. Cartwright asked Mr. McRee for more information in consideration of the current COA decision. Mr. McRee said the proposed amendment of the definition by the applicant would fix their current situation with the decision of the COA, however. The problem is that three structures exist on this property. There are two main problems which led the court to its conclusion: There are multiple buildings, none of which are accessory structures. There is only one building under the current definition and the other buildings do not meet the definition of an accessory building because they exceed the size of the principle building.

Mr. Craddock asked Mr. McRee what the legal ramifications are if the board approves the change in the definition of a structure. Mr. McRee said the text amendment as proposed by the applicant would cure the problem as determined by the court of appeals. With regard to the staff proposal, it does simplify the definition, but it still has the word "a" in the singular in the definition. If you deny the text amendment then all stays the same. The stop work order that is in effect right now would have to stay in place until a text amendment is approved to bring it into compliance or the buildings are moved to comply with CAMA regulations.

Mr. Craddock asked Mr. Newns what he would consider the building from the standpoint of the Building Code and he said it is one building, but the problem is with CAMA since it had to be different buildings; one solution may be for the property owner to seek a variance from CAMA.

Mr. Craddock asked if the buildings could be set back. Mr. McRee said this was suggested as an option to the property owner. Ben Woody said the lot is large enough to accommodate the increased setback, provided they could mitigate any other wetland issues.

Mr. Cartwright asked at what point was the building deemed non-compliant and County Attorney McRee said the property owners were given warning the litigation was ongoing and they should not continue with the building. Also, the builder knew beforehand there could be a negative effect, but they continued to build. Mr. Whiteman asked if the building permit was issued before the problem occurred and Mr. Woody said it was.

Mr. Craddock stated the UDO definition has been used for the last ten years without a problem until now.

Motion - Mr. Craddock motioned to deny the proposed text amendment both A and B of the applicant's and the staff's options since this text amendment conflicts with current land use and will cause a negative affect with surrounding houses and also since it would cause a problem countywide. Ms. Overstreet seconded the motion and the motion carried unanimously.

RESULT:	RECOMMENDED DENIAL [UNANIMOUS]	Next: 12/05/2016
MOVER:	Steven Craddock, Board	
SECONDER:	Member Jane Overstreet,	
AYES:	Carol Bell, Vice Chairman, Robert (Bobby) Bell, Board Member, Clay Cartwright, Board Member, Steven Craddock, Board Member, John McColley, Board Member, Jane Overstreet, Board Member, Fred Whiteman, Board	

Planning Board Discussion (9/13/2016)

Public Hearing and Action: PB 16-15 Elizabeth Letendre:

Carol Bell announced she had received a phone call from Bernie Mancuso before the meeting tonight. She told Mr. Mancuso she would talk to him during the Planning Board meeting.

Gregory Wills, Attorney, Bernie Mancuso, David Knoch, and Marie Long appeared before the board.

Ben Woody presented the staff report.

Attorney Gregory Wills stated that both Option A and Option B defines a single family resident with at least one room or rooms connected together with a kitchen, a bedroom, and a bathroom. Staff's definition is going through the house inside an air conditioned part without stepping outside. Attorney Wills said Mr. Woody is correct when he says

Option A is the simplest way. The NC Building Code will tell you how to build it and they found there to be a structural component within the definition. Planning staff's Option B is making the definition by how you use it which is controlled by the Residential Building Code. Attorney Wills said the County Attorney believes Option A is the best option since there is not a structural component on how you build a house.

Bennie Mancuso, the builder of the home, said the Court of Appeals decision would affect residents countywide. If you want to add an addition to a mobile home or home you would not be able to since the foundation of a new addition would be separate from the original foundation of the structure. Mr. Mancuso said he researched 130 active permits and found that

15 of them would be in violation. Houses with breeze ways would no longer be able to be permitted. Mr. Mancuso also stated the Letendre house was built as far westward as possible because of the wetlands laws and that the county sets the setback rules.

Chairman Cooper opened the public hearing.

David Knoch stated the Letendre house is not a single family home, but an event house. Mr. Knoch is against a change to the Unified Development Ordinance (UDO).

Marie Long, who lives on Ocean Pearl Road, said the building code decision was due to the Department of Insurance and that the Building Code Council decision is irrelevant because the use of the property was not commercial. Ms. Long said changing the UDO opens the door for controversy and potential litigation. Ms. Long is asking the board to deny this request.

Attorney Wills reiterated his case to approve the amendment since the Building Code Council had found the home to be a single family dwelling.

Bernie Mancuso, as builder of the house, said the NC Building Code Council found this structure to be a single family home. He said he has been a building in the county for 30 years and would like to continue.

Chairman Cooper closed the public hearing. Board

Discussion:

Chairman Cooper said the interpretation of the definition is being considered tonight, not the big house issue or how the Court of Appeals may affect the definition. This is a countywide issue and how it will affect other people is something we need to take into consideration.

The board discussed current definition of an addition to a home, accessory dwelling, breeze ways in relation to additions and accessory dwellings, and zoning in relation to building plans.

Fred Whiteman stated the decision for the Letendre case needs to be made by the NC Supreme Court first; since the board's decision could be in conflict with their decision.

Mr. Woody said we are trying to interpret the intent of the Board of Commissioners (BOC) that the Letendre project is a single family dwelling and if a building is not part of the principal building then it is accessory.

Jane Overstreet said the board does not have a legal degree and they are not equipped to make these decisions that should be made by the court. Ms. Overstreet asked if the county attorney could be present at the next planning board meeting.

John McColley agreed there is not enough information to make a good decision.

Steven Craddock asked Mr. Woody how many times the current definition of a single family residential dwelling, with the wording of the structural portion, has been an issue in the past. Mr. Woody said this is the only time.

Chairman Cooper said he needs an explanation of why the Court of Appeals made their decision.

Attorney Wills said the Supreme Court froze the decision and the Supreme Court has not said if they will hear the case.

Marie Long said the decision was made because the plans say there are four buildings.

Chairman Cooper said this is an interpretation that has been forced upon the board by the Court of Appeals.

Mr. Woody said this is a problem because the Letendre project has four buildings.

Mr. McColley made a motion to continue PB 16-15 to the next Planning Board Meeting so staff can provide the following information at the October meeting:

- Request that the county attorney and chief building inspector attend the meeting.
- Staff provide additional information when considering the current UDO and COA decision:
 - 1) Is a load bearing wall essential to an addition?
 - 2) Can you double the size of a house through an addition?
 - 3) How does the COA decision effect other additions (provide examples)?

Mr. Whiteman seconded the motion and the motion carried.

RESULT:	CONTINUED [UNANIMOUS]	Next: 10/11/2016
MOVER:	John McColley, Board	
SECONDER:	Member Fred	
AYES:	John Cooper, Chairman, Carol Bell, Vice Chairman, Robert (Bobby) Bell, Board Member, Clay Cartwright, Board Member, Steven Craddock, Board Member, John McColley, Board Member, Jane Overstreet, Board Member, Fred Whiteman, Board Member	
ABSENT:	Mike Cason, Board Member	



Benjamin R. Sullivan, Jr.

Partner

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bobbysullivan@parkerpoe.com

Atlanta, GA

Charleston, SC

Charlotte, NC

Columbia, SC

Greenville, SC

Raleigh, NC

Spartanburg, SC

November 23, 2016

Via First Class Mail and Electronic Mail

Robert Hanig
193 N. Spot Rd.
Powells Point, NC 27966

Dear Commissioner Hanig:

My name is Bobby Sullivan, and I am a North Carolina attorney whose practice focuses on zoning and other local government matters. I am writing on behalf of Elizabeth Letendre to urge you to vote for the proposed amendment to the Currituck County Unified Development Ordinance ("UDO") that would clarify the definition of "single family dwelling."

I grew up in the Carolinas and returned to practice here after getting my law degree from Harvard Law School in 2002. For many years now, my practice has focused on helping local governments in North Carolina with zoning and other issues. During that time, I served as County Attorney for Yadkin County, North Carolina, and as outside counsel I have helped a number of other North Carolina cities and counties with zoning matters, including for example the City of Wilmington, the City of Charlotte, the Town of Boone, the Town of Chapel Hill, the City of Monroe, Cabarrus County, Catawba County, and Rowan County.

Ms. Letendre engaged me to consider this proposed text amendment from the perspective of an attorney who regularly advises local governments. After thoroughly reviewing the proposed amendment and the zoning dispute that prompted it, I believe that adopting this amendment would be in the interests, not only of Ms. Letendre, but of Currituck County, as well.

First, the amendment would make the UDO's language match the County's understanding of its own ordinance. Before the Court of Appeals' decision in Ms. Letendre's case, the County interpreted its UDO to mean that Ms. Letendre's home would be a permissible single-family dwelling. That conclusion was first reached by the County planning staff, who are experts in interpreting and applying the UDO. When Ms. Letendre's permit was challenged, the same conclusion was then reached by the County's Board of Adjustment, another body with extensive experience interpreting the UDO. Ms. Letendre relied on the County's interpretation of its own UDO by then building her home in reliance on the permit issued to her.

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The County and the Board of Adjustment understood the UDO's definition of "single family dwelling" to focus on how a development is used. A development is a "single family dwelling" if it is used for only one dwelling unit, regardless of the development's size or its structural elements. That was how the County consistently interpreted the UDO.

The Court of Appeals, however, read the UDO differently. The Court concluded that, even if a development is used as only one dwelling unit, it still might not be a "single family dwelling" if it occupies more than one building. The Court thereby read the UDO in a fundamentally different way than the County read it by imposing a previously unknown "structural" element to the UDO's definition of "single family dwelling."

The Court of Appeals' reading of the UDO does not have to be the last word. The UDO is Currituck County's ordinance. The County, not the Court of Appeals, ultimately decides what the UDO should say. When it comes to the UDO's definition of "single family dwelling," the Court of Appeals read the UDO's language to mean something different than the County had intended. The County does not have to accept that. The County can and should change the UDO's language to match the County's understanding of "single family dwelling," *i.e.* a term that focuses on use rather than structure. That is the understanding of the County staff and the Board of Adjustment, and it is the understanding on which Ms. Letendre relied in building her home. This text amendment would not change the UDO so much as restore the County's original interpretation of the UDO.

Changing an ordinance is exactly what the courts expect a legislature to do if the ordinance is interpreted differently than the legislature intended. The North Carolina Supreme Court confirmed that just a few years ago in a case where it was interpreting a statute adopted by the General Assembly. The Court ruled that, if the General Assembly disagreed with how the courts interpreted the statute, the General Assembly should amend the statute to make its meaning match what the General Assembly intended. "When the legislature chooses not to amend a statutory provision that has received a specific interpretation, we assume lawmakers are satisfied with that interpretation." *Brown v. Kindred Nursing Centers East, L.L.C.*, 364 N.C. 76, 83 (2010). The County should follow this guidance by amending the UDO to reflect what the County intended.

Second, this text amendment also would help to keep a clear separation between the County's zoning regulations and the State Building Code. While both sets of regulations are important, they are intended to govern separate and distinct matters. Zoning regulations primarily focus on the overall size of developments and on how properties are used. They generally do not try to govern the details of how developments are constructed. The statute that authorizes county zoning ordinances provides that a zoning ordinance may regulate and restrict things such as the "height, number of stories and size" of developments and "the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density population," and "the location and use" of land. *See, generally*, G.S. §153A-340. Per this statute, zoning ordinances sometimes limit the overall size of residential homes by limiting homes in certain zoning districts to a particular number of stories. In the context of homes, zoning ordinances generally also regulate usage, such as the County UDO providing that a single-family dwelling can contain no

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more than one “dwelling unit,” or a zoning regulation prohibiting certain kinds of businesses from being operated out of a single-family home.

By comparison, zoning ordinances do not usually govern the structural details of a development. That is left to the State Building Code, which focuses on structural details in order to help ensure that developments are built safely and soundly. Keeping structural elements out of a zoning ordinance helps ensure that zoning regulations do not interfere with the goals of the Building Code. It gives property owners the discretion to build what they want using any designs and engineering methods deemed safe under the Building Code. Keeping zoning and building code functions separate also helps to avoid legal disputes, which can arise if a local zoning ordinance is in conflict with the Building Code.

As interpreted by the Court of Appeals, the UDO’s definition of “single family dwelling” goes beyond the traditional province of zoning by doing more than regulating the overall size of buildings or how buildings are used. Under the Court of Appeals’ reading, whether a project is a single-family dwelling can depend on how the project is constructed. A home of 5,000 square feet would be a single-family dwelling; but a home consisting of two 2,500 square foot structural foundations connected by a short air conditioned walkway would not be. Both projects would be the same size and would be used the exact same way. But because of structural differences in how they were built, one would be permitted and the other would not.

Zoning ordinances do not typically turn on such structural details. And having the UDO turn on such details puts the UDO in conflict with the State Building Code. In its August 2015 decision, the State Building Code Council determined that Ms. Letendre’s home meets the definition of a single family dwelling for purposes of the North Carolina Residential Code. The Court of Appeals made the County’s UDO inconsistent with the State Code by deciding that the exact same home is not a single family dwelling under the UDO. That inconsistency can be remedied by amending the definition of Single Family Dwelling in the UDO to match the County’s original interpretation of the ordinance.

This would also be in keeping with the fundamental purpose of zoning. Zoning ordinances are intended to govern how development on one piece of land affects neighboring lands. How large a building is, and how that building is used, can impact neighboring properties, and so those are characteristics that zoning ordinances generally regulate. Structural details, however, are typically not the kind of thing that affects neighboring properties. As a result, they are typically regulated by the State Building Code – which focuses on safe and sound development – rather than zoning ordinances. Here, for example, the Court of Appeals did not rule that Ms. Letendre’s home violates the UDO because of its size or because of how it will be used (the UDO has no size limit on homes, and Ms. Letendre’s home will be used as a single dwelling). Her home instead was found to violate the UDO purely because of a detail in how it was constructed, a detail that, itself, has no impact on surrounding properties.

Having zoning regulations that depend on such structural details also could create problems for the County in terms of interpreting and enforcing the UDO. The overall size of a building, and how the building is used, are details understandable to people who are not engineers. But if your UDO focuses on structural details, it may put the County staff in situations where interpreting

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and applying the UDO requires delving into questions of construction and engineering in which the staff may not be well versed. Further problems can arise if disputes about such structural details are appealed to your Board of Adjustment, as the volunteers who serve on the board may not be familiar with such details. By keeping your UDO focused on the overall size of a development and how it will be used, your UDO can be more effectively interpreted and applied by your staff and your Board of Adjustment.

I urge you to adopt the proposed text amendment. Not only would it be beneficial to Ms. Letendre, who relied on the County's interpretation of its own UDO in building her home, but ultimately the text amendment would benefit the County by ensuring that its zoning regulations govern the characteristics that zoning is supposed to govern.

I appreciate your consideration of this important matter.

With best regards,

PARKER, POE, ADAMS & BERNSTEIN LLP

By: 
Bobby Sullivan

BRS:pkb

Attachment: 16-15 Elizabeth Letendre Staff Report (BOC 1.3.17) (1655 : PB 16-15 Elizabeth Letendre)

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December 16, 2016

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VIA U.S. MAIL, FEDEX DELIVERY and EMAIL

RE: Proposed Text Amendment
Currituck County UDO Definition of Single Family Detached Dwelling

DEAR MEMBERS OF THE CURRITUCK COUNTY BOARD
OF COMMISSIONERS:

I am writing this letter in response to several letters that have been written to you by proponents of a proposed text amendment to change the definition of a single family dwelling under the Currituck County UDO. I represent Michael and Marie Long and I write on their behalf to urge you to vote against the proposed text amendment.

Currituck County Board of Commissioners

December 16, 2016

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By way of background, I grew up in eastern North Carolina (Rocky Mount), and I have been practicing law in North Carolina for almost 30 years. I have extensive experience representing clients in zoning and land use cases, both at the trial and appellate level, and I have recently been involved as counsel in two cases involving Currituck County: Michael & Marie Long v. Currituck County and Elizabeth Letendre (File No. 14 CVS 228) and Mary Etheridge v. Currituck County (File No. 12 CVS 38).

Ms. Elizabeth Letendre proposes a text amendment to change the current UDO definition of a single family dwelling to delete the requirement that a single family dwelling must be one principal building, with the exception of permitted accessory structures, such as garages, storage sheds, and the like. I understand that both the County's Planning and Zoning Board and the planning director, Ben Woody, are opposed to Ms. Letendre's proposed text amendment.

Because the proposed text amendment lacks support from the Currituck County planning experts, I did not think further criticism of it from me was necessary. But, it has now come to my attention that several individuals have written to you and given you incorrect and/or misleading information to convince you to vote for this text amendment. Because I cannot allow these letters to go unopposed, I now write to you in response to the letters of Benjamin R. Sullivan, Jr., H. Taylor Sugg, and Willo Kelly.

Letter of Benjamin Sullivan: Mr. Sullivan is an attorney hired by Ms. Letendre to advocate on her behalf. He is not a disinterested or objective expert in the field of zoning law. With all due respect to my colleague, Mr. Sullivan, his letter is based on flawed legal analyses and a misapprehension of the Court of Appeals' decision, the Currituck County UDO and zoning law in general. Mr. Sullivan's letter attempts to complicate a very simple issue.

At the outset, it is important to note that Mr. Sullivan's letter provides you with a misleading and inaccurate description and analysis of the Court of Appeals' decision in the Letendre case. He also mischaracterizes the facts leading up to the Court of Appeals' decision and the position of "the county" with respect to the UDO definition of single family dwelling.

Initially, Mr. Sullivan states that the Court of Appeals' decision in the Letendre case "read the UDO's language to mean something different than the county intended." This assertion is simply incorrect and reveals a misunderstanding of zoning law in North Carolina and the well-established rules of ordinance interpretation. The basic flaw in this legal analysis is that it erroneously equates the planning director's interpretation of the UDO with the intent of the Board of Commissioners who drafted the UDO definition of single family dwelling. They are not at all the same. Fort v. County of Cumberland, 218 N.C. App. 401, 408, 721 S.E.2d 350, 355 (2012) (holding that planning director's "testimony as to intent of ordinance is irrelevant

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to [Court's] analysis" of what the legislative body intended when it enacted the ordinance). This flawed premise permeates Mr. Sullivan's letter to you.

Contrary to Mr. Sullivan's assertion, the Court of Appeals interpreted the Currituck County UDO definition of single family dwelling so as to effectuate the intent of the drafters of such provision –the Currituck County Board of Commissioners. What the Court of Appeals held was that the *planning director's* interpretation of the UDO definition of single family dwelling could not stand because his interpretation was inconsistent with the intent of the Board of Commissioners when it enacted this UDO definition. The Court of Appeals' decision correctly recognized that the Board of Commissioners intended to require that a single family dwelling be limited to one principal building, except for accessory structures; which is the traditional and accepted definition of single family dwelling throughout the state. Because the planning director interpreted the UDO definition of single family dwelling in a way that was contrary to the Board of Commissioners' intent in drafting this ordinance, the Court of Appeals had no choice but to reverse the planning director's interpretation, so that the true intent of the Board of Commissioners could be carried out. Mr. Sullivan's statement that the Court of Appeals interpreted the UDO to mean something different than "the county" intended, is entirely and fundamentally incorrect. Ayers v. Board of Adjustment for Town of Robersonville, 113 N.C. App. 528, 531, 439 S.E.2d 199, 201 (1994) ("In determining the meaning of a zoning ordinance, we attempt to ascertain and effectuate the intent of the legislative body.")

Mr. Sullivan also asserts that "the county" has consistently interpreted the UDO to allow multiple principal buildings to meet the definition of single family dwelling. Aside from using the term "the county" too loosely, thereby allowing one to incorrectly assume it means something more than the planning director, this assertion is unsupportable since there does not appear to have been any other prior (or subsequent) case in Currituck County where the property owner sought to qualify its project as a single family dwelling, while simultaneously admitting to state government and CAMA officials that such project was comprised of at least three (3) separate principal buildings. Moreover, we are aware of no other situation in Currituck County where there is even a question about whether a purported single family dwelling is comprised of more than one principal building.

Mr. Sullivan states in his letter to you that the UDO provision which limits the definition of a single family dwelling to a single principal building (i.e. the house), except for accessory structures, "goes beyond the traditional province of zoning by doing more than regulating the overall size of buildings or how buildings are used." Sullivan letter, p. 3. This statement is plainly incorrect and contrary to the zoning enabling statutes. N.C. Gen. Stat. § 153A-340-341, et seq.

Mr. Sullivan's letter treats the Court of Appeals' decision in the Letendre case as some kind of strange and rogue decision, which must be corrected. But Mr. Sullivan's argument here

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is not only incorrect, it is also disingenuous, as every county and municipality which he claims to have represented--Yadkin County, Wilmington, Charlotte, Boone, Chapel Hill, Monroe, Cabarrus County, Catawba County and Rowan County--has the same or a substantially similar ordinance provision which limits the definition of single family dwelling to one principal building, except for accessory structures. Moreover, as the planning director, Ben Woody, stated in the staff report on the proposed text amendment, "Most of the surveyed definitions of Single Family Dwelling [in other coastal jurisdictions] include the reference to "[a]" building, which is one of the structural elements included in Currituck County's definition." Staff Report, p. 2.

The Currituck County Board of Commissioners, in its wisdom, intended to limit the definition of single family dwelling to one principal building, when it drafted the UDO definition of single family dwelling. This is now established as a matter of law by the Court of Appeals' decision. Any suggestion to the contrary by Mr. Sullivan is legally unsupportable. Moreover, the Board of Commissioners' decision to define a single family dwelling as one principal building, with the exception of accessory structures, is consistent with long-standing traditions of single family residential developments in Currituck County and elsewhere. For Mr. Sullivan to now assert that requiring a single family dwelling to be one principal building, with the exception of accessory structures, is somehow novel or inappropriate is, quite frankly, absurd.

Ms. Letendre's proposed text amendment is merely an attempt to save her unlawful project, which she continued to build despite ongoing litigation and multiple warnings about the risks of doing so, at the expense of all other residents of Currituck County. In particular, adoption of this text amendment would cause harm to the Single Family Residential Outer Banks Remote District zoning district, as recognized by the County's planning department staff report.

With respect to the North Carolina Building Code, Mr. Sullivan's letter merely repeats the same arguments Ms. Letendre made to the appellate court, which have now been rejected. Mr. Sullivan states that Ms. Letendre's project was found to violate the UDO "purely because of a detail in how it was constructed, a detail that, itself, has no impact on surrounding properties." This statement is simply incorrect and again reveals a misunderstanding of the Court of Appeals' decision and the UDO provision at issue here.

First, the Court of Appeals held that Ms. Letendre's project failed to meet the UDO definition of single family dwelling because: 1) the UDO limits the definition of single family dwelling to one principal building, except for accessory structures; and 2) by Ms. Letendre's own admission, her project was comprised of at least three (3) separate and independent principal buildings, none of which was an accessory building. Mr. Sullivan's characterization of this fundamental flaw in Ms. Letendre's project as a "detail in how it was constructed" is a

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gross misstatement of the Court of Appeals' opinion and the undisputed facts of the Letendre case. Despite Mr. Sullivan's repeated references to "structural details," and his suggestion that the UDO definition regulates such details, the fact remains that the UDO definition of single family dwelling does not regulate structural details. Rather, the UDO definition does nothing more than restrict the number of principal buildings which can be built on a single lot to one, and, does not in any way, shape or form attempt to regulate or restrict how or in what manner such building is built or constructed. The idea that this traditional definition of single family dwelling encroaches on the State Building Code is simply meritless. Moreover, notwithstanding Mr. Sullivan's concerns about the planning director's interpretive abilities, I am confident that the planning director and the Board of Adjustment are entirely capable of determining whether there is one building or multiple buildings; now that the Court of Appeals has clarified the intent and meaning of the UDO definition of single family dwelling.

Secondly, Mr. Sullivan's suggestion that the unlawful Letendre project has no impact on surrounding properties is clearly erroneous. Ms. Letendre's development of her multi-building lodging complex, under the guise of a "single family dwelling," has major adverse impacts on the value of my client's property, including but not limited to completely blocking their ocean view on one side due to its unreasonably close proximity to the ocean. Moreover, the drastic change in setback requirements caused by this text amendment would have an enormously destructive effect on the oceanfront and natural environment in the Single Family Residential Outer Banks Remote District, and would be contrary to the County's Land Use Plan.

Finally, Mr. Sullivan states that "[t]he Court of Appeals made the county's UDO inconsistent with the State Code by deciding that the exact same home is not a single family dwelling under the UDO." This statement is legally and factually erroneous. The Building Code Council never made any decision that is inconsistent with the Court of Appeals' opinion in the Letendre case. In fact, the Building Code Council never addressed the UDO definition of single family dwelling or the number of principal buildings allowed under the UDO definition or the building code.

Moreover, even if there was an inconsistency between the building code and the UDO, it would not matter. The zoning definition of a single family dwelling serves purposes different from the building code and it is not in the County's best interest to make them identical. The zoning definition of a single family dwelling under the UDO (as well as numerous other local land use ordinances in this State), ensures that residential zoning districts, particularly the Single Family Residential Outer Banks Remote District in Currituck County, are developed consistently with the purpose and character of the area and/or district in question. The current definition of a single family dwelling in the UDO is not only consistent with the Currituck County Land Use Plan, and supported by your planning director, planning board and many citizens of the County, it also makes total and complete sense in that it protects the residential

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character and other important aspects of the remote outer banks area and other areas of Currituck County.

Changing the UDO definition to allow multiple principal buildings to qualify as a single family dwelling would destroy Currituck County's Land Use Plan Policy OB9, which states the following:

LUP POLICY OB9: LARGE HOMES ON OCEANFRONT LOTS IN THE OFF-ROAD AREA should be located as far west as possible. Structures should not be built forward of protective dunes, thereby impeding dune recovery. County minimum setbacks may exceed CAMA minimum setback in the ocean erodible areas.

The proposed text amendment would totally erode the character of the Single Family Residential Outer Banks Remote District, circumvent its purposes and limited uses, and put an unacceptable strain on the infrastructure and natural environment that was clearly never contemplated nor intended when the Board of Commissioners created this zoning district and limited the definition of single family dwelling to one principal building.

Finally, it is elementary that no inconsistency can exist between the Court of Appeals' decision and a decision of the Building Code Council, as decisions of the Court of Appeals will always supercede and take precedence over any decision of the Building Code Council on the same subject.

Letter of H. Taylor Sugg: Mr. Sugg is the regional president of the bank that loaned Ms. Letendre the money to build her unlawful project, despite the fact that the zoning approval for the Letendre project was the subject of active litigation the entire time the bank was apparently disbursing loan proceeds to Ms. Letendre. Ben Woody, planning director for Currituck County, has appropriately responded to Mr. Sugg's letter and I commend Mr. Woody's letter to you for your consideration.

I do not know what happened between Towne Bank and Ms. Letendre, nor do I have any idea why the bank would provide construction loan funds on this project when every reasonable person knew that there was a risk that this project could be declared unlawful and its zoning approval and attendant building permit revoked. I do not know if the bank loaned the money to Ms. Letendre with full knowledge of the ongoing litigation and risks, or if Ms. Letendre failed to disclose this fact to the bank. I would only add to Mr. Woody's letter that a proposed text amendment regarding the definition of single family dwelling, which would adversely affect the entire county, particularly the oceanfront areas in the Single Family Residential Outer Banks Remote District, is not the proper solution to a problem apparently caused by either: 1) a failure by Ms. Letendre or her representatives to disclose this ongoing

Currituck County Board of Commissioners

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litigation to the bank; or 2) a knowing assumption of the risk by Ms. Letendre and her lender that the zoning approval and attendant building permit might be revoked as a result of the litigation.

In any case, the residents of Currituck County should not be brought into this private problem between Ms. Letendre and her lender. Moreover, changing the definition of single family dwelling would do nothing to change the well-established law that neither the property owner nor a lender may reasonably rely on a building permit where the project is subject to active litigation over zoning approval. Godfrey v. Zoning Bd. of Adjustment of Union County, 317 N.C. 51, 66, 344 S.E.2d 272, 281 (1986) (“The adjoining property owners should not be called upon to suffer to protect the financial investment of one who acts at his own peril with forewarning of the possible consequences.”); Clark Stone Company, Inc. v. Natural Resources, Div. of Land Resources, 164 N.C. App. 24, 40, 594 S.E.2d 832, 842 (2004) (“Permits unlawfully or mistakenly issued do not create a vested right.”).

Finally, in my view, Mr. Sugg’s statement that he speaks on behalf of “all construction lenders” is unsupportable. I venture to say that, unless they have been misled or misinformed in some way, competent construction lenders do not loan money for projects which are the subject of active litigation regarding zoning approval and understand that the law clearly contemplates that the zoning approval and any attendant building permit may be revoked as a result of such litigation. This has been the law well before the Court of Appeals’ decision in the Letendre case. Godfrey, 317 N.C. at 66, 344 S.E.2d at 281.

Email of Willo Kelly: Willo Kelly is a lobbyist for local home builders and realtors. Ms. Kelly purports to give legal interpretations of the Court of Appeals’ decision in the Letendre case which are incorrect. The biggest problem with Ms. Kelly’s letter is that her expressed concerns and fears are based on erroneous factual and legal assumptions. Ms. Kelly asserts that the effect of the Court of Appeals’ decision in the Letendre case was to render existing homes in Currituck County “illegal non-conforming” structures, which cannot be marketed, sold or insured. This hyperbolic statement is unsupportable.

First of all, there is absolutely no evidence that – other than the Letendre project – any other purported single family dwelling in existence in Currituck County is not in compliance with the UDO definition of single family dwelling, based on the existence of multiple principal buildings. What Ms. Kelly and other proponents of the text amendment fail to recognize is that the Currituck County UDO definition of a single family dwelling does nothing more than limit the number of principal buildings on a lot to one. Any suggestion that it does more than that is wrong and misleading. And as stated above, this definition is consistent with that of numerous other counties and municipalities across the State.

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Secondly, as the planning director, Ben Woody, testified at the Board of Adjustment hearing in the Letendre case, an addition to an existing house can easily comply with the single principal building requirement by merely ensuring that the addition is done in such a way as to result in a single building, rather than multiple buildings. Remember, it was Ms. Letendre who consistently stated to government officials that her project consisted of at least three (3) separate buildings, none of which was an accessory structure. She never attempted to argue that her project was one principal building. Of course, had she done so, she would have violated the CAMA regulations which prohibited structures over 5000 square feet from being built that close to the ocean. If one is acting in good faith and not trying to straddle the fence by arguing one thing to Currituck County and another thing to CAMA, it is incredibly easy to add on to an existing house without creating multiple principal buildings.

Despite the efforts of those who seek to confuse the issues, this is not complicated, nor does any of this implicate the North Carolina Building Code. Rather, quite simply, the current UDO definition of single family dwelling merely restricts the number of principal buildings that can be built on a lot. It does not address nor regulate in any way the manner in which such single building must be built or constructed. Arguments to the contrary are red herrings, which underscore how this proposed text amendment is merely an attempt to save one project, without regard for what is good for the rest of the County residents, and particularly the Single Family Residential Outer Banks Remote District.

In closing, I have been informed and believe there is great opposition from the residents of Currituck County to the Letendre text amendment because of the adverse, and indeed potentially devastating, effects this amendment will have on, among other things, the residential character and natural environment in the Single Family Residential Outer Banks Remote District. It is not fair for the other law-abiding residents of Currituck County to suffer adverse consequences from an ill-advised text amendment, borne solely from an imprudent decision to proceed with construction while litigation regarding the legality of the project was ongoing.

I thank you for taking the time to read this letter. I apologize for its length, but I believe it was necessary to adequately address the important issues raised in the three different letters from Mr. Sullivan, Ms. Kelly and Mr. Suggs. On behalf of Michael and Marie Long, I respectfully urge you to vote against the proposed text amendment submitted by Ms. Letendre.

With best regards, I remain

Sincerely,



George B. Currin

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GBC/ja

cc: Ben Woody
Ike McRee
Michael & Marie Long

Letendre Project Timeline

April 12, 2013: The Planning Director made a determination that the Letendre Project as originally proposed did not meet the permitting requirements for a single-family dwelling.

November 22, 2013: The plans for the Letendre project were modified and the Planning Director made a determination that the revised plans established a single principal structure for permitting purposes.

March 13, 2014: The Board of Adjustment affirmed the Planning Director's decision that the Letendre project was a single-family dwelling.

December 8, 2014: the Superior Court affirmed the Order of the Currituck County Board of Adjustment that affirmed the Planning Director determination that the proposed Letendre project was a single-family dwelling.

December 31, 2014: the attorney for Mike and Marie Long filed an appeal from the Superior Court decision to the North Carolina Court of Appeals.

February 25, 2015: at the request of Ms. Letendre, the county issued a building permit for the project. County staff verbally advised Ms. Letendre's representatives that an appeal was pending which could adversely affect the project as permitted.

April 10, 2015: Ms. Letendre's representatives called for the first building inspection of the project (a piling inspection).

August 21, 2015: the North Carolina Building Code Council overturned an interpretation of the North Carolina Department of Insurance and ordered that the Letendre project meets the definition of a one family dwelling as required by the North Carolina Residential Code.

Sept 23, 2015: The case was argued before the NC Court of Appeals.

June 21, 2016: The NC Court of Appeals issued a decision reversing the Superior Court decision, holding that the Letendre project is not a single-family dwelling as defined by the Unified Development Ordinance.

September 22, 2016: Ms. Letendre's petition for discretionary review by the NC Supreme Court was denied resulting in the finality of the Court of Appeals decision.

September 30, 2016: The Planning Director issued a stop work order for the Letendre project.



Currituck County Agenda Item Summary Sheet

Agenda ID Number – (ID # 1742)

Agenda Item Title

Public Hearing and Action: PB 14-16 Lake View at Currituck:

Brief Description of Agenda Item:

Request to amend the use permit to modify the sidewalk/trail setback for Lake View at Currituck. The property is owned by Lake View Land Development, LLC and located in Moyock on Survey Road, Tax Map 15, Parcels 83A, 83B, 83C, 83D and 83E, Moyock Township.

Board Action Requested

Action

Person Submitting Agenda Item

Cheri Elliott, Assistant

Presenter of Agenda Item

Ben Woody



STAFF REPORT PB 07-10 BOARD OF COMMISSIONERS JANUARY 3, 2017

APPLICATION SUMMARY

Property Owner: Lake View Land Development, LLC 616 Village Drive, Suite G Virginia Beach, VA 23454	Applicant: Lake View Land Development, LLC 616 Village Drive, Suite G Virginia Beach, VA 23454
Case Number: PB 07-10	Application Type: Amended Use Permit
Parcel Identification Number: 0015000083C0000 0015000083A0000 0015000083B0000 0015000083D0000 0015000083E0000	Existing Use: Undeveloped
Land Use Plan Classification: Rural Moyock Small Area Plan: Full Service	Parcel Size (Acres): 74.23 acres
Number of Units: 159	Project Density: 2.37 units per acre
Required Open Space: 25.98 acres	Provided Open Space: 26.45 acres

SURROUNDING PARCELS

	Land Use	Zoning
North	Agricultural	AG
South	Residential	AG
East	Residential	AG
West	Agricultural	AG

STAFF ANALYSIS

The request submitted by Lake View Land Development, LLC is to amend the use permit to allow the perimeter community walking trail to be located closer than 10 feet from exterior property lines in some locations. A construction error resulted in approximately 620 linear feet of perimeter walkway to now be located between 7.33' and 10' from the exterior property line of the delveopment.

RECOMMENDATIONS

TECHNICAL REVIEW COMMITTEE

1. The Technical Review Committee recommends approval of the use permit amendment subject to the modified conditions noted below.

2. The following conditions of approval necessary to ensure compliance with the review standards of the UDO and to prevent or minimize adverse effects of the development application on surrounding lands for all phases of the Lake View of Currituck (strickethrough text is requested removal and renumber as appropriate):
 1. Fountain Lake Way and Green Lake Road connection stub and associated sidewalks shall terminate no more than five feet from the edge of the existing ditch or drainage easement and the developer shall post a performance guarantee with the county to ensure funds are available to complete the connections.
 2. Wheelchair ramps shall be provided at intersections and other major points of pedestrian flow. Wheelchair ramps and depressed curbs shall be constructed in accordance with NCDOT standards. Please provide a curb cut detail with the submittal pre-construction plans.
 3. On street parking, if installed, shall be provided in accordance with the variance issued by the Board of Commissioners.
 4. ~~The pedestrian loop trail system must be located a minimum of 10 feet from all exterior property lines and shall be located such to provide safe movement.~~
 5. A Dominion Power encroachment agreement is required to allow roads, pedestrian trails, required landscape buffers, and wastewater treatment infiltration pond within their 150 foot utility easement. The agreement must be provided at the pre-construction submittal.
 6. Pedestrian easements shall be provided on the final plat where the sidewalk extends beyond the street right-of-way and on private lots. (Development Review Manual)
 7. Given the relatively small size of the proposed lots, deed restrictions or restrictive covenants shall restrict parking of boats and recreational vehicles on individual lots or a boat/rv parking area shall be provided.
 8. The development impact statement references the pedestrian related active recreation element. In the interest of providing a complete and safe active recreation system, the applicant shall provide sidewalks along Survey Road frontage, and between the proposed residential and nonresidential uses.
 9. The required improvements shall be installed and accepted prior to submission of final plat approval for each phase.
 10. The applicant shall submit a home and building design template that will be incorporated with the approval. Residential structures shall be designed with:
 - a. Variation in exterior architectural materials (siding, roofing);
 - b. Vertical and horizontal relief in buildings (roof lines, eaves, bump outs);
 - c. Variation in house styles/types;
 - d. Inclusion of front porches, projecting bays, vestibules; and,
 - e. The units shall have proportional attributes including overall height to width ratios of existing building facades, doors, windows, projecting canopies, and other architectural features with in the vernacular of the area.
 11. All open space areas surrounding the lake shall be stabilized with grass, vegetation, and proposed landscaping prior to recordation of the first phase.
 12. All visual relief open space within each phase shall be stabilized and vegetated with grass and proposed landscaping buffer.
 13. Low impact development techniques should be integrated in the project to manage treatment of stormwater. (WQ3, WQ6, WQ7)
 14. Internal pedestrian circulation shall be required for all commercial areas through the use of clearly defined walkways. (CD8, CD9)
 15. In commercial areas, parking located between a commercial building and street rights-of-way shall be screened with a Type B Bufferyard. (CA3, CD7, CD8)

16. Dumpsters or similar solid waste receptacles, HVAC equipment, commercial mechanical units, or similar appurtenances shall be screened from view using a combination of solid landscaping or opaque fencing. (LUP CA3)
17. Landscape islands shall be incorporated into the commercial parking areas. (LUP CD7, CD8, CA3)
18. In commercial areas pedestrian plazas or similar shaded outdoor seating areas shall be provided. (LUP CD7, CD8, CD9)
19. Neighborhood serving commercial development shall integrate pedestrian scale and design (proportional relationship of buildings and spaces to pedestrians). Retail, office, and entertainment uses shall be appropriately designed, small-scale businesses. (LUP CD1, CD5, CD6, CD7, CD8, CD9).
20. The maximum amount of pond aeration devices allowed by NC DWQ shall be installed.
21. The driveways shall be two vehicle deep parking (including garage).
22. Cluster mailboxes shall be used.
23. The building pad elevations shall be raised a minimum of 18 inches above existing grade, except in Phase 3A where building pad elevations will meet current UDO and stormwater manual requirements in effect on April 4, 2016.
24. A solid vegetative buffer and fencing between shall be provided to the adjacent agricultural properties.
25. Phase 3A shall be subject to the development agreement and use permit, as amended.
26. A solid vegetative buffer and fencing between shall be provided to the adjacent agricultural properties except in Phase 3A where the farmland buffer shall meet the UDO requirements in effect on April 4, 2016.
27. The development shall be subject to the Homeowners or Property Owners Association requirements of Section 6.1.4 of the UDO as amended; and in effect on April 4, 2016. In addition, all streets shall meet NCDOT standards at the time of transfer to the association.

INFRASTRUCTURE	
Water	Public
Sewer	Public sewer
Transportation	Streets: The streets will be designed and constructed to NCDOT standards.
	Pedestrian: A sidewalk is proposed along one side of the street within this requested phase.
	Connectivity Score: 2.0
Schools	Elementary Students Generated: 3 (39 – total for 159 lots)
	Middle School Students Generated: 1 (12 – total for 159 lots)
	High School Students Generated: 1 (22 – total for 159 lots)
Design Standards	See Amended Use Permit
Lighting	County approval will be required prior to installation of any street lights
Landscaping	50' Farmland buffer and street trees are required in Phase 3A.
Parking	None
Recreation and Park Area Dedication	Payment in lieu of recreation and park area dedication is recommended for the proposed 13 lots which is \$4,019.29
Riparian Buffers	None

USE PERMIT REVIEW STANDARDS

A use permit shall be approved on a finding that the applicant demonstrates the proposed use will meet the below requirements. It is staff's opinion that the evidence in the record, prepared in absence of testimony presented at a public hearing, supports the preliminary findings

The use will not endanger the public health or safety.

Preliminary Applicant Findings:

1. The walkway is ADA compliant and adjacent slopes meet the requirements of the UDO.
2. The use will not endanger public health or safety.

The use will not injure the value of adjoining or abutting lands and will be in harmony with the area in which it is located.

Preliminary Applicant Findings:

1. Adjacent properties are farmlands, common areas, and golf course rough area and have an existing vegetative buffer.
2. The amendment will not injure the value of adjacent property and will be in harmony with existing land uses.

The use will be in conformity with the Land Use Plan or other officially adopted plans.

Preliminary Applicant Findings:

1. The Land Use Plan classifies this area as rural but adjacent to full service within the Moyock subarea.
2. The Moyock Small Area Plan classifies the area as full service. The proposed development density is 2.37 units per acre, which is within the range of densities envisioned in the Moyock Small Area Plan.
3. The following Land Use Plan and Moyock Small Area Plan policies are relevant to and support this request:

2006 LUP POLICY PR4: The county shall seek to identify, plan for and develop a system of OPEN SPACE GREENWAYS, HIKING and BIKING TRAILS as opportunities may allow. The use of (1) natural corridors such as streams and floodplains, and (2) man-made corridors such as utility and transportation rights-of-way and easements, shall be emphasized.

MSAP POLICY R1 Expand and develop recreational opportunities for all ages and users including access to the water and natural environment, walking trails, multi-purpose fields, multi-purpose community building, and other non-traditional types of recreational opportunities that are consistent with the Currituck County Parks and Recreation Master Plan.

The use will not exceed the county's ability to provide adequate public facilities, including, but not limited to: schools, fire and rescue, law enforcement, and other county facilities. Applicable state standards and guidelines shall be followed for determining when public facilities are adequate.

Preliminary Applicant Findings:

1. The change will have no impact on the county's ability to provide adequate public facilities.

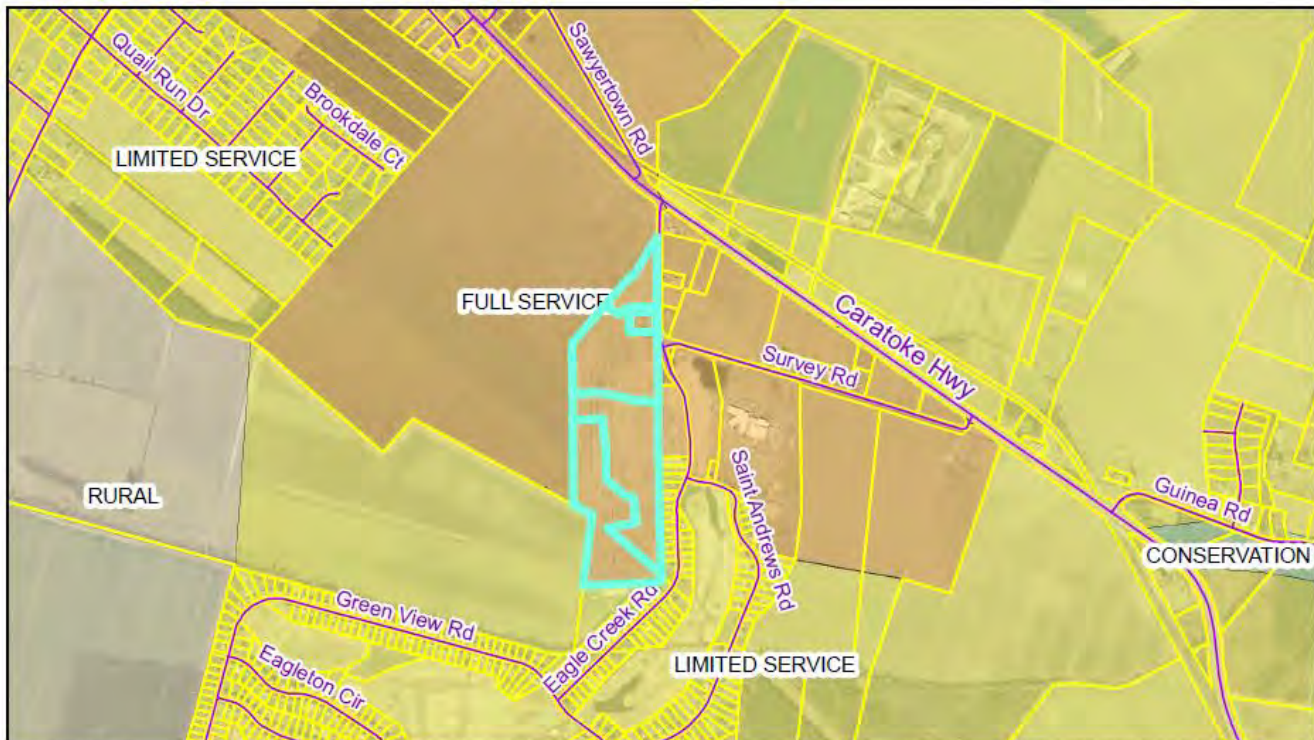
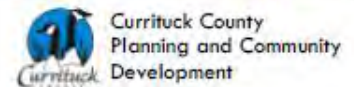
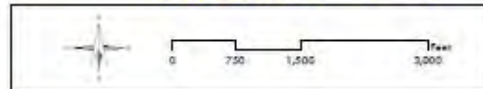
THE APPLICATION AND RELATED MATERIALS ARE AVAILABLE ON THE COUNTY'S WEBSITE

Planning Board: www.co.currituck.nc.us/board-of-commissioners-minutes-current.cfm

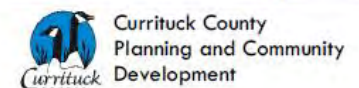
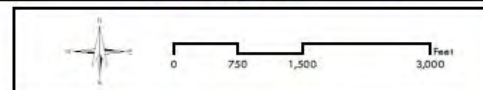
Attachment: Lake View at Currituck Am UP Staff Report (1742 : Lake View at Currituck)

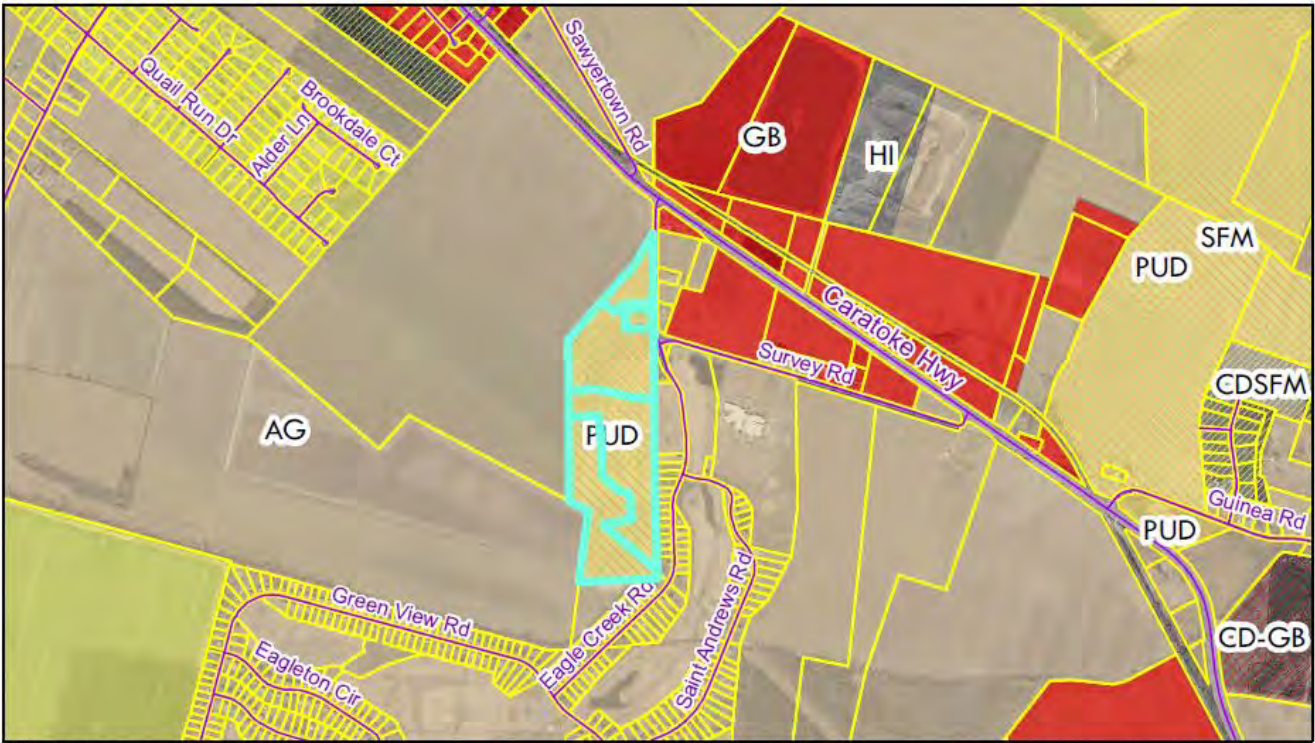


PB 07-10
Lake View at Currituck
Aerial

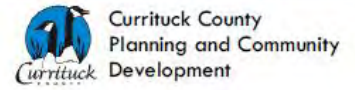
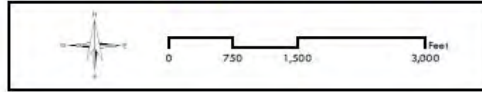


PB 07-10
Lake View at Currituck
Moyock Small Area Plan





PB 07-10
Lake View at Currituck
Zoning





Use Permit Application

OFFICIAL USE ONLY:

Case Number: _____
 Date Filed: _____
 Gate Keeper: _____
 Amount Paid: _____

Contact Information

APPLICANT: James O. Myers, Jr.
 Name: Lake View Land Development LLC
 Address: 616 Village Dr., Suite G
 Virginia Beach, VA 23454
 Telephone: 757-969-7422
 E-Mail Address: jmyers@franciscushomes.com

PROPERTY OWNER: James O. Myers, Jr.
 Name: Lake View Land Development LLC
 Address: 616 Village Dr., Suite G
 Virginia Beach, VA 23454
 Telephone: 757-969-7422
 E-Mail Address: jmyers@franciscushomes.com

VP of Franciscus Homes - Manager of Lake

LEGAL RELATIONSHIP OF APPLICANT TO PROPERTY OWNER: View Land Development, LLC

Property Information

Physical Street Address: 120 Survey Road, Moyock, NC

Location: Moyock, NC

Parcel Identification Number(s): 0015-000-083A-0000, 0015-000-083B-0000, 0015-000-083C-0000,
 0015-000-083D-0000, 0015-000-083E-0000

Total Parcel(s) Acreage: 74.23AC

Existing Land Use of Property: Residential development under construction & farmland

Request

Project Name: Lake View at Currituck

Proposed Use of the Property: Planned Unit Development

Deed Book/Page Number and/or Plat Cabinet/Slide Number: P.C. "N", Slides 181-182

Total square footage of land disturbance activity: _____

Total lot coverage: _____

Total vehicular use area: _____

Existing gross floor area: _____

Proposed gross floor area: _____

Community Meeting

Date Meeting Held: _____ Meeting Location: _____

Purpose of the Use Permit and Project Narrative (please provide on additional paper if needed):
Amendment to Condition No. 4 of the existing Use Permit to allow community walking trails to be located closer than 10 feet from exterior property lines in some locations. A construction error has resulted in approximately 620 linear feet of perimeter walkway to now be located between 7.33' and 10' from the exterior property line of the development. The walkway could be demolished and replaced, but the adjacent land has been graded, drained and stabilized (please refer to attached photograph), and the relocation of the walkway would involve relocation/regrading of an existing stabilized swale and adjacent open space areas. The existing walkway appears to meet the intent, if not the letter, of the U.D.O. and the Use Permit for this development.

The applicant shall provide a response to the each one of the following issues. The Board of Commissioners must provide specific findings of fact based on the evidence submitted. All findings shall be made in the affirmative for the Board of Commissioners to issue the use permit.

- A. The use will not endanger the public health or safety.

The walkway is ADA-compliant and adjacent slopes meet the requirements of the U.D.O. The use will not endanger public health or safety.

- B. The use will not injure the value of adjoining or abutting lands and will be in harmony with the area in which it is located.

Adjacent properties are farmlands, common areas and golf course "rough" area and have an existing vegetated buffer. The amendment will not injure the value of adjacent property and will be in harmony with existing land uses

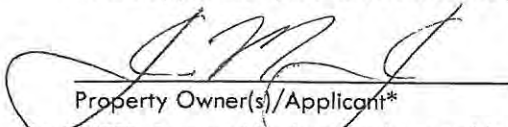
- C. The use will be in conformity with the Land Use Plan or other officially adopted plan.

The Land Use Plan and Moyock Small Area Plan promote pedestrian trail systems and connectivity (Land Use Plan Policy PR-4, and Moyock SAP Policy R2).

- D. The use will not exceed the county's ability to provide adequate public facilities, including, but not limited to, schools, fire and rescue, law enforcement, and other county facilities. Applicable state standards and guidelines shall be followed for determining when public facilities are adequate.

The change will have no impact on the County's ability to provide adequate public facilities.

I, the undersigned, do certify that all of the information presented in this application is accurate to the best of my knowledge, information, and belief. Further, I hereby authorize county officials to enter my property for purposes of determining zoning compliance. All information submitted and required as part of this application process shall become public record.

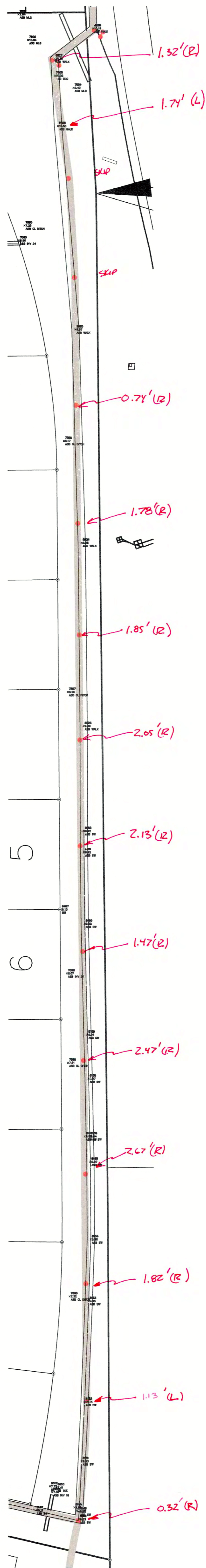

 Property Owner(s)/Applicant*

11-28-2016
 Date

*NOTE: Form must be signed by the owner(s) of record, contract purchaser(s), or other person(s) having a recognized property interest. If there are multiple property owners/applicants a signature is required for each.

Use Permit Application
 Page 6 of 8

Attachment: Lake View Signed Use Permit Application (1742 : Lake View at Currituck)



AS-BUILT WALK

• SAVED STAKE PT

DESIGN WALK

R = AS-BUILT X.XX' TO RIGHT OF STAKED WALK
L = AS-BUILT X.XX' TO LEFT OF STAKED WALK

SCALE: 1" = 30'

PRELIMINARY
For Review Purposes Only



Attachment: Lake View at Currituck Walkway Photograph (1742 : Lake View at Currituck)



Currituck County Agenda Item Summary Sheet

Agenda ID Number – (ID # 1693)

Agenda Item Title

Public Hearing & Action: PB 16-22 Barnhill Contracting Co.:

Brief Description of Agenda Item:

Request for conditional rezoning of 25 acres located in Powells Point approximately .25 miles south of South Bayview Road on the east side of Caratoke Highway, Tax Map 111, Parcel 3, Poplar Branch Township.

Board Action Requested

Action

Person Submitting Agenda Item

Tammy Glave,

Presenter of Agenda Item

Tammy Glave



STAFF REPORT PB 16-22 BARNHILL CONTRACTING BOARD OF COMMISSIONERS NOVEMBER 21, 2016

APPLICATION SUMMARY

Property Owner: Alan Foster Forbes 51047 Lunar Dr. Kitty Hawk NC 27949	Applicant: Barnhill Contracting Company PO Box 7948 Rocky Mount NC 27804
Case Number: PB 16-22	Application Type: Conditional Rezoning
Parcel Identification Number: 01111-000-0003-0000	Existing Use: Vacant
Land Use Plan Classification: Full Service	Parcel Size (Acres): 25 acres
Zoning History: A-40 (1975); A (1989)	Plan Request: Asphalt Plant and Bulk Materials Storage yard
Current Zoning: AG	Proposed Zoning: C-HI

SURROUNDING PARCELS

	Land Use	Zoning
North	Single Family Dwelling, Active Farmland	GB
South	Single Family Dwellings	AG
East	Active Farmland	AG
West	Single Family Dwellings, Retail	GB

STAFF ANALYSIS

Barnhill Contracting is relocating its Currituck operations since the OBX Waterpark Adventure project is being constructed at its current location. This conditional zoning request is in direct conflict with the Land Use Plan (see below) and presents compatibility issues with adjoining residences and with its proximity to Caratoke Highway. The applicant has proposed increased buffers for the development to attempt to minimize adverse impacts. Staff's opinion is the better approach, that is consistent with county policy, is to site this type of use in an existing or planned industrial park (See attachments A and B).

The applicant states "The current zoning request with the proposed buffers will do less to diminish the desirability of existing and planned non-industrial developments that full development under the current GB zoning would allow. Further, GB development directly on US 158 will have a greater negative impact for residents located directly on the highway, verses project proposed by Barnhill contracting." Since the adoption of the current UDO on January 1, 2013, unsightly industrial development is no longer permitted in the GB zoning district, which comprises a significant number of

parcels along Caratoke Highway. This policy change implements the Highway Corridor appearance policies in the Land Use Plan. While the applicant's statements regarding GB development on the corridor may have been true under the previous UDO, it is not accurate under the current UDO.

The current UDO provides for non-residential design standards (including architectural standards), community compatibility standards, off-street parking and loading standards, and landscaping standards (including streetscapes) that insure compatibility of GB uses with existing uses and protects and enhances property values and aesthetic qualities. These design standards are intended to implement the county's goals and expectations for higher quality commercial, office, and mixed-use development that is more compatible with residential development in the county. Stating that GB development on Caratoke Highway will have a greater negative impact for residents than a heavy industrial use such as an asphalt plant is unfounded. Hot mix asphalt plants will generate odor, noise, visual impacts, etc. that are not present in GB uses.

The applicant indicated at the Planning Board meeting that the proposed location is near several septage and sludge fields that operate as an industrial use. The Unified Development Ordinance permits septage and sludge fields as an accessory use to agricultural activity on a property, not as an industrial use. Septage and sludge fields are allowed in the AG and HI zoning districts and perform similarly to a traditional agricultural activity.

The NC Division of Waste Management allows septage and sludge fields, but requires continuous agricultural activities on the sites as part of the required state permit. For example:

Septage

Acreage is broken down into fields with a 30 day waiting period between last application and harvest. The 30 day waiting period between the last application of septage and the harvest of a crop is met by alternating septage application between fields. All crops are used as animal feed. A general summary of Division of Waste Management permits for county issued conditional use permits:

Crop	Annual Planting Season	Harvest Season
Coastal Bermuda Grass/Ryegrass	Spring	Cut and baled every 6-8 weeks
Millet/Corn	Spring	Fall
Wheat/Oats	Fall	Spring

Sludge

A crop management plan is filed for each operation. Allowable crops include: Alfalfa, Coastal Bermuda Grass, Blue Grass, Corn, Cotton, Fescue, Forest, Milo, Small Grain (Wheat/Barley/Oats), Sorghum, Soybeans, Timothy/Orchard/Rye Grass. Animal feed crops must wait 30 days after last application for harvest. Depending on the food crop, there is a 14-38 month harvest delay.

In staff's opinion the intensity of use and equipment used for a septage and sludge operation (trucks, sprayers, combines, etc.) is more similar to a traditional agricultural operation than a heavy industrial use.

RECOMMENDATIONS

TECHNICAL REVIEW COMMITTEE

The Technical Review Committee recommends **denial** of the conditional rezoning because:

- It is inconsistent with the goals, objectives, and policies of the Land Use Plan, specifically policies ID2, ID3, ID6, CA1, and ML4. (UDO Section 2.4.3.C.1)
- It does not address a demonstrated community need since the existing Barnhill Contracting Company facility does not have an asphalt plant. There has not been an asphalt plant at that location since approximately 2012. (UDO Section 2.4.3.C.4)
- It is not compatible with the existing uses surrounding the land subject to this application as this project is surrounded by single-family dwellings on three sides. It is not the appropriate zoning district and use for the land because it adjoins Caratoke Highway. (UDO Section 2.4.3.C.5)
- The project would adversely impact nearby lands as a hot mix asphalt plant will generate odor, noise, visual impacts, etc. (UDO Section 2.4.3.C.6)
- It would not result in a logical and orderly development pattern since it will not be an extension of an existing industrial zoning district. (UDO Section 2.4.3.C.7)

PLANNING BOARD

The Planning Board recommends **denial** of the conditional rezoning due to the same reasons listed by the TRC above.

CONSISTENCY STATEMENT

The conditional zoning request is **not consistent** with the 2006 Land Use Plan because it conflicts with the following policies:

- POLICY ID2: Industrial uses should not be located in areas that would diminish the desirability of existing and planned NON-INDUSTRIAL DEVELOPMENTS, nor shall incompatible non-industrial uses be allowed to encroach upon existing or planned industrial sites.
- POLICY ID3: Industrial development shall be located on land that is physically suitable and has unique locational advantages for industry. Advanced planning for the identification of such land shall be encouraged. Designation of "CERTIFIED" INDUSTRIAL SITES shall be especially pursued.
- POLICY ID6: New industrial development shall be encouraged to locate in existing and/or planned INDUSTRIAL PARKS.
- POLICY CA1: The important economic, tourism, and community image benefits of attractive, functional MAJOR HIGHWAY CORRIDORS through Currituck County shall be recognized. Such highway corridors, beginning with US 158 and NC 168, shall receive priority attention for improved appearance and development standards, including driveway access, landscaping, buffering, signage, lighting and tree preservation.
- POLICY ML4: Currituck County recognizes that the appearance and traffic moving function of the NC 168/ US 158 CORRIDOR is of exceptional importance to both the near term quality of life and long-term economic prospects for residents and property owners in the Mainland Area. The Transportation and Community Appearance policy sections of this plan shall be implemented to give priority to this issue.

The request is **not reasonable** and **not in the public interest** because:

- It establishes a new industrial site adjoining Caratoke Highway instead of locating in an existing or planned industrial park.

- Hot mix asphalt plants will generate odor, noise, visual impact, etc. that could negatively impact the surrounding properties and dwellings.

CONDITIONS OF APPROVAL

Only conditions mutually agreed to by the owner(s) may be approved as part of a conditional zoning district. Conditions shall be limited to those that address conformance of development and use of the site with county regulations and adopted plans and that address the impacts reasonably expected to be generated by the development or use. No condition shall be less restrictive than the standards of the parallel general use zoning district.

Suggested conditions of approval:

If the board approves this request, staff recommends the following conditions:

1. A Type D buffer is required along the side and rear property lines. Show what existing vegetation will remain undisturbed (permanently) in the buffers along the sides and rear property lines and how those buffers will be supplemented to create the required buffer.
2. Show what existing landscaping will be left undisturbed (permanently) within the 300' front buffer.
3. Install a fence or wall surrounding the entire compound for safety and security reasons. A fence/wall detail is required. (UDO Section 5.3/Administrative Manual)
4. Demonstrate the location of storm drainage patterns and facilities intended to serve the development. (Administrative Manual)
5. If the property is rezoned, a major site plan submittal and review is necessary for the project.

Applicant's Proposed Zoning Condition:

- 300 feet wooded buffer along Highway 158 Corridor and attractive subdivision type entrance to conceal use of property.

THE APPLICATION AND RELATED MATERIALS ARE AVAILABLE ON THE COUNTY'S WEBSITE
Planning Board: www.co.currituck.nc.us/planning-board-minutes-current.cfm

Planning Board Discussion (10/11/2016)

Tammy Graves gave a brief review of the staff report and the decision of the Technical Review Committee (TRC). Barnhill Contracting Company previously occupied land labeled as full service in Land Use Plan. The existing site was taken over by the future OBX Waterpark. The TRC reviewed PB 16-22 Barnhill Contracting Company's request for conditional rezoning at its meeting on September 21, 2016 and recommended denial.

Realtor Gary Woodson appeared before the board. Mr. Woodson said of Barnhill's fifteen plants across the state, seven are within fifteen hundred feet of residential properties and no complaints have been received. Mr. Woodson reference a letter in the Planning Board packet saying the trend of the area is industrial.

Appraiser Kim Tate appeared before the board. Mr. Tate referred to sewage spray fields and waste debris sites located in the general area of the property. He said Currituck is growing and they see industrial growth within the county. The impact on existing property would be to the older smaller homes already located next to the four lane road and these homes would possibly become businesses in the future. The property would have executive style gating with a buffer and would not be visible from the road.

Kim Hamby of East Carolina Engineering appeared before the board. Ms. Hamby said the site is suitable due to its good sandy soil with a slope. One third of the property would be dedicated to a buffer. The existing trees are already forty-five feet in height and very dense. If they choose another site it would take years for trees to grow and produce a good buffer. The sides would be obscured and the silo would only be seen from one-quarter mile away. The silo would be the only permanent piece on site. Currituck does not refer to Sand Business, septic spray business, etc., as Industrial on the Land Use Plan, but these businesses are considered industrial in a large amount of other areas.

Shannon Douglas with Barnhill Contracting Company appeared before the board. Mr. Douglas said the emissions would be mostly steam and it has a whisper jet burner to decrease the noise. We have been in this area for twenty-five years and would like to stay in the area.

Vice Chairman Bell asked if the board had any questions for the applicant. Mr. Whiteman asked for the definition of adjacent since the applicant had referenced the proposed site being adjacent to other industrial sites, but the adjacent sites appeared to all be residential or agricultural. Mr. Woody read the definition of adjacent.

Mr. Craddock said this site does not seem suitable if you have twenty-five acres requiring a buffer which causes so much loss of land. Mr. Craddock inquired to the number of sites that were examined for potential use and Mr. Douglas said they examined every available site within fourteen miles with ten acres or more which is approximately fifty sites.

Vice Chairman Bell opened the public hearing.

Robert Griffin of Poplar Branch said this proposed site is located north and east of farmed land. He opposes the site and said it would open a new access point to NC158 and would negatively affect his property value as agricultural land.

Diane Newbern asked the board to deny the rezoning due to it not being compatible with our current Land Use Plan.

The applicant gave rebuttal. Mr. Douglas said this rezoning would be beneficial to the land owners because we are willing to put a nice buffer to obscure the site. Once this land is purchased by someone else it may become a convenient store and would lose its entire buffer.

Vice Chairman Bell closed the public hearing.

Board Discussion:

The board discussed the current plan which says industry has to occur in a planned industrial area and if changed all agriculture land would have to be rezoned. Mr. Craddock asked the Planning Department if there were other areas that were better suited for the Barnhill Contracting site. Mr. Woody said the county does not have a lot of land zoned Industrial, some

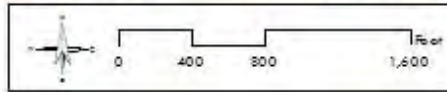
are Light Industrial. There are currently forty-nine acres available in the Currituck Industrial Park that could be rezoned from Light Industrial to Heavy Industrial.


Vice Chairman Bell asked to entertain a motion and Mr. Cartwright recused himself from voting. Bobby Bell recommended a denial with a second from Mr. Craddock and the motion carried.

RESULT:	RECOMMENDED DENIAL [5 TO 1]	Next: 11/21/2016
MOVER:	Robert (Bobby) Bell, Board Member Steven	
SECONDER:	Craddock, Board Member	
AYES:	Carol Bell, Vice Chairman, Robert (Bobby) Bell, Board Member, Steven Craddock, Board Member, Jane Overstreet, Board Member, Fred Whiteman, Board Member	
NAYS:	John McColley, Board Member	
RECUSED:	Clay Cartwright, Board Member	



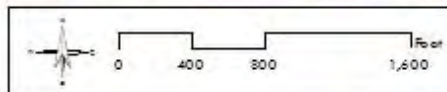
PB 16-22 Barnhill Contracting Co
Conditional Rezoning
Aerial Photography




 Currituck County
Planning and
Community Development



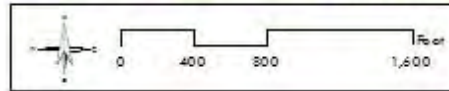
PB 16-22 Barnhill Contracting Co
Conditional Rezoning
Zoning



 Currituck County
Planning and
Community Development

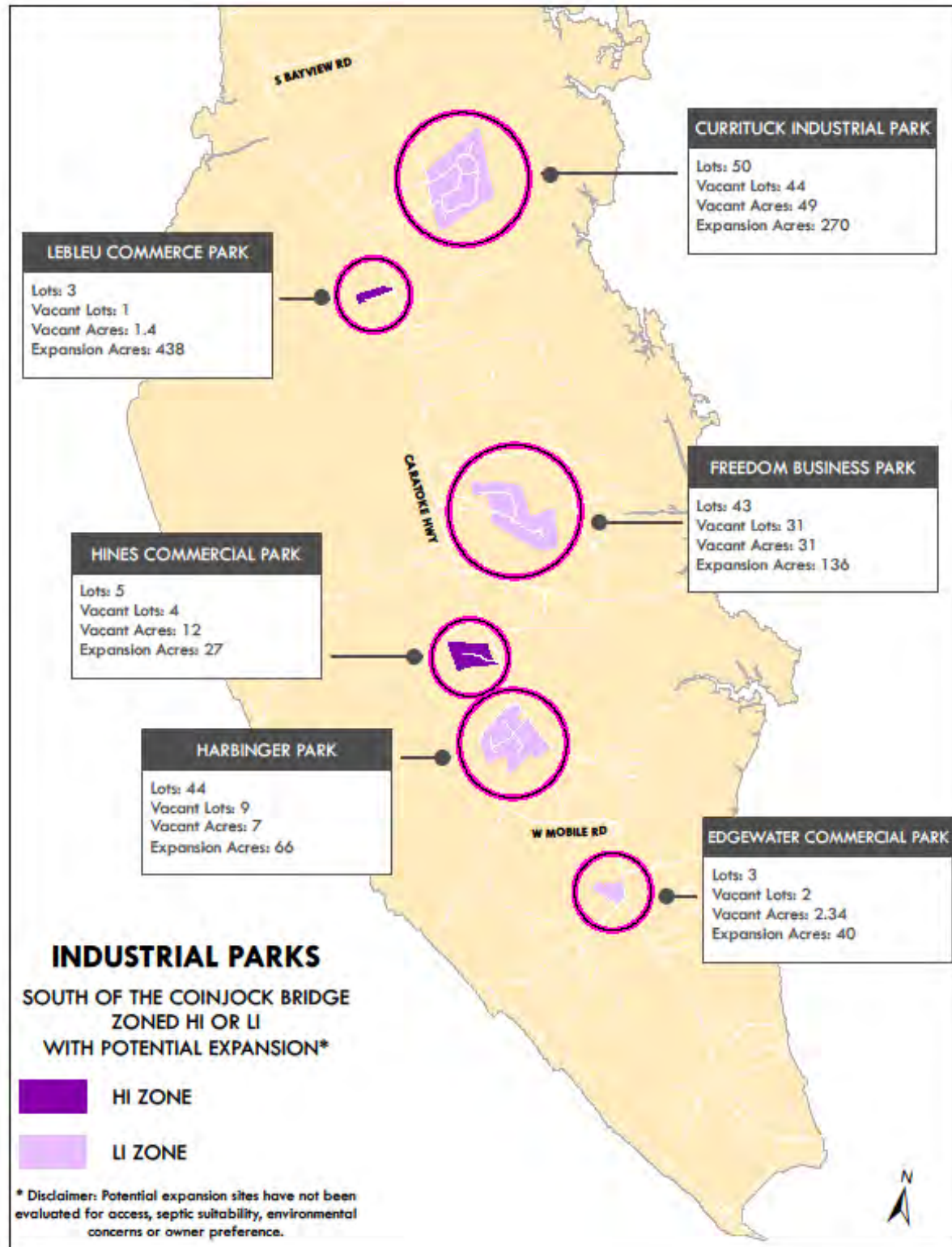


PB 16-22 Barnhill Contracting Co
Conditional Rezoning
LUP Classification

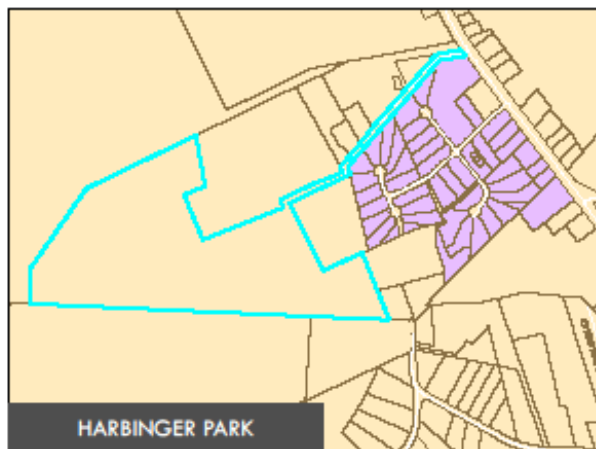
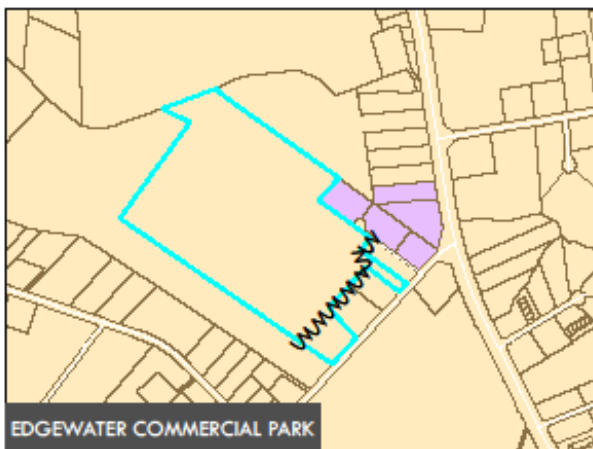
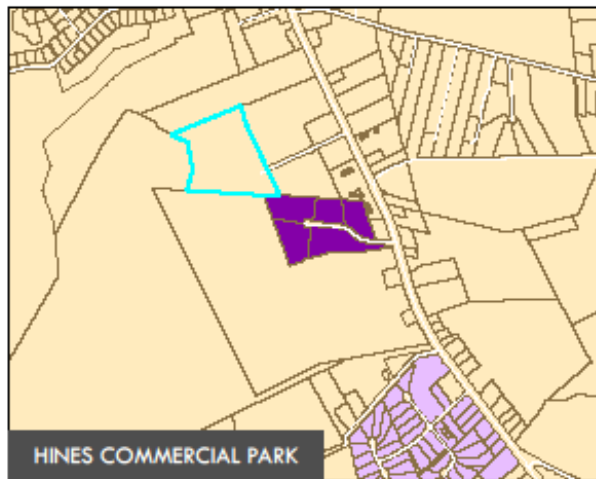
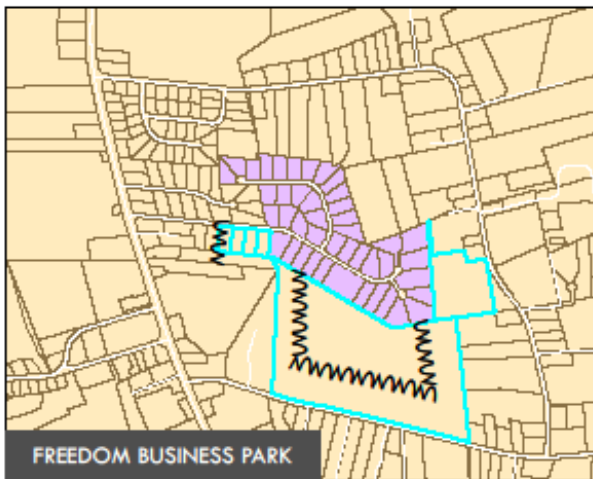
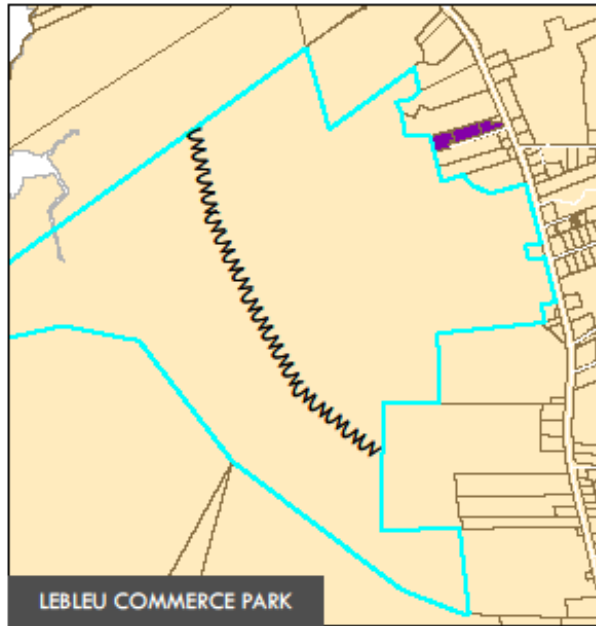
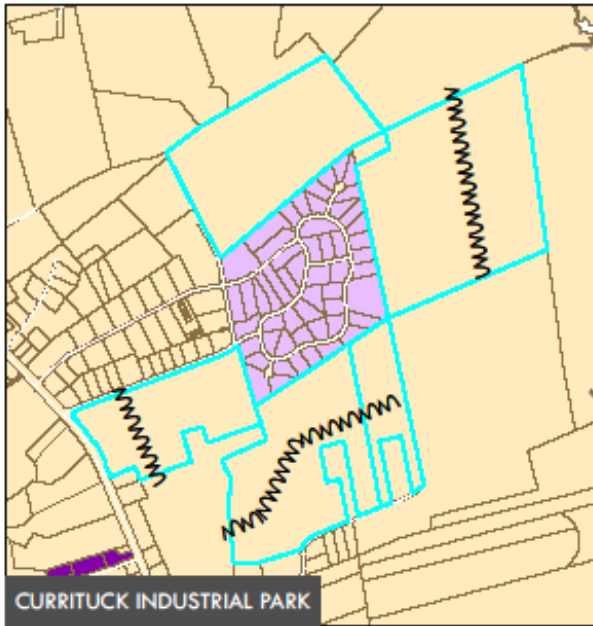


Currituck County
Planning and
Community Development

Attachment A



Attachment B





Conditional Rezoning Application

OFFICIAL USE ONLY:

Case Number: _____
 Date Filed: _____
 Gate Keeper: _____
 Amount Paid: _____

Contact Information
APPLICANT:

Name: Barnhill Contracting Co.
 Address: PO Box 7948
Rocky Mount, NC
 Telephone: 252.384.2122
 E-Mail Address: sdouglas@barnhillcontracting.com

PROPERTY OWNER:

Name: Allen Foster Forbes
 Address: 5104 Lunar Drive
Kitty Hawk, NC 27949
 Telephone: _____
 E-Mail Address: _____

LEGAL RELATIONSHIP OF APPLICANT TO PROPERTY OWNER: Property Under Contract-Potential Purchaser

Property Information

Physical Street Address: 0 Caratoke Highway
 Location: North of Calvin Oneal Ct. on the east side of Hwy 158
 Parcel Identification Number(s): 011100000030000
 Total Parcel(s) Acreage: 25
 Existing Land Use of Property: Undeveloped

Request

Current Zoning of Property: Ag Proposed Zoning District: C-HI

Community Meeting

Date Meeting Held: August 12, 2016 Meeting Location: Quible Offices

Conditional Rezoning Request

To Chairman, Currituck County Board of Commissioners:

The undersigned respectfully requests that, pursuant to the Unified Development Ordinance, a conditional zoning district be approved for the following use(s) and subject to the following condition(s):

Proposed Use(s):

Storage yard and Currituck County base of operations for Barnhill Contracting to include asphalt plant and bulk materials storage.

Proposed Zoning Condition(s):

300 feet wooded buffer along Highway 158 Corridor and attractive subdivision type entrance to

conceal use of property.

An application has been duly filed requesting that the property involved with this application be rezoned from: _____ to: _____

It is understood and acknowledged that if the property is rezoned as requested, the property involved in this request will be perpetually bound to the conceptual development plan, use(s) authorized, and subject to such condition(s) as imposed, unless subsequently changed or amended as provided for in the Currituck County Unified Development Ordinance. It is further understood and acknowledged that final plans for any development be made pursuant to any such conditional zoning district so authorized and shall be submitted to the Technical Review Committee.

Property Owner (s)

Date

NOTE: Form must be signed by the owner(s) of record. If there are multiple property owners a signature is required for each owner of record.

Conditional Rezoning Design Standards Checklist

The table below depicts the design standards of the conceptual development plan for a conditional rezoning application. Please make sure to include all applicable listed items to ensure all appropriate standards are reviewed.

Conditional Rezoning

Conceptual Development Plan Design Standards Checklist

Date Received: _____

TRC Date: _____

Project Name: _____

Applicant/Property Owner: _____

Conditional Rezoning Design Standards Checklist		
1	Property owner name, address, phone number, and e-mail address.	
2	Site address and parcel identification number.	
3	A scaled drawing showing existing boundary lines, total acreage, adjacent use types, location of streets, rights-of-way, and easements.	
4	North arrow and scale to be 1" = 100' or larger.	
5	Vicinity map showing property's general location in relation to streets, railroads, and waterways.	
6	Existing zoning classification of the property and surrounding properties.	
7	Approximate location of the following existing items within the property to be rezoned and within 50' of the existing property lines: Pathways, structures, septic systems, wells, utility lines, water lines, culverts, storm drainage pipes, ditches, canals, streams, wooded areas, ponds, and cemeteries.	
8	Approximate Flood Zone line and Base Flood Elevation as delineated on the "Flood Insurance Rate Maps/Study Currituck County."	
9	Approximate location of all designated Areas of Environmental Concern or other such areas which are environmentally sensitive on the property, such as Maritime Forest, CAMA, 404, or 401 wetlands as defined by the appropriate agency.	
10	Proposed zoning classification and intended use of all land and structures, including the number of residential units and the total square footage of any non-residential development.	
11	Proposed building footprints and usages.	
12	Proposed traffic, parking, and circulation plans including streets, drives, loading and service areas, parking layout, and pedestrian circulation features.	
13	Approximate location of storm drainage patterns and facilities intended to serve the development.	
14	Proposed common areas, open space set-asides, anticipated landscape buffering, and fences or walls (if proposed).	
15	Architectural drawings and/or sketches illustrating the design and character of the proposed uses.	
16	Proposed development schedule.	

Conditional Rezoning Submittal Checklist

Staff will use the following checklist to determine the completeness of your application within ten business days of submittal. Please make sure all of the listed items are included. Staff shall not process an application for further review until it is determined to be complete.

Conditional Rezoning Submittal Checklist

Date Received: _____

TRC Date: _____

Project Name: _____

Applicant/Property Owner: _____

Conditional Rezoning Submittal Checklist

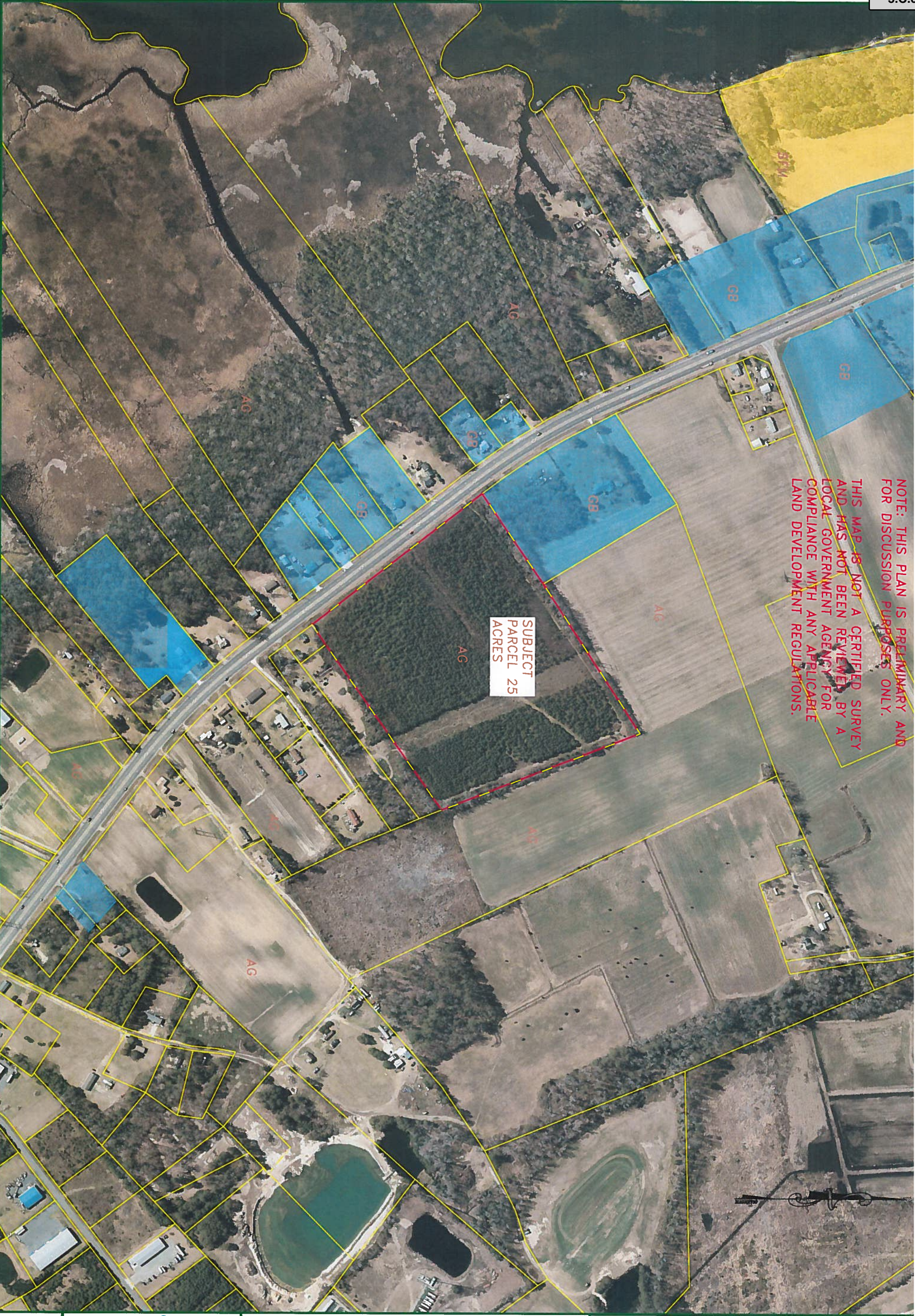
1	Complete Conditional Rezoning application	
2	Application fee (\$150 plus \$5 for each acre or part thereof)	
3	Community meeting written summary	
4	Conceptual development plan	
5	Architectural drawings and/or sketches of the proposed structures.	
6	5 copies of plans	
7	5 hard copies of ALL documents	
8	1 PDF digital copy of all plans AND documents (ex. Compact Disk – e-mail not acceptable)	

For Staff Only

Pre-application Conference

Pre-application Conference was held on _____ and the following people were present:

Comments

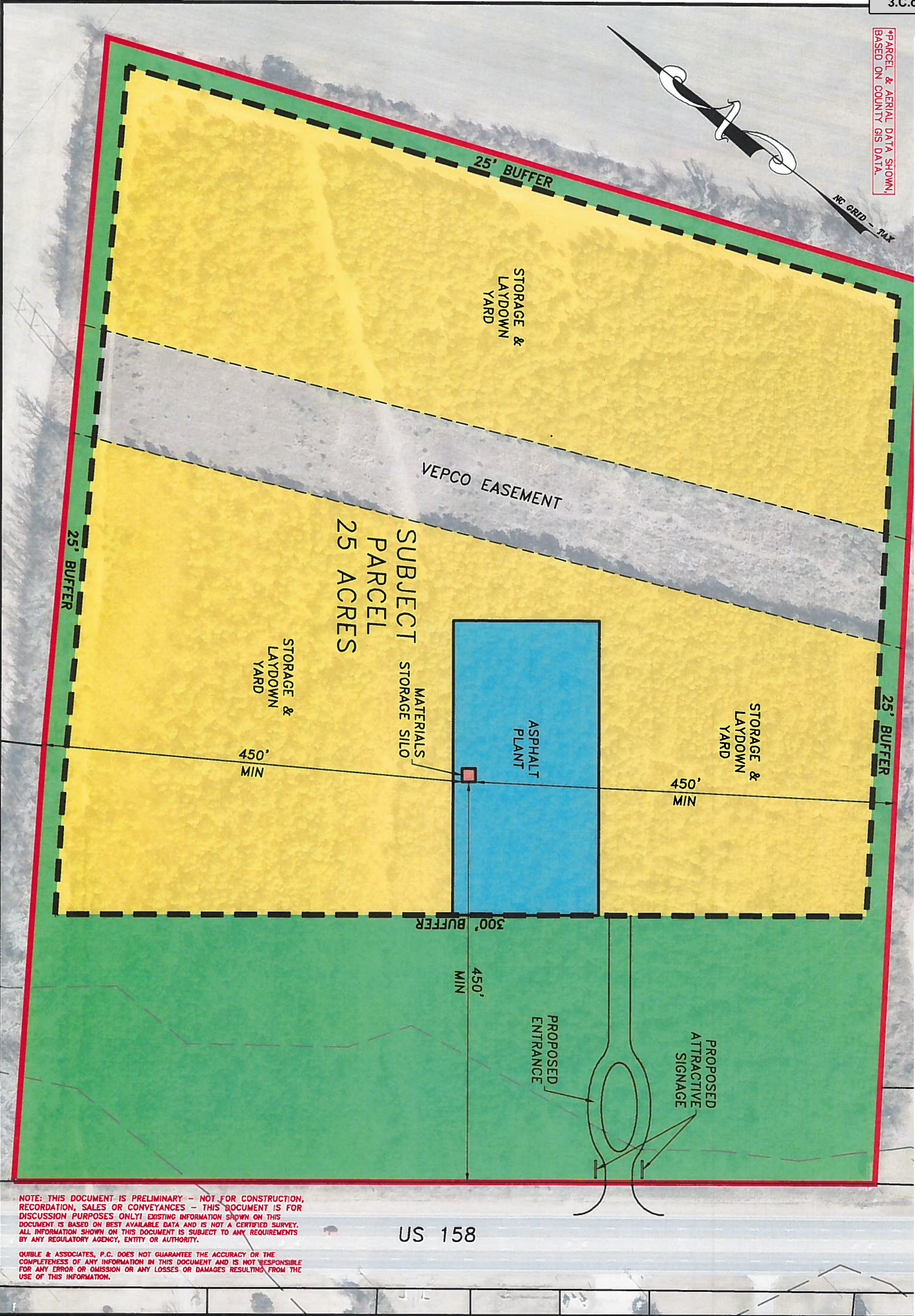


NOTE: THIS PLAN IS PRELIMINARY AND FOR DISCUSSION PURPOSES ONLY. THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.

Attachment: barnhillplans-16sep21 (1693 : PB 16-22 Barnhill Contracting Co)

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<div>DRAWN BY</div> <div>OTHERS</div>		<div>ALLEN FOSTER FORBES</div>		
<div>CHECKED BY</div> <div>WDE</div>		<div>25 ACRES</div>		
<div>DATE</div> <div>07/19/16</div>		<div>POWELLS POINT</div>	<div>CURRITUCK COUNTY</div>	
		<div>NORTH CAROLINA</div>		
		<div>0 400 800</div>		
		<div>GRAPHIC SCALE IN FEET 1"=400</div>		

*PARCEL & AERIAL DATA SHOWN,
BASED ON COUNTY GIS DATA.

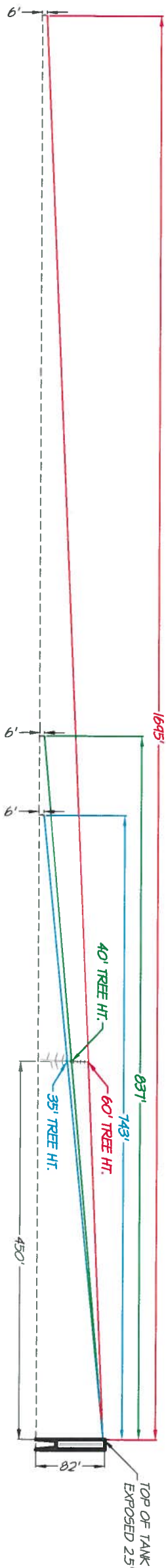


Attachment: barnhillplans-16sep21 (1693 : PB 16-22 Barnhill Contracting Co)

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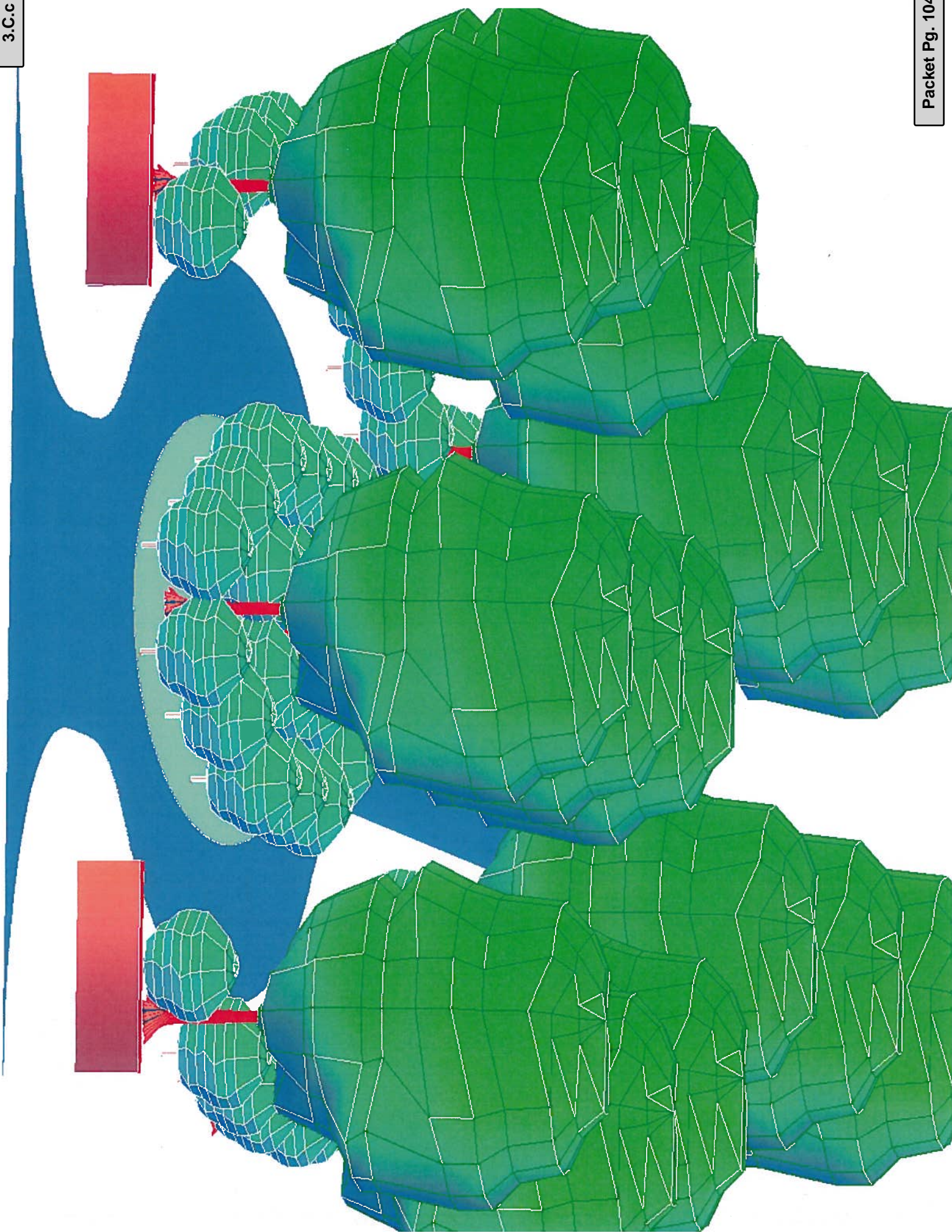
PROJECT P16067	<p>COPYRIGHT © 2015 QUIBLE & ASSOCIATES, P.C. THIS DOCUMENT IS THE PROPERTY OF QUIBLE & ASSOCIATES, P.C. ANY ALTERATION OF THIS DOCUMENT IS PROHIBITED.</p> <p>IF THIS DOCUMENT IS NOT SIGNED AND SEALED BY A LICENSED PROFESSIONAL THEN THIS DOCUMENT SHALL BE CONSIDERED PRELIMINARY, NOT A CERTIFIED DOCUMENT AND SHALL NOT BE USED FOR CONSTRUCTION, RECORDATION, SALES OR LAND CONVEYANCES, UNLESS OTHERWISE NOTED.</p>	SITE CONCEPT EXHIBIT	
DRAWN BY OTHERS		ALLEN FOSTER FORBES 25 ACRES	
CHECKED BY WDE		POWELLS POINT	CURRITUCK COUNTY
DATE 08/10/16		NORTH CAROLINA	
		<p>0 100' 200'</p> <p>GRAPHIC SCALE IN FEET 1"=100'</p>	
		<div>Quible <small>SINCE 1959</small> & Associates, P.C. ENGINEERING * CONSULTING * PLANNING ENVIRONMENTAL SCIENCES * SURVEYING NC License#: C-0208 PO Drawer 870, Kitty Hawk, NC 2794 Phone: (252) 491-8147 Fax: (252) 491-8146 E-Mail: admin@quible.com</div>	

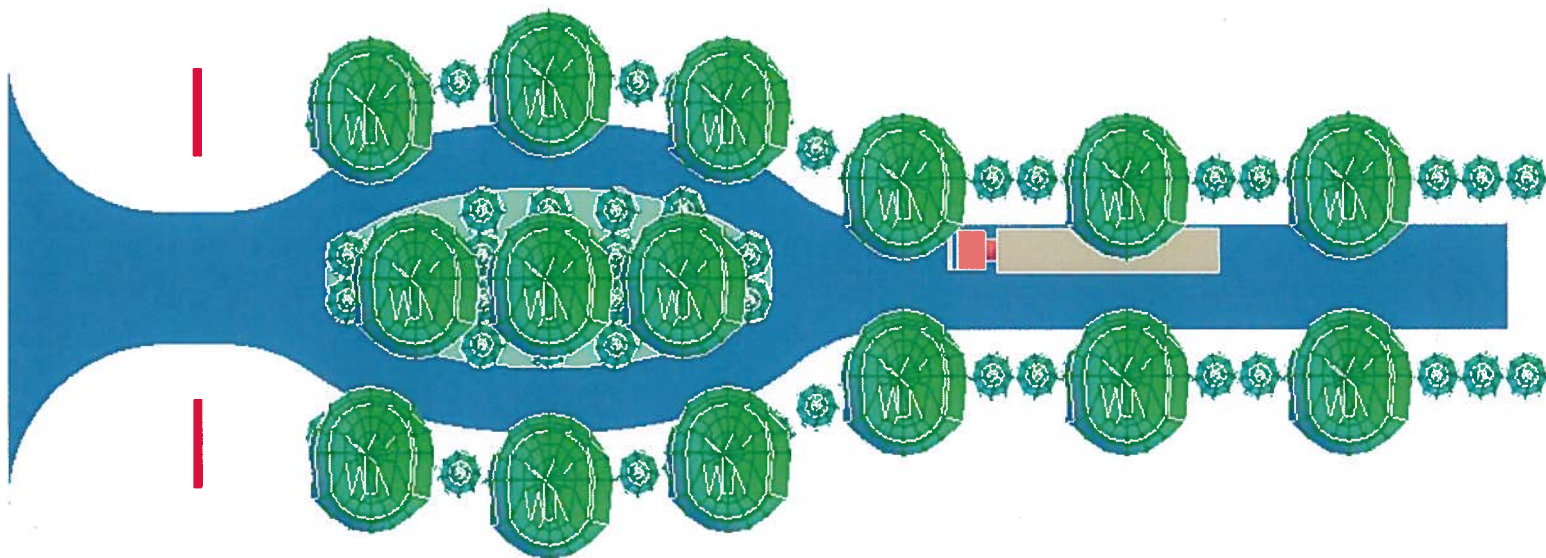


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DRAWN BY OTHERS		POWELLS POINT	CURRITUCK COUNTY	
CHECKED BY WDE		NORTH CAROLINA		
DATE 08/12/16		0 150' 300' GRAPHIC SCALE IN FEET 1"=150'		







Currituck County

Department of Planning and Community Development
 153 Courthouse Road, Suite 110
 Currituck, North Carolina 27929
 252-232-3055
 FAX 252-232-3026

MEMORANDUM

To: Warren Eadus, Quible
 Shannon Douglas, Barnhill Contracting

From: Tammy Glave
 Senior Planner

Date: September 15, 2016

Re: Barnhill Contracting Company, Conditional Rezoning from AG to C-HI, TRC Comments

The following comments have been received for the September 21, 2016 Technical Review Committee meeting. The conditional rezoning will require Planning Board recommendation and Board of Commission's action. The comments listed below must be addressed and resubmitted by September 26, 2016 in order to be placed on the October 11, 2016 Planning Board meeting. TRC comments are valid for six months from the date of the TRC meeting.

Planning (Tammy Glave, 252-232-6025)

Reviewed with comments:

1. Since trees and vegetation will be removed from approximately 300' in towards the rear property line, please indicate what vegetation will remain in the 25' buffers along the sides and rear property lines and what Type of buffer will remain as described in Section 5.2 of the UDO. If the property is rezoned to C-HI, a Type D buffer is required along the side and rear property lines.
2. Please provide a detail of what existing landscaping will be left undisturbed within the 300' front buffer. Please also show supplemental landscaping, if any, that will be placed within the front buffer.
3. If fences or walls (other than for support) will be used on the site, please show location on the site plan and provide a detail. (UDO Section 5.3/Administrative Manual)
4. Please show the approximate location of storm drainage patterns and facilities intended to serve the development. (Administrative Manual)
5. If the property is rezoned, a major site plan submittal and review is necessary for the project.
6. As discussed previously, staff has concerns regarding this rezoning request and its apparent conflict with the Land Use Plan, particularly Industrial Development Policies ID2, ID3, ID6, Community Appearance Policy CA1; Special Policies applicable to the Mainland Policy ML3; etc. The policy emphasis for Point Harbor is to preserve and enhance the roadside appearance of land uses along US 158. Major strides were made in removing industrial development from the GB zoning district (a lot of the highway corridor) in the most recent UDO to directly coincide with the Highway Corridor appearance policies. Staff also presented concerns that there are existing single-family dwellings within 1000' feet of the parcel which does not make this an ideal location for HI

Attachment: Barnhill TRC Comments 9-21-16 (1693 : PB 16-22 Barnhill Contracting Co)

zoning. Hot mix plants will generate odor, noise, visual impact, etc. that could negatively impact the surrounding property and dwellings.

Currituck County Building Inspector (Bill Newns, 252-232-6023)

Reviewed without comment.

Currituck County Code Enforcement (Stacey Smith, 252-232-6027)

Reviewed without comment.

Currituck County Engineer (Eric Weatherly, 252-232-6035)

Approved as presented.

Currituck County Fire Marshal (James Mims, 252-232-6641)

Approved use without comment.

Currituck County GIS (Harry Lee, 252-232-4039)

Reviewed without comment.

Currituck County Parks and Recreation (Jason Weeks, 252-232-3007)

Reviewed without comment.

Currituck Soil and Water (Will Creef, 252-232-3360)

Reviewed without comment.

Currituck County Utilities (Pat Irwin, 252-232-6061)

Approved without comment.

Albemarle Regional Health Services (Joe Hobbs, 252-232-6603)

Reviewed without comments.

NC DOT (Randy Midgett, 252-331-4737)

Reviewed without comment.

NC Division of Coastal Management (Charlan Owens, 252-264-3901)

Reviewed without comment.

The following items are necessary for resubmittal:

- 12 - full size copies of revised plans.
- 1- 8.5"x11" copy of all revised plans.
- 1- PDF digital copy of all revised or new documents and plans.

Quible

Quible & Associates, P.C.

ENGINEERING • ENVIRONMENTAL SCIENCES • PLANNING • SURVEYING
SINCE 1959

P.O. Drawer 870
Kitty Hawk, NC 27949
Phone: 252-491-8147
Fax: 252-491-8146
web: quible.com

August 25, 2016

Tammy Glave
Currituck County Planning and Community Development
153 Courthouse Road
Suite 110
Currituck, NC 27929

RE: **Community Meeting Report**
Conditional Rezoning Application – Allen Foster Forbes-Barnhill
Powells Point, Currituck County, NC
Parcel ID Nos: 011100000030000

Ms. Glave,

A Community Meeting for the proposed Conditional Rezoning of the above referenced parcel in Powells Point, Currituck County was held on August 12, 2016 at 2:00 p.m. at the offices of Quible & Associates, P.C. The meetings was conducted by Quible on behalf of Barnhill Contracting.

Purpose

The purpose of the meeting was to inform the community in the vicinity of the subject parcel of the intent to rezone an approximately 25-acre parcel from Agriculture (Ag) to Conditional Heavy Industrial (C-HI) for use a facility for Barnhill Contracting. Barnhill proposes to relocate their Southern Currituck Asphalt Plant and Storage Yard to this location.

Meeting synopsis

Meeting proceedings began at 2:00 p.m. and Quible handed out an Agenda (attached), took attendance (attached) and gave an overview of the rezoning request and County process. A generalized conceptual development of the property was shown that depicted boundaries, an entrance concept and general locations of Site elements.

During the meeting there was support for Barnhill Contracting, but not in the proposed location.

Upon conclusion of the discussion, attendees were again reminded that any further questions or comments not addressed at the meeting could be forwarded to Quible & Associates. The meetings lasted approximately one hour.

Copies of all handouts, exhibits, and other documents that were made available at the meeting are provided in attachments to this document. In addition, all written feedback and comments recorded by Quible during the meeting are attached.

Community Meeting Report
Conditional Rezoning Application – Barnhill Allen Foster Forbes Property
August 25, 2016

Please do not hesitate to contact me at (252) 491-8147 or via email at weadus@quible.com should you have any questions or requests for additional information.

Sincerely,
Quible & Associates, P.C.



Warren D. Eadus

cc ADG
File



**Community Meeting for Conditional Zoning – Barnhill Contracting AG to C-HI
25 Acres on Caratoke Highway (North of Calvin Oneal Lane) PIN#011100000030000**

August 12, 2016

AGENDA

1. General Introduction

- a. Gary Woodson representing Barnhill Contracting
- b. Quible & Associates, P.C.
- c. Currituck County

2. Property Location/Facts

- a. PIN 011100000030000

Current Lot Size: +/- 25 Acres

- b. Current Land Use: Undeveloped
- c. Site Zoning: AG

3. Development Proposal

- a. Conditional Rezoning from AG to C-HI
- b. Conditional rezoning if approved will force developer to develop property in strict accordance with conceptual plans (e.g. buffers, height, noise restrictions, hours of operation, etc...)

4. Questions & Comments

- a. Quible & Associates, Barnhill Representative and County will be available to answer questions and comments
- b. Comments can be provided in writing on Comment Forms provided or they can be sent to Warren Eadus, Quible & Associates, P.C. by email at weadus@quible.com, phone at 252-491-8147 or by mail addressed to Quible & Associates, P.C. 8466 Caratoke Highway Powells Point NC 27966.

Warren Eadus

From: Fannie <f.newbern@mchsi.com>
Sent: Monday, August 15, 2016 11:50 AM
To: Warren Eadus
Cc: Robert and Kelly Griffin; Sarah Griffin; Stephanie Smith; Nicole N Derby; Janice Haskett; ssnewbern1@gmail.com; Diane Newbern; Jennie Newbern
Subject: Barnhill Contracting AG to C-HI

Comments and Questions from Aug. 12 meeting:

1. Conditional Heavy Industrial Zoning is not compatible with surrounding area
2. Conditional HI will de-value our property
3. Rezoning to Conditional H I will create safety issues on Hwy 158
4. If Rezoning is necessary why not Rezone Light Industrial to Heavy Industrial? i.e. Freedom Park?
5. Why Rezone when there is Heavy Industrial 1/4 mile S of this parcel?
6. Will there be mining on this sight?
7. Rezoning to C HI does not conform to our current Land Use Plan:
 1. Policy CD4 - Highway Commercial Uses should be designed to minimize signage and access points.
 2. Policy ID1 Heavy Industrial will adversely impact environmental quality of area. I.e. Noise and odor.
 3. Policy TR4 Access to 158 must minimize hazardous movement and in and out traffic flows and limits on frequency of driveway cuts.

Sent from my iPad

Community Meeting for Conditional Zoning – Barnhill Contracting AG to C-HI

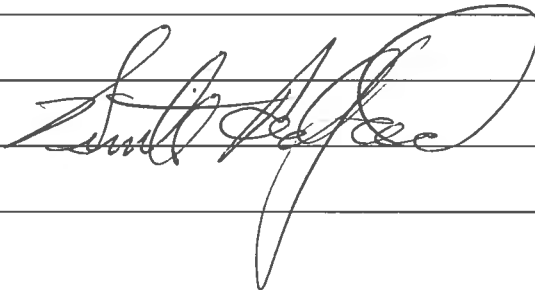
25 Acres on Caratoke Highway (North of Calvin Oneal Lane) PIN#011100000030000

Powells Point, Currituck County, NC

Comments:

*I have concerns of smell and
truck entering Highway.*

Contact Information:



Community Meeting for Conditional Zoning – Barnhill Contracting AG to C-HI

25 Acres on Caratoke Highway (North of Calvin Oneal Lane) PIN#011100000030000

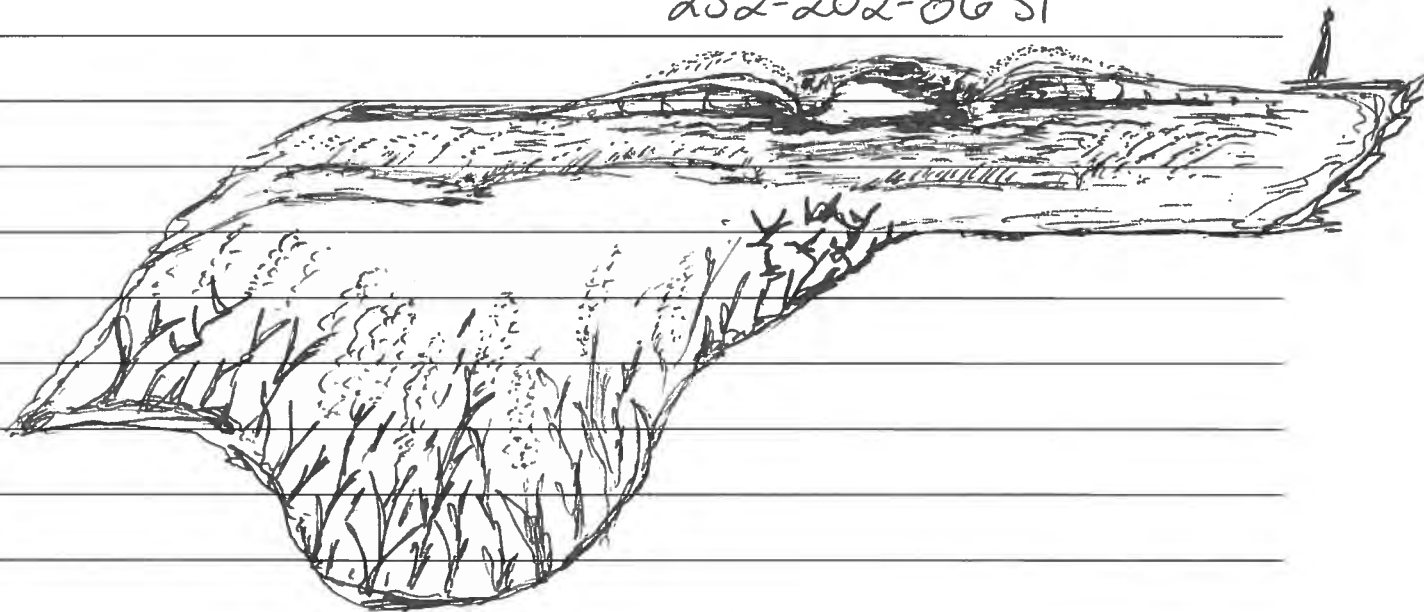
Powells Point, Currituck County, NC

Comments:

The entrance to the road is a blind entrance.
Heavy trucks enter slowly. This would be a hazard.
Traffic deaths on 158 are high. Allen Foster Forbes.
October 11th, Nov. 7th Board of Commissioners

- Roy Lee Etheridge JR.

252-202-8651



Contact Information: _____

Quible & Associates, P.C.

ENGINEERING • ENVIRONMENTAL SCIENCES • PLANNING • SURVEYING

8 Juniper Trail • P.O. Drawer 870 • Kitty Hawk, NC 27949
Phone 252-261-3300 • FAX 252-261-1260

SHEET NO. _____ OF _____

CALCULATED BY _____ DATE 8/1/16

CHECKED BY WDE DATE _____

SCALE _____

ALBERT MORRIS 252.202.2632

"PIN NUMBER INACCURATE" MISSING A "1" ?
mail @ northriversales.comTELEPHONED TO VOICE CONCERN OVER PROPOSED
USE AS A FACILITY FOR BARNHILLDOESN'T WANT TO SEE OPERATION AND CONCERNED
ABOUT ~~RED~~ BARNHILL TRUCKS LEAVING FROM
PRIVATE ENTRANCE.

8/3/16

RICHARD DAVIS CALLED WITH CONCERNS ABOUT
ASPHALT PLANT. STATED HE WAS LI (HE IS AG)
AND WANTS TO NOT LOSE TENANTS. OFFERED TO
SELL HIS PROPERTY AND THEN WANTED TO FIND
ANOTHER PROPERTY FOR BARNHILL. WORKED
ABOUT ASPHALT PLANT

8/8/16

KAREN JERROLD CALLED 8/8/16
WILL CHECK INTO IT AND CHECK BACK IN.

Quible & Associates, P.C.

ENGINEERING • ENVIRONMENTAL SCIENCES • PLANNING • SURVEYING

8 Juniper Trail • P.O. Drawer 870 • Kitty Hawk, NC 27949
Phone 252-261-3300 • FAX 252-261-1260

SHEET NO. _____ OF _____

CALCULATED BY _____ DATE 8/12/16

CHECKED BY _____ DATE _____

SCALE _____

ATTENDANCE :

- BOB GILGOS
 EANNIE NEWBORN
 LEE ETHERIDGE
 TAMMY GLAVE - CURRITUCK COUNTY
 - ROBERT GRIFFIN
 - MS. GRIFFIN
 - ~~ETHELIDGE~~ ^{DALLON} ~~MS. ETHERIDGE~~ BLACKHAM
 - LEE'S BARBARA ETHERIDGE (?)
 - HUNTER REDFORD
 - WARREN EADUS

AUG. 25th
 OCT 11th PB
 NOV. 7th BOC

ISSUES RAISED DURING MEETING

- TRAFFIC RELATIVE TO LOCATION (LEE ETHERIDGE) TRUCKS ^{ENTERING} ~~EXITING~~ HIGHWAY
 VIEW SHED
 BUFFER WIDTHS ON REMAINING SIDES
 SOUND
 HOUSE ACROSS STREET FROM BARNHILL PLANNED (LEE ETHERIDGE)
 PROPERTY VALUES
 NOT SUPPORTED BY LAND USE PLAN
 SMALL
 TRUCKS



Currituck County Agenda Item Summary Sheet

Agenda ID Number – (ID # 1745)

Agenda Item Title

An Ordinance of the Currituck County Board of Commissioners Imposing a Moratorium on the Acceptance, Processing or Consideration of Applications for Solar Arrays Pursuant to N.C. Gen. Stat. Section 153A-340(h)

Brief Description of Agenda Item:

Board Action Requested

Action

Person Submitting Agenda Item

Leeann Walton, Clerk to the Board

Presenter of Agenda Item

Donald (Ike) I. McRee Jr

**AN ORDINANCE OF THE CURRITUCK COUNTY BOARD OF COMMISSIONERS
IMPOSING A MORATORIUM ON THE ACCEPTANCE, PROCESSING OR
CONSIDERATION OF APPLICATIONS FOR SOLAR ARRAYS PURSUANT TO N.C.
GEN. STAT. SECTION 153A-340(h)**

The Board of Commissioners for the County of Currituck, North Carolina, at its regularly scheduled January 3, 2017 meeting, after due advertisement as by law required, conducted a public hearing and heard from the interested public and county officials for the purpose of gathering information and taking appropriate action within the confines of applicable law regarding imposition of a moratorium on the acceptance, processing or consideration of applications for solar arrays. From the same, the Board of Commissioners makes the following findings of fact, conclusions and legislative determination:

I. *STATEMENT OF THE PROBLEM NECESSITATING A MORATORIUM; THE COURSES OF ACTION ALTERNATIVE TO A MORATORIUM CONSIDERED AND THEIR INADEQUACY ~ NCGS 153A-340(h)(1)*

- A. Pursuant to Section 4.1.2 Use Table of the Currituck County Unified Development Ordinance solar arrays are permitted when conditionally zoned in the AG (Agricultural) zoning district which is contrary to Policy ID9 of the 2006 Currituck County Land Use Plan providing that Currituck County “shall not support the exploration or development of ENERGY PRODUCING FACILITIES within its jurisdiction including, but not limited to, oil and natural gas wells, and associated staging, transportation, refinement, processing or on-shore services or support facilities.”
- B. There exists in the county two solar arrays, one approximately 2,000 acres in size and located adjacent to residential uses of land, that has resulted in numerous complaints to the county of incompatible activity on the solar array site with use of adjacent property for residential purposes. Additionally, there is pending in the Currituck County Superior Court the appeal from denial of a use permit for solar array on property most recently used as a golf course and surrounded by property developed and used for residential purposes.
- C. In a February 10, 2016 report to the North Carolina General Assembly the North Carolina Department of Environmental Quality expressed concern for the loss of agricultural land and jobs in the state from conversion of agriculturally used property to use for solar arrays and the loss of wildlife habitat due to large areas encompassed by solar arrays that are fenced and affect food availability for wildlife. The North Carolina Utilities Commission Public Staff also reported to the North Carolina General Assembly on February 10, 2016 that as of January 31, 2016 Currituck County was ranked fifth among the top ten counties in the number of pending North Carolina Utilities Commission certificate applications.
- D. County residents have reported adverse effects of solar array construction, activity and operation including aesthetic impacts and potential impacts on residential and other

property values. Absent the adoption of this ordinance incompatible solar array projects may be established that could adversely impact the quality of life for county residents.

- E. It is anticipated that the county may receive a number of applications to construct new solar arrays in the near future that may be incompatible with residential and other land uses and the county's 2006 Land Use Plan requiring a period of time to develop amendment to the Currituck County Unified Development Ordinance to properly reflect land development patterns as set forth in that plan.
- F. In addition, after further consideration it is not certain or apparent that the use of land for solar arrays to the extent developed in the county and that which is anticipated is in the best interest of the county.
- G. Modification regarding the use land for solar arrays will require amendment of the Unified Development Ordinance which process will be compromised and futile if additional solar array approval is sought prior to the time required to address the concerns set forth herein.

II. *STATEMENT OF DEVELOPMENT APPROVAL SUBJECT TO THE MORATORIUM AND HOW SUCH MORATORIUM WILL ADDRESS THE EXISTING PROBLEMS ~ NCGS 153A-340(h)(2)*

Imposition of a moratorium on the acceptance, processing or consideration of solar array applications will prevent the approval of solar arrays as an acceptable use of land in the county.

III. *DATE FOR TERMINATION AND THE REASONABLE NECESSITY FOR ITS LENGTH TO ADDRESS THE PROBLEMS GIVING RISE TO THE IMPOSITION OF A MORATORIUM ~ NCGS 153A-340(h)(3)*

Regulation to prohibit the use of land for solar arrays will require amendment of the Unified Development Ordinance. Therefore, time is required to review existing ordinances, draft proposed amendments and process any proposed amendment through relevant county boards or agencies. It is anticipated that a minimum of 60 days will be required to complete that process.

IV. *STATEMENT OF ACTIONS AND SCHEDULE FOR THOSE ACTIONS PROPOSED TO BE TAKEN DURING THE EXISTENCE OF A MORATORIUM REASONABLY NECESSARY TO ADDRESS THE PROBLEMS AND CONDITIONS LEADING TO THE IMPOSITION OF THE MORATORIUM ~ NCGS 153A-340(h)(4)*

During the existence of this moratorium the appropriate Currituck County staff shall:

- A. Review the Currituck County Unified Development Ordinance and 2006 Land Use Plan to determine amendment to the Unified Development Ordinance that is advisable to meet and preserve the stated goals established by the Currituck

County 2006 Land Use Plan; and

- B. Process any land use ordinance amendments through the Currituck County Planning Board so that a public hearing may be held on any amendments prior to the expiration of this ordinance.

V. IMPOSITION OF MORATORIUM

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS FOR THE COUNTY OF CURRITUCK that after careful, deliberate and studied contemplation of the above does hereby implement and impose, effective from the date and time of the adoption of this ordinance, to and including the end of March 4, 2017, a moratorium prohibiting the acceptance, processing or consideration by any county employee, or appointed or elected board any application for use of land within the county for a solar array.

ADOPTED the 3rd day of January, 2017 at _____ o' clock ____ .m.

Bobby Hanig, Chairman
Board of Commissioners

ATTEST:

Leeann Walton, Clerk to the Board

(COUNTY SEAL)

Attachment: Solar Array Moratorium Ordinance (1745 : Ordinance-Solar Array Moratorium)



Currituck County Agenda Item Summary Sheet

Agenda ID Number – (ID # 1743)

Agenda Item Title

An Ordinance of the Currituck County Board of Commissioners Amending Section 2-65 of the Currituck County, North Carolina Code of Ordinances Providing for the Location of Public Comments on the Agenda and Time Allotted for Public Comments.

Brief Description of Agenda Item:

Consideration of Ordinance amendment to move the public comment period to the beginning of the agenda and provide three minutes for each speaker as requested by the Board of Commissioners at the December 5, 2016, regular meeting.

Board Action Requested

Action

Person Submitting Agenda Item

Leeann Walton, Clerk to the Board

Presenter of Agenda Item

Donald (Ike) I. McRee Jr

**AN ORDINANCE OF THE CURRITUCK COUNTY BOARD OF COMMISSIONERS
AMENDING SECTION 2-65 OF THE CURRITUCK COUNTY, NORTH CAROLINA
CODE OF ORDINANCES PROVIDING FOR THE LOCATION OF PUBLIC
COMMENTS ON THE AGENDA AND TIME ALLOTTED FOR PUBLIC COMMENTS**

WHEREAS, pursuant to N.C. Gen. Stat. §153A-71 a board of commissioners may adopt its own rules of procedure in keeping with the size and nature of the board and in the spirit of generally accepted principles of parliamentary procedure.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners for the County of Currituck, North Carolina as follows:

PART I. Sec. 2-65 of the Code of Ordinances, Currituck County, North Carolina is amended to read as follows

Sec. 2-65. - Order of business.

Items shall be placed on the agenda according to the order of business. The order of business for each regular meeting shall be as follows:

- (1) Call to order;
- (2) Invocation and pledge of allegiance;
- (3) Approval of agenda;
- (4) ~~Administrative reports~~ Public comment;
- (5) ~~Public hearings~~ Administrative reports;
- (6) ~~Old business~~ Public hearings;
- (7) ~~New business~~ Old business;
- (8) ~~Board appointments~~ New business;
- (9) ~~Consent agenda~~ Board appointments;
- (10) ~~Approval of minutes~~ Consent agenda;
- (11) ~~Commissioner's report~~ Approval of minutes;
- (12) ~~County manager's report~~ Commissioner reports;
- (13) ~~Public comment~~ County manager's report;
- (14) Adjournment.

Without objection, the chair may call items in any order most convenient for the dispatch of business.

PART II. Sec. 2-69 of the Code of Ordinances, Currituck County, North Carolina is amended to read as follows:

Sec. 2-69. – Informal public comments.

The clerk to the board shall include on the agenda of each regular meeting time for comments or questions from the public in attendance on any item on the agenda or not on the agenda, so long as the topic is not concerned with any matter that is the subject of a public hearing on the agenda. Each person wishing to address the board shall place their name and address and the topic of ~~his~~ their comments on the sign-up sheet. Each speaker shall be allotted three minutes to address the board. The chairman shall ~~specify the time allotted to each speaker and shall chair~~ the public comment portion of the agenda. When a speaker's time for informal public comment has expired, the county attorney shall advise.

PART III. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

PART IV. This ordinance is effective immediately upon adoption.

ADOPTED this 3rd day of January, 2017.

Bobby Hanig, Chairman

ATTEST:

Leeann Walton
Clerk to the Board

APPROVED AS TO FORM:

Donald I. McRee, Jr.
County Attorney

Date adopted: _____

Motion to adopt by Commissioner _____

Second by Commissioner _____

Vote: _____ AYES _____ NAYS

S:\Legal\Ordinances\



Currituck County Agenda Item Summary Sheet

Agenda ID Number – (ID # 1746)

Agenda Item Title

Nominations of Commissioners to Advisories

Brief Description of Agenda Item:

Commissioner appointees are required to serve on several regional and local boards. The Board of Commissioners will designate replacements for vacant positions left by the term expirations of former Commissioners and revise current appointments as desired by the Board.

Board Action Requested

Action

Person Submitting Agenda Item

Leeann Walton, Clerk to the Board

Presenter of Agenda Item



Currituck County Agenda Item Summary Sheet

Agenda ID Number – (ID # 1751)

Agenda Item Title

Planning Board-Amended Agenda Item

Brief Description of Agenda Item:

Commissioner Hall wishes to reappointment Fred Whiteman to the Planning Board.

Board Action Requested

Action

Person Submitting Agenda Item

Leeann Walton, Clerk to the Board

Presenter of Agenda Item

PLANNING BOARD
2 Year Terms

Incumbent	Nominated by	New Appointee	Nominated by	Date of Appointment	End of Term
Mike Cason	District 1		Bob White	January 5, 2014	1st Term 12/31/2016
Steven Craddock	District 2		Bobby Hanig	January 2013	1st Term 12/31/2016
John Cooper	District 3		Mike Payment	January 2012	2nd Term 12/31/2016
Daniel Cartwright	District 4		Paul Beaumont	January 2012	2nd Term 12/31/2016
Carol Bell	District 5		Marion Gilbert	January 4, 2016	2nd Term 12/31/2017
Fred Whiteman	At-Large		Mike Hall	January 2012	1st Term 12/31/2016
John McColley	At-Large		Kitty Etheridge	April 18, 2016	1st Term 12/31/2017
Jane Overstreet	Outer Banks		Consensus	December 2013	1st Term 12/31/2016
Robert Bell	Mainland		Consensus	January 5, 2015 January 2012	2nd Term 12/31/2016

*Must be Replaced

*Can be Reappointed



Currituck County Agenda Item Summary Sheet

Agenda ID Number – (ID # 1750)

Agenda Item Title

Recreation Advisory-Amended Agenda Item

Brief Description of Agenda Item:

Commissioner Etheridge wishes to nominate Ellen Owens for reappointment to the Recreation Advisory Board.

Board Action Requested

Action

Person Submitting Agenda Item

Leeann Walton, Clerk to the Board

Presenter of Agenda Item

RECREATION ADVISORY BOARD
2 Year Terms

Incumbent	District Served	New Appointee	Nominated by	Date of Appointment	End of Term
Ryan Hodges	District 1		Bob White	1/4/2016	1st Term January 2018
Neel Smith	District 2		Bobby Hanig	1/17/2012	2nd Term January 2017
Robin Kane	District 3		Mike Payment	1/4/2016	1st Term January 2018
Janet Rose	District 4		Paul Beaumont	1/17/2012	2nd Term January 2017
Peter Aitken	District 5		Marion Gilbert	2/15/2016	1st Term January 2018
Kevin McCord	At-Large		Mike Hall	1/19/2016	1st Term January 2018
Ellen Owens	At-Large		Kitty Etheridge	4/6/2015	1st Term January 2017

*Can be Reappointed

*Must be Replaced

Commissioner Beaumont Serves on this Board



Currituck County Agenda Item Summary Sheet

Agenda ID Number – (ID # 1752)

Agenda Item Title

Historic Preservation Commission-Amended Agenda Item

Brief Description of Agenda Item:

Consensus appointments to the Historic Preservation Commission. These are initial appointments to a newly-created advisory.

Board Action Requested

Action

Person Submitting Agenda Item

Leeann Walton, Clerk to the Board

Presenter of Agenda Item

HISTORIC PRESERVATION COMMISSION
4 Year Terms

Incumbent	Nominated by	New Appointee	Nominated by	Date of Appointment	End of Term
	Consensus				
	Consensus				
	Consensus				
	Consensus				
	Consensus				

Initial Terms: 1-Two Year 2-Three Year 2-Four Year



**CURRITUCK COUNTY
NORTH CAROLINA**

December 5, 2016

Minutes – Regular Meeting of the Board of Commissioners

6:00 PM CALL TO ORDER

The Currituck County Board of Commissioners met in the Historic Courthouse, 153 Courthouse Road, Currituck, NC, for its regular meeting.

Attendee Name	Title	Status	Arrived
Bobby Hanig	Chairman	Present	
Mike D. Hall	Vice Chairman	Present	
Paul M. Beaumont	Commissioner	Present	
Mary "Kitty" Etheridge	Commissioner	Present	
Marion Gilbert	Commissioner	Present	
Mike H. Payment	Commissioner	Present	
Bob White	Commissioner	Present	
S. Paul O'Neal	Commissioner	Present	
David L. Griggs	Chairman	Present	
O. Vance Aydlett	Vice Chairman	Absent	

Chairman Griggs called the meeting to order.

**A) Invocation & Pledge of Allegiance-Rev. Walter Gallop, Retired, US Air Force
Chaplain**

Reverend Walter Gallop gave the Invocation and led the Pledge of Allegiance.

B) Approval Of Minutes

Commissioner Gilbert requested the agenda be amended to add Item B-1 under the Call to Order section, ABC Appointments. Chairman Griggs seconded and the motion passed unanimously.

1. BOC Minutes for November 21, 2016.

Commissioner Gilbert moved for approval of the November 21, 2016, minutes and was seconded by Commissioner Payment. The motion passed unanimously.

Communication: BOC Meeting Minutes for December 5, 2016 (Approval Of Minutes for December 5, 2016)

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Marion Gilbert, Commissioner
SECONDER:	Mike H. Payment, Commissioner
AYES:	David L. Griggs, Chairman, S. Paul O'Neal, Commissioner, Paul M. Beaumont, Commissioner, Marion Gilbert, Commissioner, Mike D. Hall, Vice Chairman, Mike H. Payment, Commissioner
ABSENT:	O. Vance Aydlett, Vice Chairman

) ABC Appointments-Amended Item

1. Motion to approve nominees Sybil O'Neal and Vance Aydlett to the ABC Board effective immediately.

Commissioner Gilbert recalled the prior meeting where she nominated Sybil O'Neal and Vance Aydlett to the ABC Board with delayed effective dates. Commissioner Gilbert moved to appoint Sybil O'Neal and Vance Aydlett to the ABC Board effective immediately. Commissioner Griggs seconded.

Commissioner Hall was opposed and stated the Board had already voted previously on this item and he was not made aware of the change. Commissioner Gilbert said the appointments were an order of business under the current board and needed to be completed by the current board.

Motion passed with a vote of 5 to 1, with Commissioner Hall voting against.

RESULT:	APPROVED [5 TO 1]
MOVER:	Marion Gilbert, Commissioner
SECONDER:	David L. Griggs, Chairman
AYES:	David L. Griggs, Chairman, S. Paul O'Neal, Commissioner, Paul M. Beaumont, Commissioner, Marion Gilbert, Commissioner, Mike H. Payment, Commissioner
NAYS:	Mike D. Hall, Vice Chairman
ABSENT:	O. Vance Aydlett, Vice Chairman

C) Commissioner Recognition and Presentation

Commissioner Gilbert presented a plaque to outgoing Chairman David Griggs and thanked him for his service to the county. Chairman Griggs said it was an honor to give back and thanked the citizens for their trust. He said Currituck is the envy of many other counties and talked of our sound financial status and capital investments.

Commissioner Gilbert presented outgoing Commissioner Paul O'Neal with a Currituck County flag. Commissioner O'Neal recalled his 20 years of service and thanked all who have supported him. He specifically thanked the Sheriff's Department, EMS and Fire and county staff, and recognized past Commissioners with whom he served and asked citizens to offer support and encouragement to the new Commissioners.

Commissioner Gilbert also honored outgoing Commissioner Vance Aydlett, who was not present. Commissioner Payment thanked his fellow commissioners for their support over the past two years.

D) Oaths of Office for Newly-Elected Commissioners

Currituck County Clerk of Superior Court, Ray Matusko, administered the oaths of office to Currituck's newly-elected Commissioners. Those sworn were sitting Commissioner Paul Beaumont and newly-elected Commissioners Mary Etheridge, Bobby Hanig, and Bob White.

E) Election of Chairman of the Board of Commissioners

County Manager, Dan Scanlon, explained the organizational meeting and the process for the selection of the Chairman and Vice-chairman.

Commissioner Etheridge nominated Bobby Hanig for Chairman. Commissioner Gilbert nominated Commissioner Payment for Chairman. The nominees were voted on in the order their names were placed into nomination. Commissioner Hanig was elected Chairman, receiving a four-vote majority with Commissioners Hanig, Hall, Etheridge, and White voting in favor.

F) Election of Vice-Chairman of the Board of Commissioners

County Manager Scanlon turned the meeting over to Chairman Hanig who called for nominations for Vice-chairman.

Commissioner Gilbert nominated Commissioner Mike Payment and Commissioner White nominated Commissioner Hall. Commissioner Payment removed himself from consideration.

Commissioner Hall was elected Vice-chairman with a majority vote. Voting in favor were Commissioners Hanig, Hall, Etheridge and White.

RECESS

Chairman Hanig spoke briefly, thanking Commissioners, county staff, family and supporters. Chairman Hanig recessed the meeting at 6:30 PM.

APPROVAL OF AGENDA

The Board of Commissioners returned from recess and Chairman Hanig reconvened the meeting at 6:45 PM.

Commissioner Gilbert moved to approve the agenda. The motion was seconded by Commissioner Payment.

Commissioner Hall moved to add Board discussion of meeting times and public comment under New Business. Commissioner Etheridge moved to add ABC Board Appointments to the agenda.

The agenda was unanimously approved as amended:

6:00 PM Call to Order

- A) Invocation & Pledge of Allegiance-Rev. Walter Gallop, Retired, US Air Force Chaplain
- B) Approval Of Minutes
BOC Minutes for November 21, 2016.
- ABC Appointments-*This item was added to the agenda as an amendment***
- C) Commissioner Recognition and Presentation
- D) Oaths of Office for Newly-Elected Commissioners
- E) Election of Chairman of the Board of Commissioners
- F) Election of Vice-Chairman of the Board of Commissioners

Recess**Approval of Agenda****Administrative****Reports**

- A) Moyock Park Design Presentation by Laughing

Gull**Public Hearings**

- A) **Public Hearing & Action: PB 16-18 Lauren Berry** A request to amend the Unified Development Ordinance to establish commercial fishing as an accessory use.

New Business

- A) **Consideration and Action: PB 15-16 Moyock Commons, Phase 2: Subsequent Similar Request-Request for the Board to consider a subsequent rezoning request for Moyock Commons, Phase 2 (Second Request)**
- B) **Consideration of Resolution Authorizing Upset Bid Process Pursuant to G. S. 160A-269 for County Property in Corolla as Described in Deed Book 1304, Page 736 and Deed Book 1304, Page 739 of the Currituck County Registry**
- C) **Board Appointments**
 - 1. Whalehead Service District-Subdivision Improvement Advisory Board (Stormwater)
 - 2. **ABC Board Appointments-*This item was added to the agenda as an amendment***

This item was Added to the Agenda as an Amendment: Discussion of Meeting Times and

Public Comment

- D) **Consent Agenda**
 - 1. Budget Amendments
 - 2. Purchase Request for Carova Beach Volunteer Fire Department-Humvee
 - 3. Job Description Revision: 4-H Program Assistant
 - 4. Sheriff's Office-Records Retention Schedule Amendment
 - 5. Petition for Road Addition-Aydlett Soundside, Foreman Drive
- E) **Commissioner's Report**
- F) **County**

Manager's Report**Public****Comment**

Please limit comments to matters other than those appearing on this agenda as a Public Hearing. Public comments are limited to 5 minutes.

Closed Session

Closed Session pursuant to G. S. 143-318.11(a)(3) to consult with the county's attorneys to preserve attorney-client confidentiality and to receive information and give direction to the county's attorneys in matters entitled Swan Beach Corolla, LLC v. Currituck County and Coastland Corporation v. Currituck County

Adjourn

Communication: BOC Meeting Minutes for December 5, 2016 (Approval Of Minutes for December 5, 2016)

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Marion Gilbert, Commissioner
SECONDER:	Mike H. Payment, Commissioner
AYES:	Bobby Hanig, Chairman, Mike D. Hall, Vice Chairman, Paul M. Beaumont, Commissioner, Mary "Kitty" Etheridge, Commissioner, Marion Gilbert, Commissioner, Mike H. Payment, Commissioner, Bob White, Commissioner

ADMINISTRATIVE REPORTS

A. Moyock Park Design Presentation by Laughing Gull

Ben Woody, Planning and Community Development Director, recalled the steps taken by staff in an effort to establish a park in Moyock. He introduced landscape designer Jim Connor of Laughing Gull Design Studio, who presented a preliminary park design for a 25-acre, county owned parcel in Moyock. Mr. Conner reviewed design elements such as playgrounds and splash play areas, a gazebo, picnic areas, and a pond with walkways and seating. Proposed landscaping and plantings were described. He said stormwater was addressed in the design.

Mr. Woody and Mr. Conner responded to Board questions regarding ADA accessibility and stormwater, and Mr. Scanlon explained the tracking of the project, which would come to the Board for discussion at the January Board retreat. Mr. Conner thanked the county and staff for the opportunity to work on the project.

PUBLIC HEARINGS

A. Public Hearing & Action: PB 16-18 Lauren Berry

Mr. Woody reviewed the text amendment request with the Board.

To: Board of Commissioners
 From: Planning Staff
 Date: November 14, 2016
 Subject: PB 16-18 Lauren Berry Text Amendment REVISED

Lauren Berry initially submitted a text amendment to establish commercial fishing (watermen) as a principal use. After reviewing the proposed language, it did not appear to be consistent with the land use plan policies and goals. Ms. Berry worked with staff to address concerns related to the proposed text amendment.

There are portions of the commercial fishing operation that present concerns (i.e. outdoor storage of equipment, watercraft, and number of employees). The revised text amendment provides outdoor storage regulations associated with commercial fishing on-site operations. The revised text amendment provides a maximum outdoor storage limit (10%), buffers to adjacent properties, and requires the operation meet the accessory use general standards in the UDO. The number of watercraft or vessels and employees are not specifically addressed but would require the operation to maintain the residential neighborhood character of the community.

BACKGROUND

In many instances, commercial fishing operations are home occupations or accessory uses to principal uses of property. The home occupation standards require a dwelling unit on the property and limit the size and appearance of the commercial activity.

Occasionally, the county receives complaints related to commercial fishing operations near residential subdivisions. The complaints range from crab pot storage, boat storage, parking, noise, and odor. A notice of violation was sent to Wayne Burch in April, 2016 for not meeting the home occupation standards related to a commercial fishing and crabbing operation. Lauren Berry and Wayne Burch met with staff and elected to submit

a text amendment in an effort to allow larger commercial fishing operations in residential districts by modifying the crab shedding principal use regulations. On November 3, 2016 after discussing the county concerns related to the proposed amendment, Ms. Berry modified her request to establish accessory use standards for commercial fishing. It should be noted that current operations may continue to operate under their approved permits. Expansions of operations or operations not approved would be subject to the text amendment.

In 2009, a stakeholder steering committee was established to assess the storage of boats for commercial fishermen. A draft text amendment was proposed and, no action was taken by the Board of Commissioners. During the 2013 UDO re-write many of the industrial uses found in the UDO were evaluated to determine what districts the use should be allowed. The 2013 UDO re-write removed crab shedding as a principal use from residential zoning districts.

The activities typically associated with commercial fishing often include:

- Outdoor storage of boats, nets, crab pots, refrigeration units, and other types of equipment.
- Crab shedding
- Traffic
- On site sales and storage of fish, crabs, bait, and equipment.

LAND USE PLAN CONSISTENCY

The 2006 Land Use Plan states, "traditional commercial crabbing activities, both on Knotts Island and the Mainland have generated some conflicts with sound front residential uses but with no associated water quality impacts." The 2006 Land Use Plan Policy statements that are relevant to the request and the secondary impacts are as follows:

POLICY ED1: NEW AND EXPANDING INDUSTRIES AND BUSINESSES should be especially encouraged that 1) diversify the local economy, 2) train and utilize a more highly skilled labor force, and 3) are compatible with the environmental quality and natural amenity-based economy of Currituck County.

POLICY CD7: Attractive, environmentally beneficial LANDSCAPING shall be provided by new commercial or office developments, and in the rehabilitation and upgrading of existing developments. Appropriate BUFFERING or other effective DESIGN FEATURES may be employed to allow less intensive forms of commercial and office development to adjoin existing or planned residential uses.

The 2006 Land Use and Development Goals relevant to the request are as follows:

10. To properly distribute development forms in accordance with the suitability of the land, infrastructure available and the compatibility of surround land uses.

RECOMMENDATION

The board may include limitations on the number of employees and watercraft not owned by the property owner to be consistent with home occupation standards. Planning staff recommends approval of the revised text amendment since the request is consistent with the goals, objectives, and policies of the Land Use Plan, and is reasonable and in the public interest by providing setbacks and buffers from adjacent properties that will improve the compatibility among uses to ensure efficient development within the county.

After review, Mr. Woody confirmed several aspects of the text amendment with Commissioner Hall. Commissioner Payment said he had heard concerns from citizens regarding odor.

Commissioner Beaumont was concerned that the current wording in the text amendment allows for a trial by error. He confirmed with Mr. Woody that Property Owners Associations can restrict use if they desire.

Chairman Hanig agreed with Commissioner Beaumont that the wording of the text amendment needs to be more specific. After Board discussion Chairman Hanig opened the Public Hearing.

Carl Davis, Woodard Acres, questioned who would enforce the regulations. He is concerned with additional traffic on a community-maintained road and odor. He is not against crabbers but doesn't want an operation next to his house. Wayne Kerns and

Gwen Dodson, also of Woodard Acres, expressed similar concerns.

Steve Kinnaird of Alex Lane said a wholesale operation on his road generates heavy traffic. He would like wholesale prohibited the same as retail sales.

Applicant, Lauren Berry of Moyock, described the application process and provided a history of the waterman heritage and its economic impact in Currituck County. She provided statistics of the fishing industry and addressed concerns regarding traffic, noise and littering which are covered under other ordinances. She asked the Board to protect the county's heritage, and said the amendment would allow a bit more flexibility for commercial fishermen. She said the amendment would increase the beauty of neighborhoods due to buffer requirements.

Dale Brouse of Alex Lane talked of property values, saying one crabbing operation in a community drastically affects the rest of the homes.

Wayne Burch of Alex Lane supports the amendment as a commercial fisher and wholesale crabber. He has never had a problem until new neighbors moved in.

Kim Old, Tulls Bay, supports commercial fishermen, holds a license, and described their struggles to make a living with state restrictions. He said Mr. Burch is his neighbor and he has no problem with his operation. Mr. Old sells real estate for a living and does not see an operation affecting values.

Melvin Lewis, Waterlily Road, spoke in support and said he had dealt with the same issue many years ago. He said frozen bait doesn't smell.

Alice Stringham of Alex Lane does not dispute the heritage but says we need to think about the future, as Currituck is a draw for retirees. She asked the Board to look at some of these neighborhoods before voting. She said truck traffic is damaging their roads.

Chairman Hanig closed the Public Hearing but reopened for additional speakers.

Mike Durst of Gadwell Drive and Terry Overton of Alex Lane spoke in support of the amendment.

David Summerell, a property owner on Bells Island Rd, said his son, now deceased, worked as a commercial fisherman and he supports them.

Al Lowery and Jessie Ward both spoke in support of the amendment.

Watson Stewart, Bells Island Road, and a 50-year commercial fisherman, said bait is frozen and crabs are alive so he doesn't know where the smell would come from. He said commercial fishing is one of the only jobs available in Currituck and a solution is needed.

Sharon Kinnaird of Alex Lane said Mr. Burch was crabbing when she built her home four years ago, but he went big last year. Now cars and tractor trailers run up and down the road and it is out of hand.

Commissioner Etheridge commented she needs to research before making a decision, and Commissioner Payment agreed. Chairman Hanig closed the public hearing and Commissioner Etheridge moved to table the item until the second meeting in January and schedule a work session beforehand, recommending a visit to the area.

The motion was seconded by Commissioner Payment and carried unanimously.

RESULT:	TABLED [UNANIMOUS]	Next: 1/17/2017 6:00 PM
MOVER:	Mary "Kitty" Etheridge, Commissioner	
SECONDER:	Mike H. Payment, Commissioner	
AYES:	Bobby Hanig, Chairman, Mike D. Hall, Vice Chairman, Paul M. Beaumont, Commissioner, Mary "Kitty" Etheridge, Commissioner, Marion Gilbert, Commissioner, Mike H. Payment, Commissioner, Bob White, Commissioner	

NEW BUSINESS

A. Consideration and Action: PB 15-16 Moyock Commons, Phase 2: Subsequent Similar Request-Request for the Board to consider a subsequent rezoning request for Moyock Commons, Phase 2 (Second Request)

A brief recess was called at 8:10 PM. The meeting reconvened at 8:16 PM.

Ben Woody reviewed the request for reconsideration, providing a history of the initial application submitted by Mr. Friedman and the applicant's current request for Board consideration.

TO: Board of Commissioners

FROM: Planning Staff

DATE: November 28, 2016

SUBJECT: Moyock Commons, Phase 2, Subsequent Similar Request #2

Chip Freidman is again asking the board to consider a subsequent rezoning request for Moyock Commons, Phase 2. As you may recall the board denied the rezoning request (AG to C-SFM) for this property on December 7, 2015 and denied a subsequent similar request on March 21, 2016. Section 2.3.16 of the UDO requires a one year waiting period after an application is denied before an application proposing the same or similar development may be submitted for the same land. This same section of the UDO allows the board to waive this time limit only on a finding by two-thirds of its membership that the owner or agent has demonstrated that:

- There is a substantial change in circumstances relevant to the issues or facts considered during review of the prior application that might reasonably affect the board's application of the relevant review standards to the development proposed in the new application; or
- New or additional information is available that was not available at the time of review of the prior application and that might reasonably affect the board's application of the relevant review standards to the development proposed in the new application; or
- The new application proposed to be submitted is materially different from the prior application; or
- The final decision on the prior application was based on a material mistake of fact.

Mr. Friedman request the one year period be waived upon the following:

- This application is for a different zoning district
- The 2016 newly enacted UDO changes to this zoning district and changes to other zoning districts by the board.
- The new information learned from Dan Scanlon, County Manager, at the December 7, 2015 public hearing where he requested direction from the board for the Moyock watershed drainage district needing improvements to the districts 869 acres per North Carolina Statue on districts.
- New information from engineer Andy Deel stating improvements to this property's ditches will benefit the drainage district.

The purpose for the UDO one year required waiting period is noted by the North Carolina Supreme Court in George v. Town of Edenton, 294 N.C. 679, 242 S.E.2d 877 (1978), "A waiting period required by the ordinance is designed to prevent an applicant from subjecting the residents of an area to the burden of having to protest and defend against a series of repetitious applications."

Should the board find that granting a waiver of the one year waiting period is justified; the subsequent rezoning request will proceed as a new application. In any event, the one year waiting period ends on December 7, 2016 and a new application can be submitted on December 8, 2016.

Thank you.

After review, and when asked by Chairman Hanig, Mr. Woody said he did not believe Mr. Friedman had met the criteria.

Commissioner Gilbert moved to deny the request so the applicant can bring back a proper application so the new Board members will have an opportunity to review and make a vetted decision on the zoning. The motion was rescinded to offer the applicant an opportunity to speak.

Chip Friedman, applicant, said the application filed under original zoning of single-family mainland (SFM) cannot be considered similar to the subsequent application applied for under Mixed Residential (MXR). When asked why he is applying now, saving himself three days, he told the Board his lawsuit runs out in three days, which can be amended or dismissed. He responded to questions from the Board regarding lot layouts and zoning and said he believes he meets the criteria, and that the zoning change prohibits the ability for a similar plan to be submitted. Stormwater and state drainage improvements were discussed, and Mr. Friedman said this is an opportunity to improve things in that regard. When asked, he described the reason for the lawsuit and said he is tired of playing games.

Chairman Hanig again asked Mr. Woody if the criteria have been met. Mr. Woody said the zoning change conceivably allows for apartments, and could be considered different than a SFM zoning district. He stated his opinion that if houses were proposed, and houses were proposed again, then they are similar requests. Mr. Woody reviewed aspects of MXR and SFM zoning districts, with MXR allowing higher densities.

Commissioner Gilbert moved to deny the request for an early review of the zoning for Mr. Friedman to reapply after once the one-year waiting period is complete. The motion died for lack of a second. Mr. Woody clarified for the Board the applicant's request and

explained that submittals under straight MXR are not binding, as they would be with a conditional use permit.

No action was taken.

B. Consideration of Resolution Authorizing Upset Bid Process Pursuant to G. S. 160A-269 for County Property in Corolla as Described in Deed Book 1304, Page 736 and Deed Book 1304, Page 739 of the Currituck County Registry

County Attorney, Ike McRee, reviewed the upset bid resolution for the Board, describing the property location, the county's acquisition of the property and reviewed the ten day upset bid process and purpose. He said a bid was received from Mr. Chip Friedman and the property would be conveyed if no upset bids are received after advertising.

Commissioner Hall moved to proceed with the upset bid. The motion was seconded by Commissioner Etheridge and carried unanimously.

**RESOLUTION OF THE CURRITUCK COUNTY BOARD OF COMMISSIONERS
AUTHORIZING DISPOSAL OF REAL PROPERTY PURSUANT
TO N.C. GEN. STAT. §160A-269**

WHEREAS, the County of Currituck owns the following property in Corolla, North Carolina:

Beginning at a point which is located at United States Coast and Geodatic Survey North Carolina Grid Coordinate N 973,586.31 E 2,931,941.83, said point being the Northeast corner of that property conveyed by Hollis R. Parker and wife to Walter F. Parker by deed dated May 2, 1896 and recorded in Deed Book 42, at Page 221, and from said point of beginning thence S 2° 04' 09" E 105 feet, thence S 87° 55' 51" W 210 feet, thence N 2° 04' 09" W 105 feet, thence N 87° 55' 51" E 210 feet to the point of beginning and being the same property conveyed in the deed immediately above mentioned and also being exception 4 of the plat of survey entitled in part "Whalehead Club, Inc. to Edwin Lynch, Trustee for Vernon M. Lynch Sons" prepared by S. Elmo Williams under date of August 4, 1967 which plat is recorded with that deed of record in Deed Book 106, Page 543 of the Currituck County Registry. Reference is also made to those deeds recorded in Deed Book 1304, Page 736 and Deed Book 1304, Page 739 of the Currituck County Registry;

and

WHEREAS, N.C. Gen. Stat. §160A-269 permits the County to sell property by upset bid, after receipt of an offer for the property; and

WHEREAS, the County has received an offer to purchase the property described above, for the amount of \$100.00, submitted by Charles S. Friedman; and

WHEREAS, Charles S. Friedman has paid the statutorily required five percent (5%) deposit on the offer;

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

Section 1. The Board of Commissioners authorizes sale of the property described above through the upset bid procedure set forth in N.C. Gen. Stat. §160A-269.

Section 2. The Clerk to the Board of Commissioners shall cause notice of the proposed sale to be published. The notice shall describe the property and the amount of the offer, and shall state the terms established by this resolution under which the offer may be upset.

Section 3. Any person may submit an upset bid to the Office of the Clerk to the Board of Commissioners within ten (10) days after the notice of sale is published. Once a qualifying higher bid has been received, that bid will become the new offer.

Section 4. If a qualifying higher bid is received, the Clerk to the Board of Commissioners shall cause a notice of upset bid to be published, and shall continue to do so until a ten (10) day period has passed without any qualifying upset bid having been received. At that time, the amount of the final high bid shall be reported to the Board of Commissioners.

Section 5. A qualifying higher bid is one that raises the existing offer by not less than ten percent (10%) of the first \$1,000.00 of that offer and five percent (5%) of the remainder of that offer.

Section 6. A qualifying higher bid must also be accompanied by a deposit in the amount of five percent (5%) of the bid; the deposit may be made in cash, cashier's check, or certified check. The County will return the deposit on any bid not accepted, and will return the deposit on an offer subject to upset if a qualifying higher bid is received. The county will return the deposit of the final high bidder at closing.

Section 7. The terms of the final sale are that:

a. The Board of Commissioners must approve the final high offer before the sale is closed, which it will do within thirty (30) days after the final upset bid period has passed, and

b. The buyer must pay with cash at the time of closing.

Section 8. The County reserves the right to withdraw the property from sale at any time before the final high bid is accepted and the right to reject at any time all bids.

Section 9. If no qualifying upset bid is received after the initial public notice, the offer set forth above is hereby accepted. The appropriate County officials are authorized to execute the instruments necessary to convey the property by special warranty deed to Charles S. Friedman.

ADOPTED this 5th day of December, 2016.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Mike D. Hall, Vice Chairman
SECONDER:	Mary "Kitty" Etheridge, Commissioner
AYES:	Bobby Hanig, Chairman, Mike D. Hall, Vice Chairman, Paul M. Beaumont, Commissioner, Mary "Kitty" Etheridge, Commissioner, Marion Gilbert, Commissioner, Mike H. Payment, Commissioner, Bob White, Commissioner

C) Board Appointments

1. Whalehead Service District-Subdivision Improvement Advisory Board (Stormwater)

Commissioner Beaumont moved to approve nominees for the Whalehead Stormwater District Advisory. Commissioner Hall seconded and the motion carried unanimously. The nominees submitted and approved were: Martin Kruelle, Lee Foreman, Jim Pruden, John J. McTear and Sid Wilson.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Paul M. Beaumont, Commissioner
SECONDER:	Mike D. Hall, Vice Chairman
AYES:	Bobby Hanig, Chairman, Mike D. Hall, Vice Chairman, Paul M. Beaumont, Commissioner, Mary "Kitty" Etheridge, Commissioner, Marion Gilbert, Commissioner, Mike H. Payment, Commissioner, Bob White, Commissioner

2) ABC Board Appointments-Amended Agenda Item

Commissioner Etheridge asked that the two ABC appointments, Sybil O'Neal and Vance Aydlett, be voided. She said applications had not been submitted and Mr. Aydlett was serving as a Commissioner at the time of his appointment. Commissioner Hall seconded the motion.

Mr. McRee noted applications are not required for appointment to a county board and there are no rules prohibiting a commissioner from serving on a board. He said the appointment motion gave both individuals a seat on the ABC Board and explained process for removal such as just cause or a motion to reconsider.

Commissioners Etheridge and Hall detailed their concerns with the appointments. When asked, Mr. McRee explained the processes for removal of board members from local advisories and the ABC Board specifically, and stated his opinion that nominees, once approved, were seated on the Board. He said he could not find a swearing-in requirement for the ABC Board.

Commissioner White suggested a policy be put into place regarding submission of advisory board applications and appointments. The Board discussed reviewing the ordinance regulating advisory appointments along with the inclusion of ethics training.

No action was taken.

) Discussion of Meeting Times & Public Comment-Amended Agenda Item

Commissioner Hall asked that an ordinance be brought to the Board at the next meeting that would return Public Comment toward the beginning of the meeting agenda. He wished to continue with a 6 PM meeting time. Commissioner Beaumont asked that the speaking time for Public Comment be reduced to three minutes. Mr. McRee said an ordinance can be brought to the Board for consideration at their next meeting.

D) Consent Agenda

Commissioner Beaumont moved to approve the Consent Agenda. The motion was seconded by Commissioner Gilbert and passed unanimously.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Paul M. Beaumont, Commissioner
SECONDER:	Marion Gilbert, Commissioner
AYES:	Bobby Hanig, Chairman, Mike D. Hall, Vice Chairman, Paul M. Beaumont, Commissioner, Mary "Kitty" Etheridge, Commissioner, Marion Gilbert, Commissioner, Mike H. Payment, Commissioner, Bob White, Commissioner

1. Budget Amendments

Account Number	Account Description	Debit	Credit
		Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
51380-425001	State Lottery Proceeds	\$ 34,143	
51848-592002	Griggs - Upgrade Energy Mgmt		\$ 16,204
51848-595005	CCHS - RTF House HVAC		\$ 93
51848-597004	Moyock Elem Gym HVAC		\$ 17,846
		\$ 34,143	\$ 34,143
Explanation:	School Construction Projects (51848) - To close out lottery projects and return residual funds.		
Net Budget Effect:	School Construction Fund (51) - Decreased by \$34,143.		

		Debit	Credit
		Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
<u>Account Number</u>	<u>Account Description</u>		
50442-590004	Corolla Village Road Sidewalk	\$ 112,440	
50442-590005	Albacore Sidewalk		\$ 112,440
		\$ 112,440	\$ 112,440

Explanation: Connecting Corolla (50442) - Transfer funds between budgeted projects to reflect allocations based on the bids received.

Net Budget Effect: County Governmental Construction Fund (50) - No change.

		Debit	Credit
		Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
<u>Account Number</u>	<u>Account Description</u>		
10510-514500	Training and Education	\$ 25,050	
10510-545000	Contract Services	\$ 2,650	
10510-557100	Software License Fee	\$ 3,300	
10510-590000	Capital Outlay	\$ 9,000	
10330-449900	Miscellaneous Grants		\$ 40,000
		\$ 40,000	\$ 40,000

Explanation: Sheriff (10510) - To record HERO grant funded 100% by the NC Department of Public Safety for purchase of Cellebrite software, license fees for year two and training.

Net Budget Effect: Operating Fund (10) - Increased by \$40,000.

		Debit	Credit
		Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
<u>Account Number</u>	<u>Account Description</u>		
10380-485002	Extension Donations		\$ 254
10640-532007	Supplies - Backpacks for Kids	\$ 254	
		\$ 254	\$ 254

Explanation: Cooperative Extension (10640) - Increase appropriations to record donations collected by Senior Center for the Backpacks for Kids program.

Net Budget Effect: Operating Fund (10) - Increased by \$254.

			Debit	Credit
			Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
<u>Account Number</u>	<u>Account Description</u>			
10330-432200	HCCBG In Home			\$ 17,395
10560-519701	HCCBG - Access Services			\$ 2,232
10390-499900	Fund Appropriate Balance	\$	19,627	
		\$	19,627	\$ 19,627
Explanation:	PUBLIC ASSISTANCE (752) - Increase HCCBG In Home to reflect the actual amount of allocated funds of the County Funding Plan from Albemarle Commission.			
Net Budget Effect:	Operating Fund (10) - Decreased by \$2,232.			
			Debit	Credit
			Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
<u>Account Number</u>	<u>Account Description</u>			
10530-502000	Salaries - Regular			\$ 203,321
10530-502100	Overtime	\$	203,321	
		\$	203,321	\$ 203,321
Explanation:	Emergency Medical Services (10530) - Transfer budgeted funds from salaries to overtime for overtime required due to position vacancies in the first quarter of FY 2016.			
Net Budget Effect:	Operating Fund (10) - No change.			

2. Purchase Request for Carova Beach Volunteer Fire Department-Humvee
3. Job Description Revision: 4-H Program Assistant
4. Sheriff's Office-Records Retention Schedule Amendment
5. Petition for Road Addition-Aydlett Soundside, Foreman Drive

E) Commissioner's Report

Commissioner Beaumont attended Currituck County's tree lighting and parade, saying there was good attendance and was a great time. He wished everyone a Merry Christmas.

Commissioner Etheridge thanked the voters, saying she will do her best for the citizens. She wished everyone a Merry Christmas.

Commissioner White announced upcoming events at Whalehead and Santa's visit to Carova. He thanked the voters and wished all a Merry Christmas.

Commissioner Payment asked for volunteers for local fire departments. He wished all a Merry Christmas and Happy New Year.

Commissioner Gilbert also attended the parade and noted the number of community organizations and citizens in attendance. She wished all a Merry Christmas.

Commissioner Hall called on citizens to volunteer for Advisory Boards. He stressed fire safety this time of year and wished all a Merry Christmas.

Chairman Hanig encouraged citizen participation and input and wished all a Merry Christmas.

F) County Manager's Report

No report.

PUBLIC COMMENT

Please limit comments to matters other than those appearing on this agenda as a Public Hearing. Public comments are limited to 5 minutes.

Doris Flora, Moyock, welcomed new Commissioners and discussed her concerns with the new audio in the Board room.

Norman Bibeau of Elan Vacations and University Park discussed ongoing issues with the buffer area and its definition at his University Park project. He said he agreed to a 25 foot buffer and disputed the word "undisturbed" being include in the minutes of an earlier meeting. He said must begin the process again with the Planning Board and asked Commissioners to review.

Steve Fentress discussed the Board's April 4, 2016, decision on the Goose Creek solar farm and said the Board may need to address the issue again, as the Board's earlier denial is under appeal and will be heard by a superior court judge in Dare County. He discussed a document being deleted from the record, to which Mr. McRee informed him the record was amended on October 4, 2016, to include the conditions as part of the record. Mr. Fentress distributed documents to Chairman Hanig and Commissioners Etheridge and White for their review.

Angeroniam Saunders, a Board member of the Historic Jarvisburg Colored School, thanked the Board for their support of the completion and opening of the museum.

John McColley, a Grandy Road resident, spoke of the proposed solar farm at Goose Creek and the applicant, Ecoplexis. He said the community was compelled to hire experts at an exorbitant cost to citizens and asked the Board to aggressively defend their earlier motion so the decision is upheld.

CLOSED SESSION

1. Closed Session pursuant to G. S. 143-318.11(a)(3) to consult with the county's attorneys to preserve attorney-client confidentiality and to receive information and give direction to the county's attorneys in matters entitled Swan Beach Corolla, LLC v. Currituck County and Coastland Corporation v. Currituck County

Chairman Hanig announced the closed session pursuant to G. S. 143-318.11(a)(3) to consult with the county's attorneys to preserve attorney-client confidentiality and to receive information and give direction to the county's attorneys in matters entitled Swan Beach Corolla, LLC v. Currituck County and Coastland Corporation v. Currituck County and pursuant to G.S. 143-318.11(a)(6) to discuss personnel matters.

Commissioner Hall moved to enter Closed Session and the motion was seconded by Commissioner Beaumont. The motion carried unanimously and the Board entered closed session.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Mike D. Hall, Vice Chairman
SECONDER:	Paul M. Beaumont, Commissioner
AYES:	Bobby Hanig, Chairman, Mike D. Hall, Vice Chairman, Paul M. Beaumont, Commissioner, Mary "Kitty" Etheridge, Commissioner, Marion Gilbert, Commissioner, Mike H. Payment, Commissioner, Bob White, Commissioner

ADJOURN

Motion to Adjourn Meeting

The Board returned from Closed Session and had no further business. Commissioner Gilbert moved to adjourn. The motion was seconded by Commissioner Payment, passed unanimously, and the meeting of the Board of Commissioners was concluded.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Marion Gilbert, Commissioner
SECONDER:	Mike H. Payment, Commissioner
AYES:	Bobby Hanig, Chairman, Mike D. Hall, Vice Chairman, Paul M. Beaumont, Commissioner, Mary "Kitty" Etheridge, Commissioner, Marion Gilbert, Commissioner, Mike H. Payment, Commissioner, Bob White, Commissioner



Currituck County Agenda Item Summary Sheet

Agenda ID Number – (ID # 1738)

Agenda Item Title

Budget Amendments

Brief Description of Agenda Item:

Board Action Requested

Action

Person Submitting Agenda Item

Leeann Walton, Clerk to the Board

Presenter of Agenda Item

ber

2017040

BUDGET AMENDMENT

The Currituck County Board of Commissioners, at a meeting on the 3rd day of January 2017, passed the following amendment to the budget resolution for the fiscal year ending June 30, 2017.

<u>Account Number</u>	<u>Account Description</u>	Debit	Credit
		<u>Decrease Revenue or Increase Expense</u>	<u>Increase Revenue or Decrease Expense</u>
16609-514800	Fees Paid to Officials	\$ 4,200	
16609-545000	Contract Services		\$ 4,200
		<u>\$ 4,200</u>	<u>\$ 4,200</u>

Explanation: Ocean Sands and Crown Point Watershed (16609) - Transfer funds for advisory board fees.

Net Budget Effect: Ocean Sands and Crown Point Watershed Fund (16) - No change.

Minute Book # _____, Page # _____

Journal # _____

Clerk to the Board

Attachment: Bud_Amends_Jan 3-2017 (1738 : Budget Amendments)

ber

2017041

BUDGET AMENDMENT

The Currituck County Board of Commissioners, at a meeting on the 3rd day of January 2017, passed the following amendment to the budget resolution for the fiscal year ending June 30, 2017.

<u>Account Number</u>	<u>Account Description</u>	Debit	Credit
		<u>Decrease Revenue or Increase Expense</u>	<u>Increase Revenue or Decrease Expense</u>
10510-526000	Advertising	\$ 618	
10330-424000	Officer Fees		\$ 618
		<u>\$ 618</u>	<u>\$ 618</u>

Explanation: Sheriff (10510) - Increase appropriations for legal advertisement for writ of execution advertisement. Funds collected from Renaissance Construction.

Net Budget Effect: Operating Fund (10) - Increased by \$618.

Minute Book # _____, Page # _____

Journal # _____

Clerk to the Board

Attachment: Bud_Amends_Jan 3-2017 (1738 : Budget Amendments)

per

2017042

BUDGET AMENDMENT

The Currituck County Board of Commissioners, at a meeting on the 3rd day of January 2017, passed the following amendment to the budget resolution for the fiscal year ending June 30, 2017.

<u>Account Number</u>	<u>Account Description</u>	Debit	Credit
		<u>Decrease Revenue or Increase Expense</u>	<u>Increase Revenue or Decrease Expense</u>
10510-532000	Supplies	\$ 6,000	
10510-590000	Capital Outlay	\$ 18,000	
10330-449900	Miscellaneous Grants		\$ 24,000
		<u>\$ 24,000</u>	<u>\$ 24,000</u>

Explanation: Sheriff (10510) - Increase appropriations to record 100% funded grant from the NC Department of Public Safety to purchase 3 radar trailers, bicycle helmets, locks and reflective gear and community watch brochures.

Net Budget Effect: Operating Fund (10) - Increased by \$24,000.

Minute Book # _____, Page # _____

Journal # _____

Clerk to the Board

Attachment: Bud_Amends_Jan 3-2017 (1738 : Budget Amendments)

ber

2017043

BUDGET AMENDMENT

The Currituck County Board of Commissioners, at a meeting on the 3rd day of January 2017, passed the following amendment to the budget resolution for the fiscal year ending June 30, 2017.

<u>Account Number</u>	<u>Account Description</u>	Debit	Credit
		<u>Decrease Revenue or Increase Expense</u>	<u>Increase Revenue or Decrease Expense</u>
12543-516103	Buildings & Grounds	\$ 2,800	
12543-553003	Dues & Subscriptions	\$ 2,100	
12543-545000	Contract Services		\$ 2,800
12543-536103	Personal Protective Equipment		\$ 2,100
		<u>\$ 4,900</u>	<u>\$ 4,900</u>

Explanation: Moyock Volunteer Fire Department (12543) - Transfer budgeted funds within the Moyock VFD fire contract per email from Chief Pervere dated 12/7/2016.

Net Budget Effect: Fire Services Fund (12) - No change.

Minute Book # _____, Page # _____

Journal # _____

Clerk to the Board

Attachment: Bud_Amends_Jan 3-2017 (1738 : Budget Amendments)

per

2017044

BUDGET AMENDMENT

The Currituck County Board of Commissioners, at a meeting on the 3rd day of January 2017, passed the following amendment to the budget resolution for the fiscal year ending June 30, 2017.

<u>Account Number</u>	<u>Account Description</u>	Debit	Credit
		<u>Decrease Revenue or Increase Expense</u>	<u>Increase Revenue or Decrease Expense</u>
10450-590000	Capital Outlay	\$ 6,671	
10350-468000	Sale of Fixed Assets		\$ 6,671
		<u>\$ 6,671</u>	<u>\$ 6,671</u>

Explanation: Tax (10450) - Increase appropriations to record fees associated with foreclosure on property at 103 Bluefish Court, Grandy.

Net Budget Effect: Operating Fund (10) - Increased by \$6,671.

Minute Book # _____, Page # _____

Journal # _____

Clerk to the Board

Attachment: Bud_Amends_Jan 3-2017 (1738 : Budget Amendments)

ber

2017045

BUDGET AMENDMENT

The Currituck County Board of Commissioners, at a meeting on the 3rd day of January 2017, passed the following amendment to the budget resolution for the fiscal year ending June 30, 2017.

<u>Account Number</u>	<u>Account Description</u>	Debit	Credit
		<u>Decrease Revenue or Increase Expense</u>	<u>Increase Revenue or Decrease Expense</u>
61818-533800	Chemicals		\$ 4,500
61818-561000	Professional Services		\$ 5,000
61818-590000	Capital Outlay		\$ 16,850
61818-532000	Supplies	\$ 15,000	
61818-516000	Repairs and Maintenance	\$ 10,000	
61818-514500	Training and Education	\$ 350	
61818-514000	Travel	\$ 1,000	
		<u>\$ 26,350</u>	<u>\$ 26,350</u>

Explanation: Mainland Water System (61818) - Transfer for operations of the Mainland water system.

Net Budget Effect: Mainland Water System Fund (61) - No change.

Minute Book # _____, Page # _____

Journal # _____

Clerk to the Board

Attachment: Bud_Amends_Jan 3-2017 (1738 : Budget Amendments)

per

2017046

BUDGET AMENDMENT

The Currituck County Board of Commissioners, at a meeting on the 3rd day of January 2017, passed the following amendment to the budget resolution for the fiscal year ending June 30, 2017.

<u>Account Number</u>	<u>Account Description</u>	Debit	Credit
		<u>Decrease Revenue or Increase Expense</u>	<u>Increase Revenue or Decrease Expense</u>
10415-561000	Professional Services	\$ 80,000	
10380-488400	ABC Profits		\$ 80,000
		<u>\$ 80,000</u>	<u>\$ 80,000</u>

Explanation: Legal (10415) - Increased appropriations for increases in attorney fees for litigation.

Net Budget Effect: Operating Fund (10) - Increased by \$80,000.

Minute Book # _____, Page # _____

Journal # _____

Clerk to the Board

Attachment: Bud_Amends_Jan 3-2017 (1738 : Budget Amendments)

ber

2017047

BUDGET AMENDMENT

The Currituck County Board of Commissioners, at a meeting on the 3rd day of January 2017, passed the following amendment to the budget resolution for the fiscal year ending June 30, 2017.

<u>Account Number</u>	<u>Account Description</u>	Debit	Credit
		<u>Decrease Revenue or Increase Expense</u>	<u>Increase Revenue or Decrease Expense</u>
10511-561000	Professional Services		\$ 8,000
10511-516200	Vehicles Repairs	\$ 6,800	
10511-516000	Repairs & Maintenance	\$ 1,200	
		<u>\$ 8,000</u>	<u>\$ 8,000</u>

Explanation: Detention Center (10511) - Transfer budgeted funds for repairs for the remainder of this fiscal year.

Net Budget Effect: Operating Fund (10) - No change.

Minute Book # _____, Page # _____

Journal # _____

Clerk to the Board

Attachment: Bud_Amends_Jan 3-2017 (1738 : Budget Amendments)

ber

2017048

BUDGET AMENDMENT

The Currituck County Board of Commissioners, at a meeting on the 3rd day of January 2017, passed the following amendment to the budget resolution for the fiscal year ending June 30, 2017.

<u>Account Number</u>	<u>Account Description</u>	Debit	Credit
		<u>Decrease Revenue or Increase Expense</u>	<u>Increase Revenue or Decrease Expense</u>
64848-516000	Repairs & Maintenance	\$ 2,500	
64848-532000	Supplies	\$ 2,500	
64848-590000	Capital Outlay		\$ 5,000
		<u>\$ 5,000</u>	<u>\$ 5,000</u>

Explanation: Maple Commerce Park (64848) - Transfer for operations of the Maple Commerce Park sewer system.

Net Budget Effect: Maple Commerce Park Sewer fund (64) - No change.

Minute Book # _____, Page # _____

Journal # _____

Clerk to the Board

Attachment: Bud_Amends_Jan 3-2017 (1738 : Budget Amendments)



Currituck County Agenda Item Summary Sheet

Agenda ID Number – (ID # 1744)

Agenda Item Title

Surplus Resolution-Animal Quarantine Building

Brief Description of Agenda Item:

The county is requesting approval to surplus for demolition the old quarantine building due to damage caused by Hurricane Matthew.

Board Action Requested

Action

Person Submitting Agenda Item

Leeann Walton, Clerk to the Board

Presenter of Agenda Item

SURPLUS RESOLUTION

WHEREAS, the Board of Commissioners of Currituck County, North Carolina during its regularly scheduled meeting held on _____, 2017, authorized the following, pursuant to GS 160A and 270(b), that the following property is declared surplus and is to be demolished:

Asset # 5344 – Animal Quarantine Building (damaged in Hurricane Matthew)

ADOPTED THIS THE 3rd day of January, 2017.

CURRITUCK COUNTY BOARD OF COMMISSIONERS

Chairman

ATTEST:

Leeann Walton
Clerk to the Board



Currituck County Agenda Item Summary Sheet

Agenda ID Number – (ID # 1737)

Agenda Item Title

Surplus Resolution - 2008 Nissan Titan (EMS)

Brief Description of Agenda Item:

Vehicle Surplus Resolution

Board Action Requested

Action

Person Submitting Agenda Item

Sandra Hill, Director

Presenter of Agenda Item

RESOLUTION

WHEREAS, THE Board of Commissioners of the County of Currituck, North Carolina during its regularly scheduled meeting authorized the following, pursuant to G.S. 160A and 270(b) that the property listed below will be sold at auction, negotiated sale or will be disposed of if not sellable.

<u>County Asset Tag</u>	<u>Description</u>	<u>Serial Number</u>
6809	2008 Blizzard Nissan Titan	1N6AA07C68N352304

NOW, THEREFORE, BE IT RESOLVED, that the Board of Commissioners of the County of Currituck reserves the tight to reject any and all bids.

ADOPTED, this 3RD day of January, 2017.

 Bobby Hanig, Chairman
 County of Currituck, Board of Commissioners

 Leeann Walton
 Clerk to the Board

(Seal)

Attachment: Jan 2017_EMS Truck (1737 : Surplus Resolution for EMS Truck)



Currituck County Agenda Item Summary Sheet

Agenda ID Number – (ID # 1741)

Agenda Item Title

EIC-Community Services Block Grant Funding Submission

Brief Description of Agenda Item:

Planning Board Recommendation:

The Economic Improvement Council submits a grant application for multiple counties in the region and asks that the Board of Commissioners acknowledge the EIC's intent by placing the item on Consent Agenda. A full application for all counties is provided for Board review.

Board Action Requested

Action

Person Submitting Agenda Item

Leeann Walton, Clerk to the Board

Presenter of Agenda Item

**ECONOMIC IMPROVEMENT COUNCIL, INC.
ADMINISTRATIVE OFFICE**

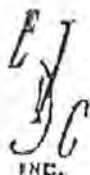
712 VIRGINIA ROAD

P.O. BOX 549

EDENTON, NORTH CAROLINA 27932

PHONE (252) 482-4458 FAX (252) 482-0328

www.eiccaa.org



Mr. ALBERT BUTTS
PRESIDENT
BOARD OF DIRECTORS

Dr. LANDON B. MASON SR.,
EXECUTIVE DIRECTOR

December 13, 2016

Mr. Bobby Hanig, Chairman
Currituck County Commissioners
153 Courthouse Road – Suite 204
Currituck, North Carolina 27929

Dear Mr. Hanig:

The Economic Improvement Council, Inc. is pleased to announce the continued funding of the Community Services Block Grant Program for Fiscal Year July 1, 2017 through June 30, 2018. The Community Services Block Grant Program is funded by the North Carolina Department of Health and Human Services, Office of Economic Opportunity in Raleigh, North Carolina. Funding for Fiscal Year 2017 is as follows:

Family Self-Sufficiency: \$373,181

The enclosed 2017 Grant Application is provided to the County Commissioners for informational purposes and notification of our intent to apply for the funds.

Please have the Clerk sign and notarize the Documentation of Submission Form and return in the self-stamped envelope as soon as possible.

Should you have questions, please call Dr. Landon B. Mason at 482-4458 Ext. 137. We appreciate your continued support of our program.

Sincerely,

Dr. Landon B. Mason
Executive Director

Enclosure (1) Application

Attachment: EIC-CDBG Submission (1741 : EIC-Community Services Block Grant Program)

"AN EQUAL OPPORTUNITY EMPLOYER"

Agency Name _____

**OFFICE of
ECONOMIC OPPORTUNITY**

**Community Services Block Grant [CSBG]
Documentation of Submission to County Commissioners**

Background: The North Carolina Administrative Code [10A NCAC 97C.0111 (b)(1)(A)] requires that each CSBG grant recipient submit its Community Anti-Poverty Plan [grant application] to each County Commissioner Board that it serves.

Instructions: This form is to be completed and notarized by the Clerk to the Board.

Agency Name: _____

County: _____

Date of Application Submission: _____

[Note: This application should be submitted to the County Commissioners at least thirty [30] days prior to application submission to the Office of Economic Opportunity [OEO]. The grant application is due to OEO **February 13, 2017**.

Clerk to the Board should initial all items below.

_____ The agency submitted a complete grant application for Commissioner review.

_____ The Clerk to the Board will be responsible for assuring that the application is distributed to the Commissioners.

_____ Commissioners' comments provided those to the agency. (If applicable)

Clerk to the Board

Date

Notary

Date



Currituck County Agenda Item Summary Sheet

Agenda ID Number – (ID # 1747)

Agenda Item Title

Closed Session pursuant to G. S. 143-318.11(a)(3) to consult with the county attorney in order to preserve the attorney-client privilege related to the following matters: R.F. London and Mermaids, Inc. v. Currituck County and Currituck County Board of Adjustment; Swan Beach Corolla, LLC v. Currituck County; Ocean Hill Commercial, LLC and others v. James Bickford, Midlantic Builders, Ocean Hill 1 Property Owners Association and Currituck County; Ocean Hill Commercial, LLC and others v. Currituck County; Moyock Commercial Properties, LLC and Charles S. Friedman v. Currituck County; Coastland Corporation and James E. Johnson, Jr. v. Currituck County and Ocean Sands Water and Sewer District; Ecoplexus, Inc., Fresh Air Energy II, LLC and Currituck Sunshine Farm, LLC v. Currituck County and Teresa Wheeler v. Currituck County.

Brief Description of Agenda Item:

Board Action Requested

Discussion

Person Submitting Agenda Item

Leeann Walton, Clerk to the Board

Presenter of Agenda Item

Donald (Ike) I. McRee Jr