



**Board of Commissioners
Agenda Packet**

November 1, 2021

6:00 PM Call to Order

- A) Invocation & Pledge of Allegiance
- B) Approval of Agenda

Public Comment

Please limit comments to matters other than those appearing on this agenda as a Public Hearing. Public comments are limited to 3 minutes.

Commissioner's Report**County Manager/County Attorney Reports****Public Hearings**

- A) **PB 21-20 Baxter Station:** Allied Properties, LLC, is requesting conditional rezoning of 53.43 acres, owned by Jarvis Harvest, LLC, from Agriculture Zoning District to Conditional Mixed Residential Zoning District to allow 80 single-family detached lots within an age-restricted community located in Moyock on the south side of Baxter Lane adjoining Baxter Lane Estates to the east and Hidden Oaks to the south, Tax Map 9, Parcel 25A, Moyock Township.

New Business

- A) **Consideration of Agreement for Professional Services for Phase I Drainage Improvements for Ocean Sands North and Crown Point Service District for Watershed Improvements, and Authorize County Manager to Execute Agreement.**
- B) **Discussion of service contract with Corolla Volunteer Fire and Rescue Squad Inc.**
- C) **Consent Agenda**
 - 1. Budget Amendments
 - 2. Surplus Resolution and Authorization for Sergeant Joseph Davidson to Purchase His Service Weapon in the Amount of \$1.00 Upon Retirement
 - 3. Approval Of Minutes-10/18/2021 & SM 8/25/2021

Adjourn



Currituck County Agenda Item Summary Sheet

Agenda ID Number – 3254

Agenda Item Title: PB 21-20 Baxter Station:

Submitted By: Tammy Glave – Planning & Community Development

Item Type: Legislative

Presenter of Item: Tammy Glave

Board Action: Action

Brief Description of Agenda Item:

Allied Properties, LLC, is requesting conditional rezoning of 53.43 acres, owned by Jarvis Harvest, LLC, from Agriculture Zoning District to Conditional Mixed Residential Zoning District to allow 80 single-family detached lots within an age-restricted community located in Moyock on the south side of Baxter Lane adjoining Baxter Lane Estates to the east and Hidden Oaks to the south, Tax Map 9, Parcel 25A, Moyock Township.

Planning Board Recommendation: Denial

Staff Recommendation: Approval with Conditions

TRC Recommendation: Approval with Conditions



STAFF REPORT
PB 21-20 BAXTER STATION
CONDITIONAL REZONING
BOARD OF COMMISSIONERS
NOVEMBER 1, 2021

Attachment: 1 Baxter Station C-MXR Staff Report (PB 21-20 Baxter Station Conditional Zoning)

APPLICATION SUMMARY	
Property Owner: Jarvis Harvest LLC Charles T. Busby PO Box 88 Maple NC 27956 (Per Tax Record and NC Sec'y of State) Jarvis Harvest LLC 701 Blue Point Drive Wilmington NC 28411 (Per Application)	Applicant: Allied Properties LLC 417 Caratoke Hwy Unit D Moyock NC 27958
Case Number: PB 21-20	Application Type: Conditional Rezoning
Parcel Identification Number: 0009-000-025A-0000	Existing Use: Cultivated Farmland
Land Use Plan Classification: Rural*	Parcel Size (Acres): 53.43
Moyock Small Area Plan Classification: Full Service	Zoning History: RA-20 (1974), A (1989); AG (2013)
Current Zoning: AG (Agricultural)	Proposed Zoning: C- MXR (Conditional – Mixed Residential)
Request: Conditional zoning to allow 80 single-family detached lots within an age-restricted community located in Moyock on the south side of Baxter Lane adjoining Baxter Lane Estates to the East and Hidden Oaks to the south, Moyock Township.	

*Requires a Land Use Plan amendment.

SURROUNDING PARCELS		
	Land Use	Zoning
North	Commercial, Residential Subdivisions (Windswept Pines, Georgias Vineyard, etc.)	GB, AG, C-MXR
South	Residential Subdivision (Hidden Oaks)	C-SFM
East	Residential Subdivision (Baxter's Lane Estates)	C-SFM
West	Vacant, Railroad	GB

REQUEST HISTORY

In 2019 the developer proposed a conditional zoning to Planned Development – Residential (PD-R) for this property. The proposal contained 103 single-family dwelling units and 44 duplex dwelling units with a minimum lot size of 10,000 square feet and the construction of an on-site wastewater treatment plant. The Planning Board recommended denial of that request because it was inconsistent with the 2006 Land Use Plan and the Moyock Small Area plan. This proposal was also determined to be incompatible with surrounding subdivisions and neighborhoods. Additionally, the proposed neighborhood would be served by Moyock Elementary School which was over capacity. For these reasons, the request was not reasonable or in the public interest. The developer withdrew the request in June 2020, prior to it being considered by the Board of Commissioners.

NARRATIVE

The applicant is now proposing an age-restricted residential community containing 80 single-family dwelling units. All units are proposed to be occupied by occupants 55 years of age or older. Before the issuance of the first building permit for the first dwelling unit, the developer will record a restrictive covenant in the homeowners' association documents restricting the age of the occupants accordingly. The restrictive covenants will require certifications of age of all household occupants at least once every two years and provide enforcement of violations. Outlined in the attached letter dated December 1, 2020, from the applicant's attorney, Currituck County can accept age restrictive covenants as legally enforceable conditional zoning conditions. According to the applicant's attorney, restrictions that comply with federal and state law "prevents school-aged children from occupying units."

Per the County Attorney, the current department of HUD standards define age restricted or an age restricted community as: (i) a community intended and operated for occupancy by persons 55 years of age or older; (ii) a community where at least 80% of the units have at least one occupant who is 55 years of age or older; (iii) the community must publish and adhere to policies and procedures that demonstrate the intent to operate as "55 or older" housing and (iv) the community must comply with HUD's regulatory requirements for age verification of residents. The applicant is proposing zero occupants less than 55 years old.

The properties along Baxter Lane have historically dealt with stormwater runoff and flooding issues. As part of the conditional zoning request, one condition the developer is offering is to help address drainage in this area. The Baxter Lane Ditch will be improved, and on-site stormwater storage will be provided, including berms as necessary, to address the 100-year storm on the Baxter Station property. An undersized culvert will be replaced at Baxter Lane Extension, assuming the County obtains right of entry onto all private properties. Currituck County's Soil and Stormwater Manager is confident that the proposed improvements will help alleviate stormwater runoff issues along Baxter Lane and adjoining properties. There is also a waterline under the undersized culvert that must be addressed, and the developer is working directly with Public Utilities to rectify that situation. Since these improvements are conditions proposed by the applicant, should the Board of Commissioners agree to the conditions, these improvements are bindings on the land and will become a part of the preliminary plat/use permit requirements.

The amenities plan for the 55 and older community includes a dog park and a waterfront garden with landscaping, walking paths, a pergola, and seating. (See attached amenities plan.)

Since the 2006 Land Use Plan classifies the property as Rural in the Moyock subarea, a Land Use Plan amendment is required to reclassify the property as Full Service to develop at the desired density of 1.49 units per acre. Since the more specific Moyock Small Area Plan classifies this area as Full Service,

the amendment to the LUP is consistent with the policies and guidance offered in that plan. G.S. 160D-605 provides that “[i]f a zoning map amendment is adopted, and the action was deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending any future land-use map in the approved plan, and no additional request or application for a plan amendment shall be required.”

ZONING DISTRICT DENSITY COMPARISON

This rezoning request will result in a substantial density increase for the property. Please note that this is raw data and assuming ideal conditions with no limitations on the property (soil suitability, infrastructure placement, etc.). These numbers should be used for general reference purposes only.

AG (Existing)	17 lots	23 lots
Conservation	Minimum lot size 30,000 sf	Minimum lot size 30,000 sf
Subdivision Required	50% open space	60% open space
(Currently Allowed)	Max Density: .33 u/ac	Max Density: .4 u/ac
MXR Request	80	
Assuming Full Service	15,000 sf minimum lot size	
LUP Map Amendment	30% open space required; 38% proposed	
	Max Density: 2 u/ac with 1.49 u/ac proposed	

COMMUNITY MEETING

A community meeting on this version of the plan was held on July 20, 2021, at the Eagle Creek Pavilion. There were approximately 14 neighboring property owners in attendance. Most questions centered around drainage issues and plan for improvements, lot size/subdivision layout, poor soils, and general development in Moyock.

CONDITIONS OF APPROVAL

Only conditions mutually agreed to by the owner(s) of the property to be conditionally zoned and the Board of Commissioners may be approved as part of a conditional zoning district. If the Board wishes to add additional conditions of approval, the applicant must agree to the new conditions for the conditions to be valid. The property owner and applicant are offering two proposed conditions that the Board must agree to:

1. Regarding Age Restriction: The use of the property shall be limited to an age-restricted residential community where all units are occupied by occupants fifty-five (55) years of age or older. Before the issuance of the first building permit for the first dwelling unit, Developer will record a restrictive covenant in the homeowners' association documents restricting the use accordingly, requiring occupants to certify the age of all household occupants at least once every two years, and providing for enforcement of such restriction.
2. Regarding Drainage Improvements: Drainage improvements will be provided as follows:
 - a. Perform modeling of the Baxter ditch to its outlet on the Jarvis (Landing) property.
 - b. Based on model results, make improvements to Baxter Lane ditch along the Baxter Station property boundary, including widening, deepening, laying back side slopes and putting on proper grade. Improvements to be completed prior to putting first plat phase of subdivision to record.
 - c. Record an easement along the Baxter Station part of the ditch to provide access for ongoing maintenance.

- d. Include a provision in the covenants of Baxter Station that clarifies that the HOA will have the responsibility to maintain the Baxter Lane ditch through the subdivision at least annually, and budget for funding within the HOA dues structure to assure that ongoing maintenance is funded.
- e. Model the Baxter Station to manage the 100-year storm event and provide stormwater storage, including berms as necessary, to prevent runoff from Baxter Station during the 100 year storm event from adversely impacting offsite properties.
- f. If Currituck County is able to obtain the necessary right of entry agreements, the existing undersized culvert at Baxter Lane Extension will be replaced with a properly sized culvert set at the proper grade.

There is waterline under the undersized culvert on Baxter Lane Extension. Public Utilities is requesting the following condition:

- 3. That the developer will lower or move the waterline located at the end of Baxter Lane to provide proper separation to the new drainage culvert. Public Utilities must approve the construction plan prior to work beginning on the culvert/waterline.

LAND USE PLAN

The 2006 Land Use Plan classifies this site as Rural within the Moyock subarea. The policy emphasis for the Moyock subarea is managing the increased urban level of growth that this area is sure to experience over the next decade and beyond. In areas where on-site wastewater is proposed, and other county services are limited, development density should be limited to 1-2 units per acre. The proposed development plan may be considered consistent with the Moyock subarea emphasis, but this consideration does not change the 2006 Land Use Plan land use classification of the subject property. This signifies a discrepancy with the UDO dimensional standards for the MXR district. * **The following land use plan policies are relevant to the request:**

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 proximity of the site to existing and planned urban services.
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**Prior zoning map amendments (2015 and 2018) adopted by the BOC placed emphasis on the Moyock Small Area plan future land use map classifying this property as Full Service. A zoning map amendment, PB 18-23 effective May 6, 2019, placed emphasis on the CAMA Land Use Plan. The decision emphasizes the 2006 Land Use Plan as the controlling document and the relation to the UDO dimensional standards for the MXR district signifies a discrepancy between the two plans and requires a Land Use Plan map amendment.*

MOYOCK SMALL AREA PLAN

The Moyock Small Area Plan identifies this site as Full Service. Full-Service designations are focal points in the community where high amounts of activity occur. Typical densities in Full-Service designations range from 1.5 – 3 units per acre depending on surround land uses.

Policy FLU1	Promote compatibility between new development and existing development to avoid adverse impacts to the existing community. This is achieved through design and includes larger setbacks, landscaped or forested strips, transition zones, fencing, screening, density and/or bulk step downs, or other architectural and site planning measures that encourage harmony.
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Staff Concerns

- Participating in the HUD regulated program for age-restricted communities is a voluntary action. Should the developer choose not to participate in the HUD age-restricted community program, an amended conditional zoning district will be required.
- There are concerns for school capacity should the developer chose to no longer participate in the age-restricted community.
- It is understood that the intent is for the HOA to be responsible for enforcing the age restriction requirement, but it should be noted that enforcement actions often fall to the county and staff enforcement of the age-restriction would be very difficult, even if legally permissible.

RECOMMENDATION

Technical Review Committee Comments

The Technical Review Committee reviewed this conditional zoning request and identified the following comments:

1. The 2006 Land Use Plan identifies this property as Rural within the Moyock subarea. The policy's emphasis for the Moyock subarea is managing the increased urban level of growth that this area is sure to experience over the next decade and beyond. In areas where on-site wastewater is proposed, and other county services are limited development density should be limited to 1-2 units per acre.
2. The Moyock Small Area Plan identifies this site as Full-Service. This designation identifies areas where there will be significant public investment in infrastructure, and thus can support higher density of development.
3. The UDO dimensional standards in the MXR zoning district provide the maximum density of 2 units per acre in the Full-Service area and 1 unit per acre in the Limited-Service Area. The UDO does not provide density allocation for property in the Rural land use classification. The MXR zoning district purpose provides more intense development density and uses than the areas typically identified as the Rural land use classification.
4. Prior zoning map amendments, including the amendments in 2015 and 2018, placed emphasis on the Moyock Small Area plan allowing for the full-service development density of 2 units per acre. However, a zoning map amendment, PB 18-23 with an effective date of May 6, 2019, placed emphasis on the 2006 Land Use Plan as the approved CAMA plan. That decision, if applied to this property, would not meet the county UDO since this area is identified as Rural with no development density allocated.
5. Based on the 2019 decision, an amendment to the 2006 Land Use Plan land use map (Rural to Full-Service) is necessary for this increase in development density to be allowed under the UDO.
6. Conditional zonings are legislative decisions of the board and not controlled by any one factor. In determining whether to adopt or deny a proposed request, the board may consider the standards in UDO, Section 2.4.3.C.
 - a. Is consistent with the goals, objectives, and policies of the Land Use Plan, other applicable county-adopted plans, and the purposes of this Ordinance;
 - b. Is in conflict with any provision of this Ordinance, or the County Code of Ordinances;
 - c. Is required by changed conditions;
 - d. Addresses a demonstrated community need;
 - e. Is compatible with existing and proposed uses surrounding the land subject to the application, and is the appropriate zoning district and uses for the land;
 - f. Adversely impacts nearby lands;
 - g. Would result in a logical and orderly development pattern;
 - h. Would result in significant 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;

- i. Would result in development that is adequately served by public facilities (e.g., streets, potable water, sewerage, stormwater management, solid waste collection and disposal, schools, parks, police, and fire and emergency medical facilities);
- j. Would not result in significantly adverse impacts on the land values in the surrounding area; and
- k. Would not conflict with the public interest and is in harmony with the purposes and intent of this Ordinance.

Technical Review Committee Recommendation

Provided adequate public facilities are available to serve the proposed development, the Technical Review Committee recommends approval of the conditional zoning application subject to the following conditions (must be agreed upon by the county and the applicant):

1. The 2006 Land Use Plan future land use map must be amended to identify the property as Full-Service as part of the motion for approval.
2. Regarding Age Restriction: The use of the property shall be limited to an age-restricted residential community where all units are occupied by occupants fifty-five (55) years of age or older. Before the issuance of the first building permit for the first dwelling unit, Developer will record a restrictive covenant in the homeowners' association documents restricting the use accordingly, requiring occupants to certify the age of all household occupants at least once every two years, and providing for enforcement of such restriction.
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 - c. Record an easement along the Baxter Station part of the ditch to provide access for ongoing maintenance.
 - d. Include a provision in the covenants of Baxter Station that clarifies that the HOA will have the responsibility to maintain the Baxter Lane ditch through the subdivision at least annually, and budget for funding within the HOA dues structure to assure that ongoing maintenance is funded.
 - e. Model the Baxter Station to manage the 100-year storm event and provide stormwater storage, including berms as necessary, to prevent runoff from Baxter Station during the 100 year storm event from adversely impacting offsite properties.
 - f. If Currituck County is able to obtain the necessary right of entry agreements, the existing undersized culvert at Baxter Lane Extension will be replaced with a properly sized culvert set at the proper grade.
4. That the developer will lower or move the waterline located at the end of Baxter Lane to provide proper separation to the new drainage culvert. Public Utilities must approve the construction plan prior to work beginning on the culvert/waterline.
5. Should the development stop participating in the voluntary HUD regulated age-restricted community program, an amended conditional zoning request must be approved prior to those less than 55 years old occupying a dwelling unit.

Planning Board Recommendation

On October 12, 2021, the Planning Board recommended denial of the requested conditional rezoning. The original motion to approve resulted in a 2-2 vote. The request is denied as it did not receive approval by a majority vote as stated in the Currituck County Planning Board Rules of Procedure.

CONSISTENCY STATEMENT

A conditional zoning is a legislative decision of the Board of Commissioners. In determining whether to approve or deny a conditional rezoning the Board of Commissioners shall adopt a written statement of consistency.

The conditional zoning request is consistent with and amends the 2006 Land Use Plan by designating this property as Full-Service on the future land use map because the amendment recognizes and implements the Full-Service designation of the Moyock Small Area Plan adopted by the Board of Commissioners.

The request is reasonable and in keeping with the changed conditions acknowledged by the Moyock Small Area Plan and addresses the demonstrated community need of providing a Full-Service area.

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.

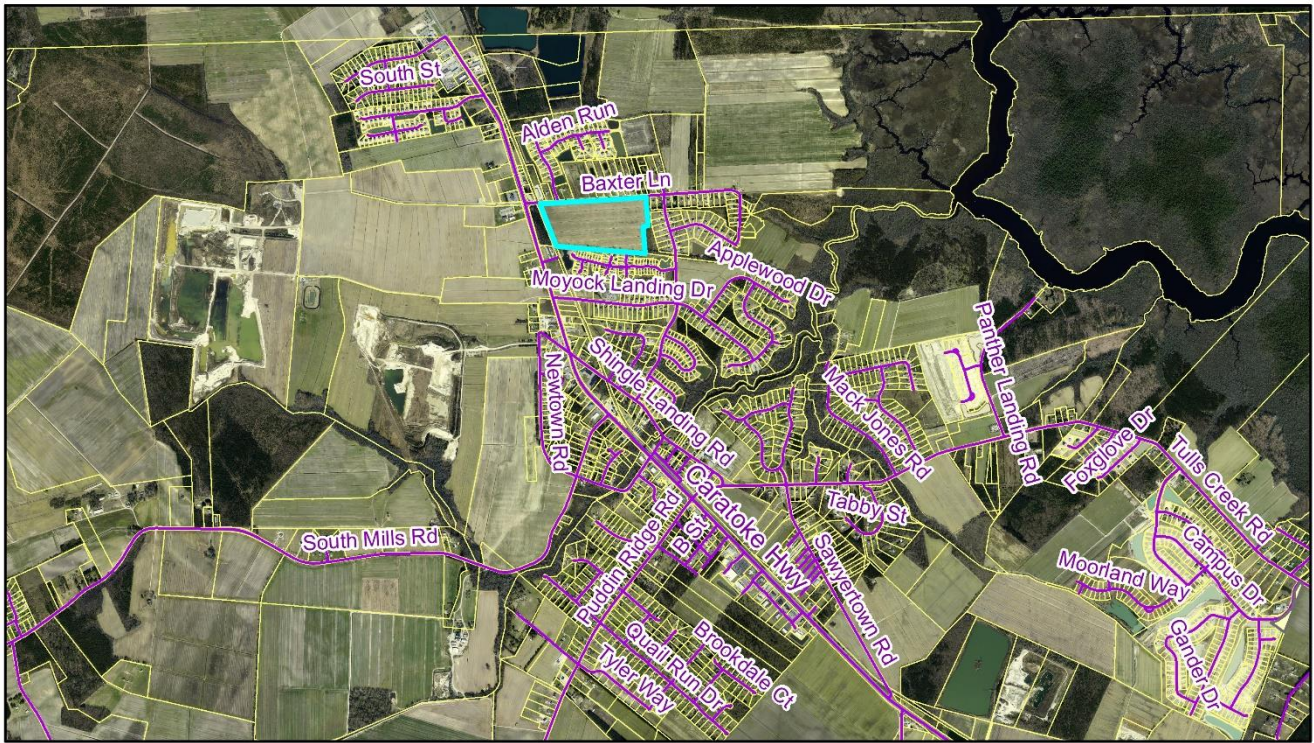
Agreed upon conditions of approval:

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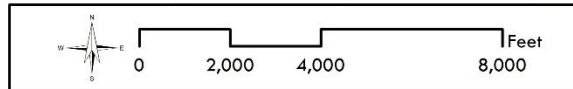
Technical Review Committee recommended condition that must be agreed upon by the applicant and the county:

1. That the developer will lower or move the waterline located at the end of Baxter Lane to provide proper separation to the new drainage culvert. Public Utilities must approve the construction plan prior to work beginning on the culvert/waterline.
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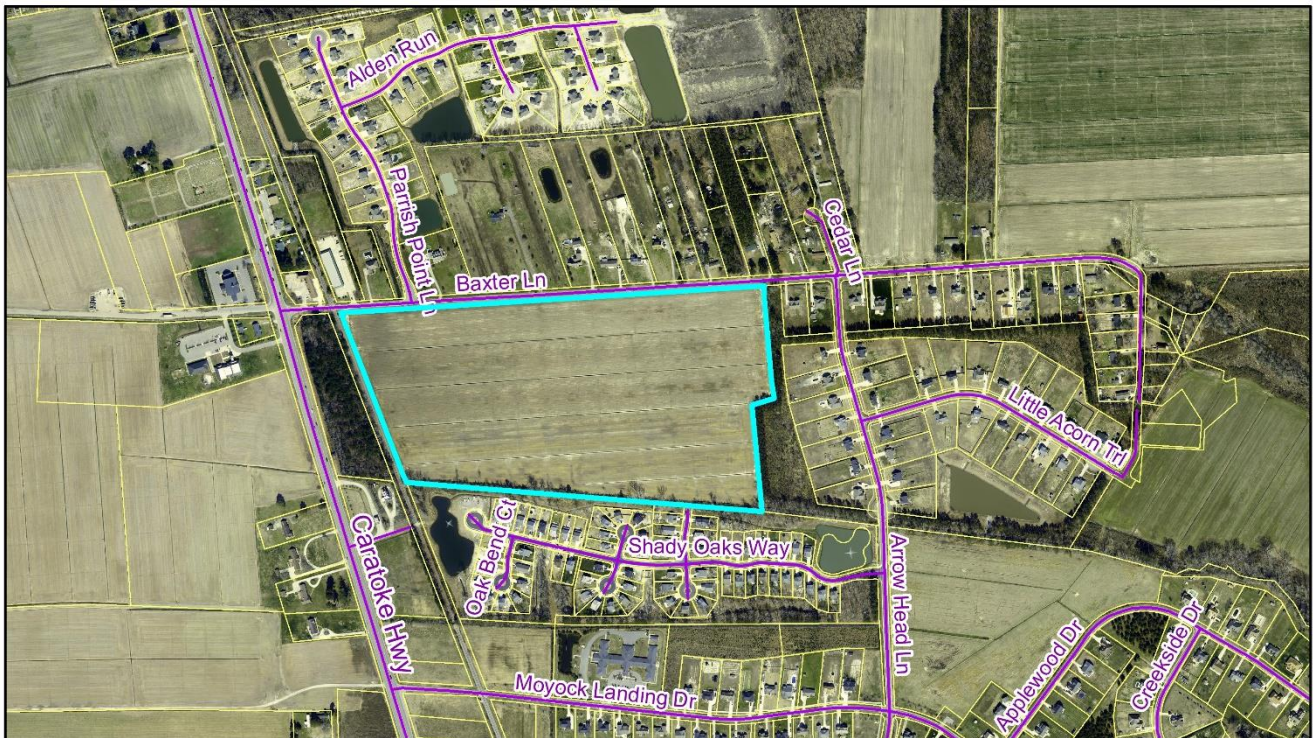
THE APPLICATION AND RELATED MATERIALS ARE AVAILABLE ON THE COUNTY'S WEBSITE
Board of Commissioners: [www.co.currituck.nc.us/ board-of-commissioners-minutes-current.cfm](http://www.co.currituck.nc.us/board-of-commissioners-minutes-current.cfm)



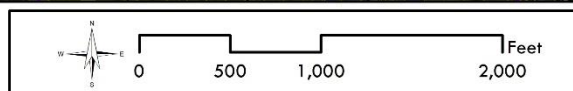
PB 21-20 Baxter Station
C-MXR
Context Map



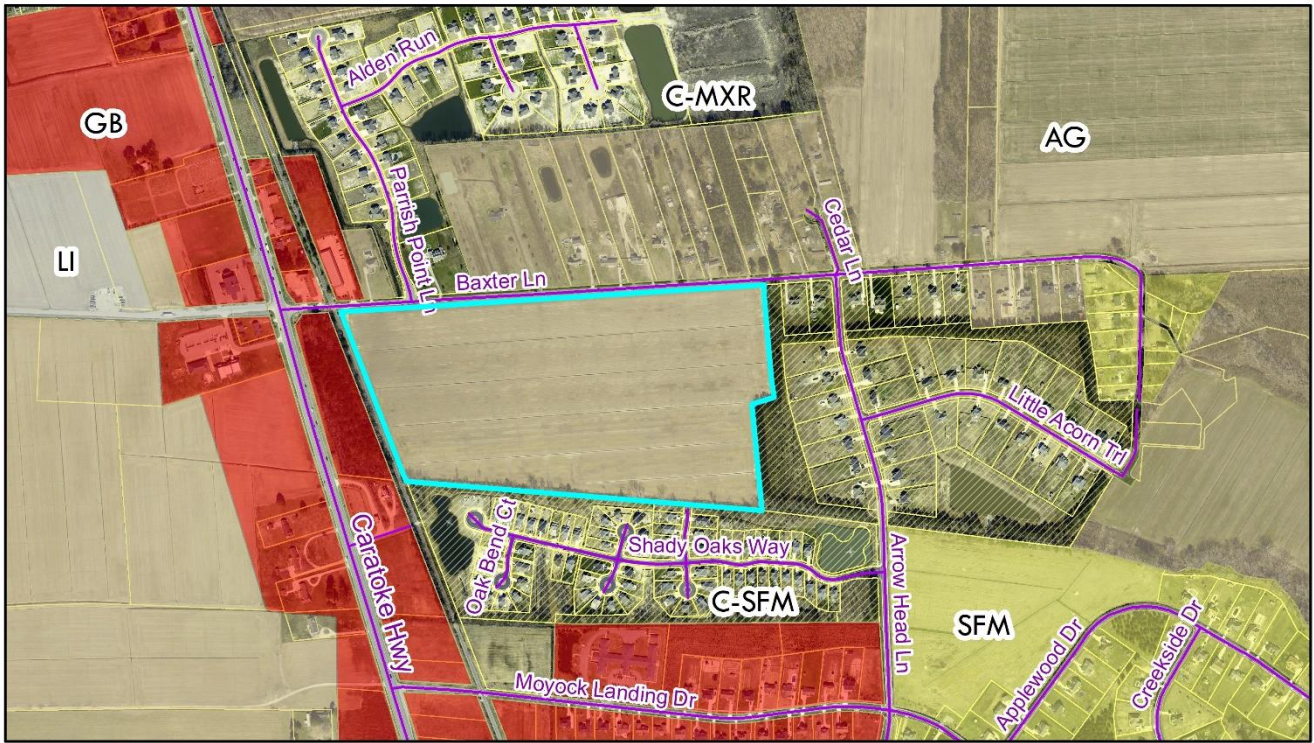
Currituck County
Planning and
Community Development



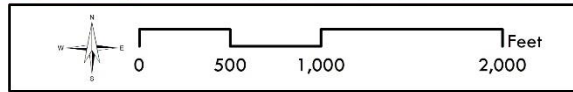
PB 21-20 Baxter Station
C-MXR
2020 Aerial Photo



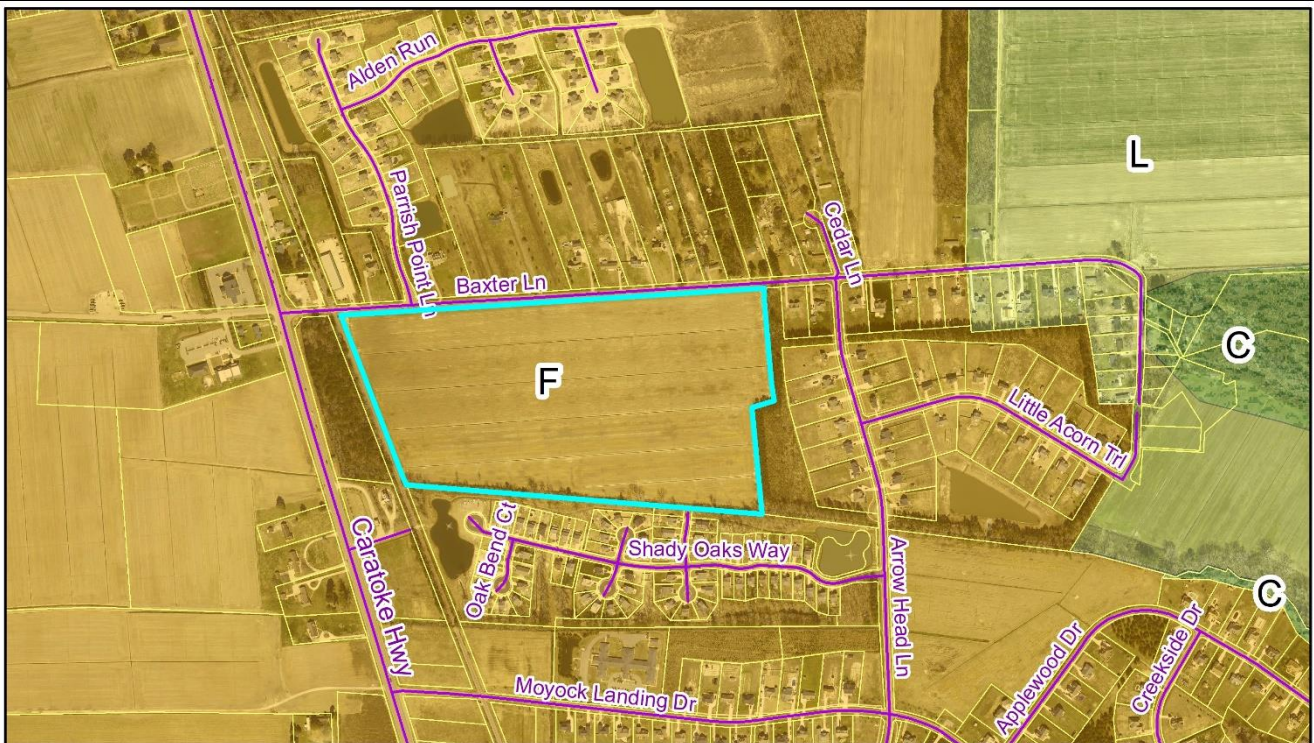
Currituck County
Planning and
Community Development



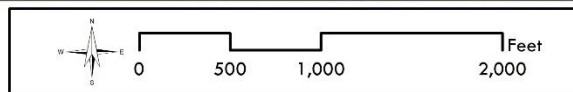
PB 21-20 Baxter Station
C-MXR
Zoning



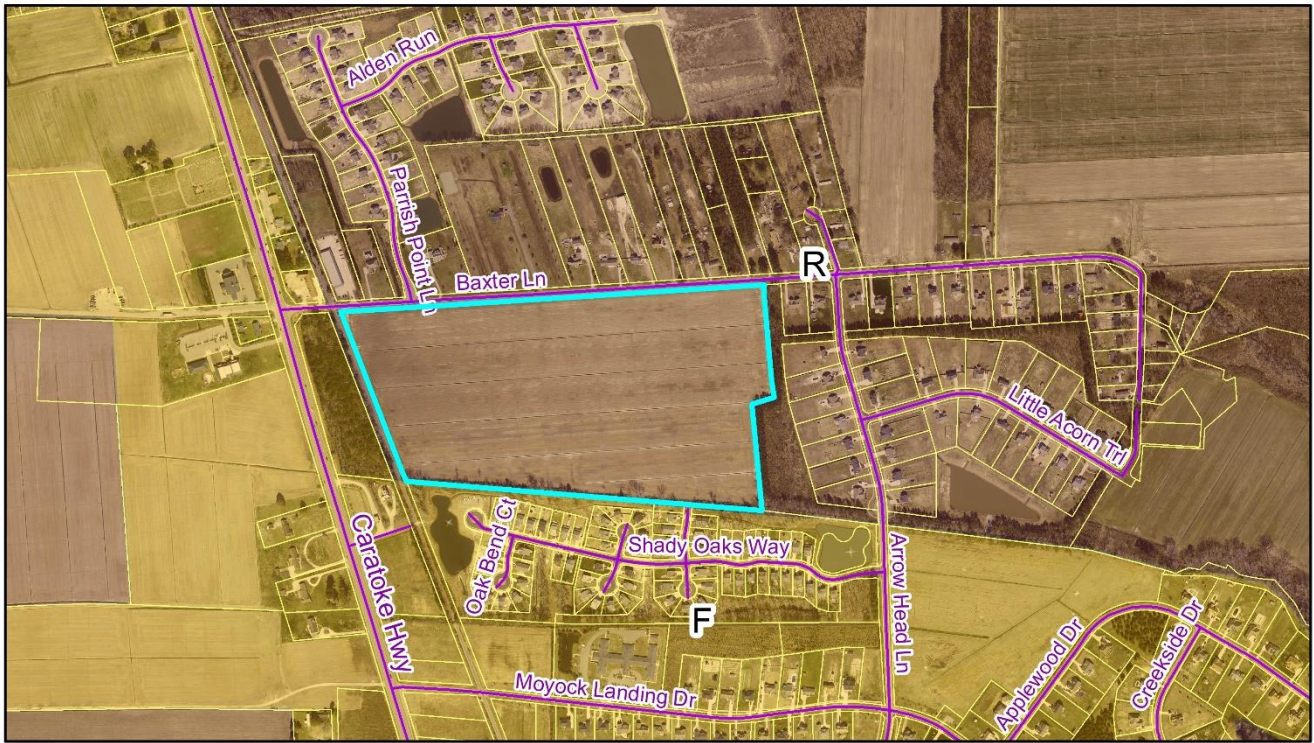
Currituck County
Planning and
Community Development



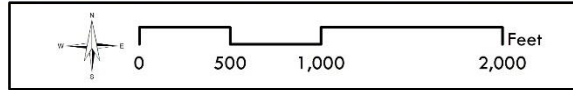
PB 21-20 Baxter Station
C-MXR
Moyock SAP



Currituck County
Planning and
Community Development



PB 21-20 Baxter Station
C-MXR
LUP



Currituck County
Planning and
Community Development

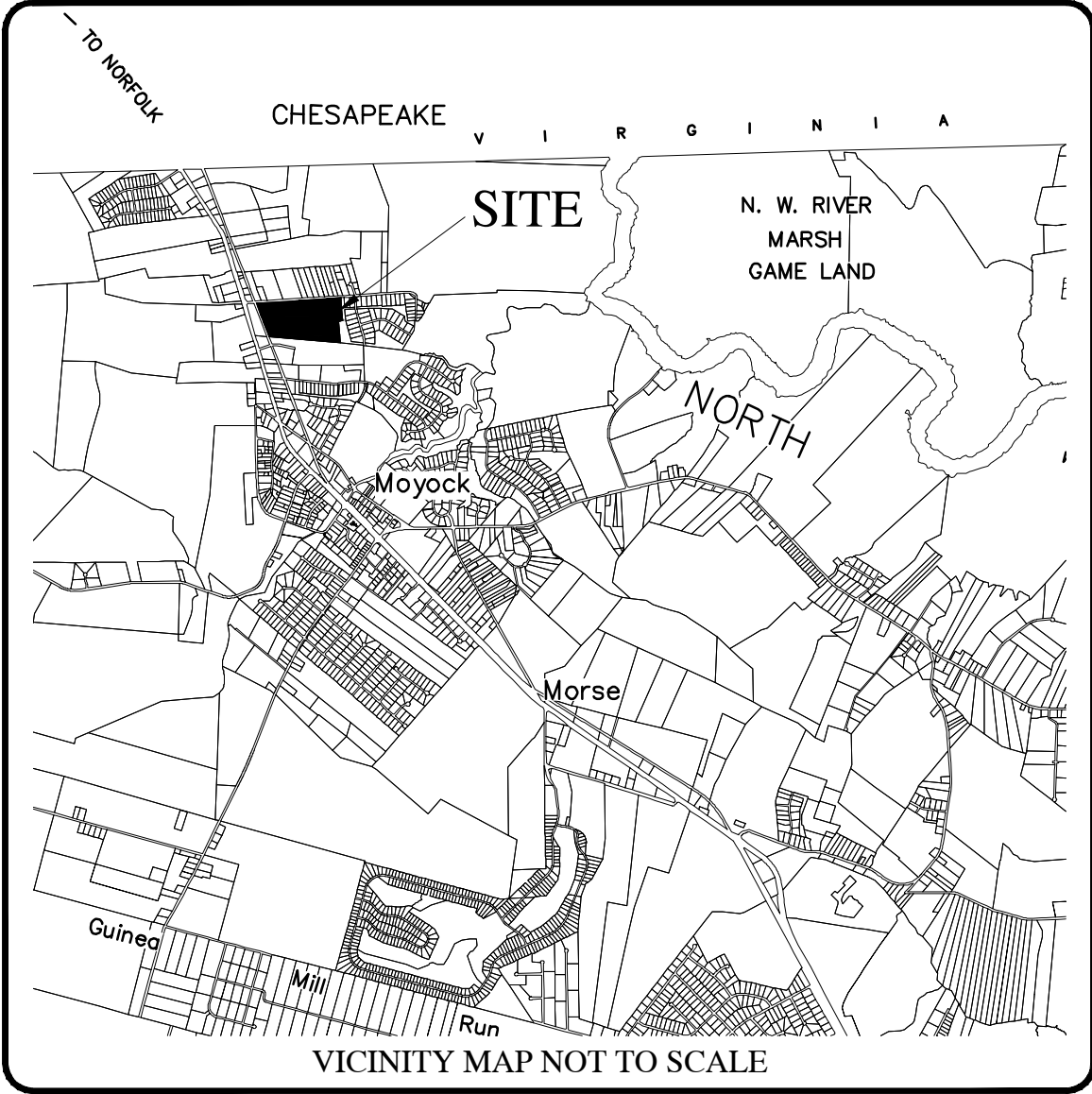
BAXTER STATION

AGE-RESTRICTED MXR DEVELOPMENT

PRELIMINARY MASTER PLAN

MOYOCK TOWNSHIP CURRITUCK COUNTY

PROPOSED ZONING: C-MXR



Sheet Number	Sheet Title
1	COVER SHEET, DEVELOPMENT NOTES & SITE LOCATION
2	EXISTING SITE CONDITIONS & SITE FEATURES PLAN
3	STORMWATER DRAINAGE, PHASING & LANDSCAPING MASTER PLAN
4	WATER MAIN EXTENSION & WATER SERVICE PLAN
5	TYPICAL CONSTRUCTION DETAILS

OWNERSHIP AND DEDICATION CERTIFICATE.
I HEREBY CERTIFY THAT I AM THE OWNER OF THE PROPERTY DESCRIBED HEREON, WHICH PROPERTY IS LOCATED WITHIN THE SUBDIVISION REGULATION JURISDICTION OF CURRITUCK COUNTY, THAT I HEREBY FREELY ADOPT THIS PLAT OF SUBDIVISION AND DEDICATE TO PUBLIC USE ALL AREA SHOWN ON THIS PLAT AS STREETS, UTILITIES, ALLEYS, WALKS, RECREATION AND PARKS, OPEN SPACE AND EASEMENTS, EXCEPT THOSE SPECIFICALLY INDICATED AS PRIVATE AND THAT I WILL MAINTAIN ALL SUCH AREAS UNTIL THE OFFER OF DEDICATION IS ACCEPTED BY THE APPROPRIATE PUBLIC AUTHORITY OR HOME OWNERS' ASSOCIATION. ALL PROPERTY SHOWN ON THIS PLAT AS DEDICATED FOR A PUBLIC USE SHALL BE DEEMED TO BE DEDICATED FOR ANY OTHER PUBLIC USE AUTHORIZED BY LAW WHEN SUCH USE IS APPROVED BY THE APPROPRIATE PUBLIC AUTHORITY IN THE PUBLIC INTEREST.

DATE _____ OWNER _____
I, _____, A NOTARY PUBLIC
OF _____ COUNTY, NORTH CAROLINA, DO HEREBY CERTIFY THAT
_____ PERSONALLY
APPEARED BEFORE ME THIS DATE AND ACKNOWLEDGED THE DUE EXECUTION OF THE FOREGOING CERTIFICATE.
WITNESS MY HAND AND OFFICIAL SEAL THIS _____ DAY OF _____, 20____

NOTARY PUBLIC
MY COMMISSION EXPIRES _____

PRIVATE STREETS OWNER CERTIFICATE
I HEREBY CERTIFY THAT THE PRIVATE STREETS SHOWN ON THIS PLAT ARE INTENDED FOR PRIVATE USE AND WILL REMAIN UNDER THE CONTROL, MAINTENANCE, AND RESPONSIBILITY OF THE DEVELOPER AND/OR A HOMEOWNER'S ASSOCIATION AND ACKNOWLEDGE THAT SOME PUBLIC SERVICES MAY NOT BE PROVIDED DUE TO THE PRIVATE NATURE OF THE ROAD(S).

SURVEYOR'S CERTIFICATION
I, MICHAEL D. BARR, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED AND DESCRIPTION RECORDED IN BOOKS REFERENCED); THAT THE RATIO OF PRECISION AS CALCULATED IS 1: 10,000 AND VERTICAL ACCURACY IS ± 0.05'; THAT THE GLOBAL POSITIONING SYSTEM (GPS) OBSERVATIONS WERE PERFORMED TO THE GEOSPATIAL POSITIONING ACCURACY STANDARDS, PART 2: STANDARDS FOR GEODETIC NETWORKS AT THE 2-CENTIMETER ACCURACY CLASSIFICATION (95% CONFIDENCE) USING REAL TIME KINEMATIC AND TRADITIONAL TRAVERSE, THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED, THAT THIS PLAT MEETS THE REQUIREMENT OF G.S. 47-30 SECTION F-11-C-1AND FURTHER THAT IT MEETS THE REQUIREMENTS OF THE STANDARDS OF PRACTICE FOR LAND SURVEYING IN NORTH CAROLINA (21 NCAC 56. 1600)."

THIS IS TO CERTIFY THAT THIS SURVEY CREATES A SUBDIVISION OF LAND WITHIN THE AREA OF A COUNTY OR MUNICIPALITY THAT HAS AN ORDINANCE THAT REGULATES PARCELS OF LAND.

WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL THIS 23RD DAY OF DECEMBER, A.D., 2019.

SIGNATURE L-1756

- GENERAL NOTES:**
- PROJECT NAME: BAXTER STATION
 - APPLICANT: NORTH-SOUTH DEVELOPMENT GROUP, LLC.
417-D CARATOKE HIGHWAY
MOYOCK, NC 27958
 - OWNERS: JARVIS HARVEST, LLC
701 BLUE POINT DRIVE
WILMINGTON, NC 28411
 - PROPERTY DATA:
ADDRESS: BAXTER LANE, MOYOCK, NC 27958
PIN: 0008-000-025A-0000
RECORD DOCUMENT(S): D.B.1421, PG:801
ACREAGE: 53.52 ACRES
PROPERTY ZONING: EXISTING: AG (AGRICULTURAL)
PROPOSED: C-MXR
 - F.I.R.M. DATA:
ZONE "X" PER F.I.R.M. MAP NOS. 3721802200 K, CID 370078, HAVING AN EFFECTIVE DATE DECEMBER 21, 2018. USE OF LAND WITHIN A FLOODWAY OR FLOOD PLAIN IS SUBSTANTIALLY RESTRICTED BY CHAPTER 7 OF THE CURRITUCK COUNTY UNIFIED DEVELOPMENT ORDINANCE.
 - THIS PROPERTY CONTAINS NO ACOE "404" JURISDICTIONAL WETLANDS.
 - A 10' EASEMENT FOR UTILITIES AND DRAINAGE ALONG REAR AND SIDE PROPERTY LINES AND A 15' EASEMENT FOR UTILITIES AND DRAINAGE ALONG FRONT PROPERTY LINE IS HEREBY ESTABLISHED.
 - EXISTING CONDITION INFORMATION BASED ON A COMBINATION OF THE FOLLOWING:
 - 2012 AERIAL IMAGERY OBTAINED FROM NCONEMAP.COM
 - FIELD TOPOGRAPHIC SURVEY DATA BY BISSELL PROFESSIONAL GROUP.
 - ELEVATIONS ARE REFERENCED TO NAVD 1988 VERTICAL DATUM.
 - ALL UTILITIES ARE TO BE UNDERGROUND.
 - NEAREST HYDRANT (WBO1) FLOW REPORTED AT 1,146 GPM. DESIGN FIRE FLOW IS 1,000 GPM FOR SINGLE FAMILY RESIDENCES BASED ON STRUCTURES HAVING LESS THAN 4,800 SQ. FT. AND NOT OVER 2-STORIES HIGH.

LOT DEVELOPMENT CONFIGURATION:
LOT AREAS: VARY FROM APPROXIMATELY 15,000 TO 19,400 SQUARE FEET.

DEVELOPMENT NOTES:
TRACT SUMMARY:
TOTAL AREA OF TRACT: 53.5 AC. APPROX.
AREA SUMMARY:
PROPOSED LOT AREA: 27.8 AC. APPROX.
PUBLIC PROPOSED R/W AREA: 5.3 AC. APPROX.
REQUIRED OPEN SPACE TOTAL=30% (0.3*53.52): 16.1 AC. APPROX.
OPEN SPACE PROVIDED: 20 AC. (±38%) APPROX.
OF PROPOSED LOTS: 80 (1.49 LOTS/ACRE)

PROPOSED RIGHT-OF-WAY WIDTHS (FT.): VARIES (100' - 40')
PROPOSED PAVED ROADWAY WIDTH: SEE DETAIL SHEET
LINEAR FOOTAGE PUBLIC ROADWAY: 5,500L.F.±

SURVEY LEGEND	
---	RIGHT-OF-WAY
---	PROPERTY BOUNDARY
---	ADJOINING PROPERTY LINE
---	EASEMENT LINE
---	CENTERLINE OF ROADWAY
•	SET IRON ROD
○	EXISTING IRON ROD
○	EXISTING IRON PIPE
□	EXISTING CONCRETE MONUMENT
N/F	NOW OR FORMERLY TOWNSHIP
P.C.	PLAT CABINET
SL	SLIDE
D.B.	DEED BOOK
M.B.	MAP BOOK
PG.	PAGE
SQ.FT. or S.F.	SQUARE FEET
M.B.L.	MAXIMUM BUILDING LINE
AC or AC.	ACRES
P/O	PART OF
TYP.	TYPICAL
N.T.S.	NOT TO SCALE
O.S.	OPEN SPACE
R/W	RIGHT-OF-WAY

LEGEND	
---	EXISTING DITCH CENTERLINE
---	EXISTING DITCH TOP OF BANK
---	PROPOSED SWALE W/ FLOW ARROW
---	PROPOSED SWALE HIGH POINT
EWL	EXISTING WATER LINE
WL	PROPOSED WATER LINE (SIZE AS NOTED)
---	EXISTING FIRE HYDRANT
---	PROPOSED FIRE HYDRANT
---	PROPOSED WATER VALVE
FM	EXISTING FORCE MAIN SAN. SEWER
SS	EXISTING GRAVITY SAN. SEWER
⊙	PROPOSED SANITARY SEWER MANHOLE
⊙	EXISTING SANITARY SEWER MANHOLE
⊠	PROPOSED CATCH BASIN
⊠	EXISTING CATCH BASIN
---	PROPOSED STORM SEWER PIPE
---	EXISTING STORM SEWER PIPE
---	PROPOSED EDGE OF WATER
---	EXISTING EDGE OF WATER
---	PROPOSED SIDEWALK
---	EXISTING SIDEWALK
---	PROPOSED EDGE OF PAVEMENT & BACK OF CURB
---	EXISTING EDGE OF PAVEMENT & BACK OF CURB
OHE	EXISTING OVERHEAD ELECTRIC LINE
⊗	EXISTING UTILITY POLE
BOC	BACK OF CURB
EOP	EDGE OF PAVEMENT
EX.	EXISTING
PRVT.	PRIVATE

STORMWATER STATEMENT
NO MORE THAN 30% OF ANY LOT SHALL BE COVERED BY IMPERVIOUS STRUCTURES AND MATERIALS, INCLUDING ASPHALT, GRAVEL, CONCRETE, BRICK, STONE, SLATE, OR SIMILAR MATERIAL, NOT INCLUDING WOOD DECKING OR THE WATER SURFACE OF SWIMMING POOLS. THIS COVENANT IS INTENDED TO ENSURE COMPLIANCE WITH THE STORMWATER PERMIT NUMBER _____ ISSUED BY THE STATE OF NORTH CAROLINA. THE COVENANT MAY NOT BE CHANGED OR DELETED WITHOUT THE CONSENT OF THE STATE. FILLING IN OR PIPING OF ANY VEGETATIVE CONVEYANCES (DITCHES, SWALES, ETC.) ASSOCIATED WITH THIS DEVELOPMENT, EXCEPT FOR AVERAGE DRIVEWAY CROSSINGS, IS STRICTLY PROHIBITED BY ANY PERSON. THE LOT COVERAGE ALLOWANCE PROVIDED IN THE CURRITUCK COUNTY UNIFIED DEVELOPMENT ORDINANCE MAY BE DIFFERENT THAN THE NC STATE STORMWATER PERMIT. THE MOST RESTRICTIVE LOT COVERAGE SHALL APPLY.

REVIEW OFFICER CERTIFICATE
STATE OF NORTH CAROLINA
COUNTY OF CURRITUCK

I, _____, REVIEW OFFICER OF CURRITUCK COUNTY, CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

DATE _____ REVIEW OFFICER _____

PUBLIC STREETS DIVISION OF HIGHWAY DISTRICT ENGINEER CERTIFICATE
I HEREBY CERTIFY THAT THE PUBLIC STREETS SHOWN ON THIS PLAT ARE INTENDED FOR DEDICATION AND HAVE BEEN DESIGNED OR COMPLETED IN ACCORDANCE WITH AT LEAST THE MINIMUM SPECIFICATIONS AND STANDARDS OF THE NC DEPARTMENT OF TRANSPORTATION FOR ACCEPTANCE OF SUBDIVISION STREETS ON THE NC HIGHWAY SYSTEM FOR MAINTENANCE.

DATE _____ DISTRICT ENGINEER _____

APPROVAL CERTIFICATE
I HEREBY CERTIFY THAT THE SUBDIVISION SHOWN ON THIS PLAT IS IN ALL RESPECTS IN COMPLIANCE WITH THE CURRITUCK COUNTY UNIFIED DEVELOPMENT ORDINANCE AND, THEREFORE, THIS PLAT HAS BEEN APPROVED BY THE CURRITUCK COUNTY TECHNICAL REVIEW COMMITTEE AND SIGNED BY THE ADMINISTRATOR, SUBJECT TO ITS BEING RECORDED IN THE CURRITUCK COUNTY REGISTRY WITHIN 90 DAYS OF THE DATE BELOW.

DATE _____ ADMINISTRATOR _____

REVIEW OFFICER CERTIFICATE
STATE OF NORTH CAROLINA
COUNTY OF CURRITUCK

I, _____, REVIEW OFFICER OF CURRITUCK COUNTY, CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

DATE _____ REVIEW OFFICER _____

REQUIRED IMPROVEMENTS CERTIFICATE
I HEREBY CERTIFY THAT ALL IMPROVEMENTS REQUIRED BY THE CURRITUCK COUNTY UNIFIED DEVELOPMENT ORDINANCE HAVE BEEN INSTALLED IN ACCORDANCE WITH THE PLANS AND SPECIFICATIONS PREPARED BY BISSELL PROFESSIONAL GROUP, AND SAID IMPROVEMENTS COMPLY WITH CURRITUCK COUNTY SPECIFICATIONS.

DATE _____ REGISTERED LAND SURVEYOR/ENGINEER _____

REGISTRATION NUMBER _____

Bissell Professional Group
Firm License # C-66
P.O. Box 108
Kitty Hawk, North Carolina 27549
Tel: (252) 281-1760
Fax: (252) 281-1760

BISSELL
PROFESSIONAL GROUP

Engineers, Planners, Surveyors
and Environmental Specialists

COVER SHEET, DEVELOPMENT
NOTES & SITE LOCATION

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BAXTER STATION MXR

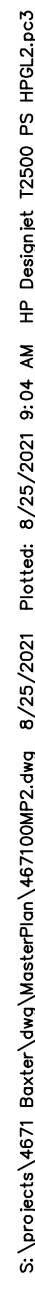
NORTH CAROLINA
CURRITUCK COUNTY
MOYOCK TOWNSHIP

PRELIMINARY MASTER PLAN

REVISIONS		BY	DATE
1	GENERAL REVISIONS	MB	6/14/19
2	New Submittal	MB	10/28/20
3	Revised Submittal	MB	11/14/20
4	CONTRACT COMMENTS	MB	12/24/21

**PRELIMINARY
DO NOT USE FOR
CONSTRUCTION**

DATE: 6/14/19 SCALE: 1" = 100'
DESIGNED: BPG CHECKED: MSB
DRAWN: KJW APPROVED: BPG
SHEET: 1 OF 5
CAD FILE: 467100MP2
PROJECT NO: 4671



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SHEET 2 **OF** 5

CAD FILE: 467100MP2
PROJECT NO: 4671

DATE: 10/30/20 **SCALE:** 1" = 100'

DESIGNED BY: BPG **CHECKED BY:** MSB

DRAWN BY: KJW **APPROVED BY:** BPG

REVISIONS

NO.	DATE	DESCRIPTION	BY
1	07-26-24	General Submittal	WFL
2	07-26-24	New Submittal	WFL

PROJECT: MOYOCK TOWNSHIP

NORTH CAROLINA

BAXTER STATION MXR

AGE RESTRICTED COMMUNITY

EXISTING SITE CONDITIONS

& SITE FEATURES PLAN

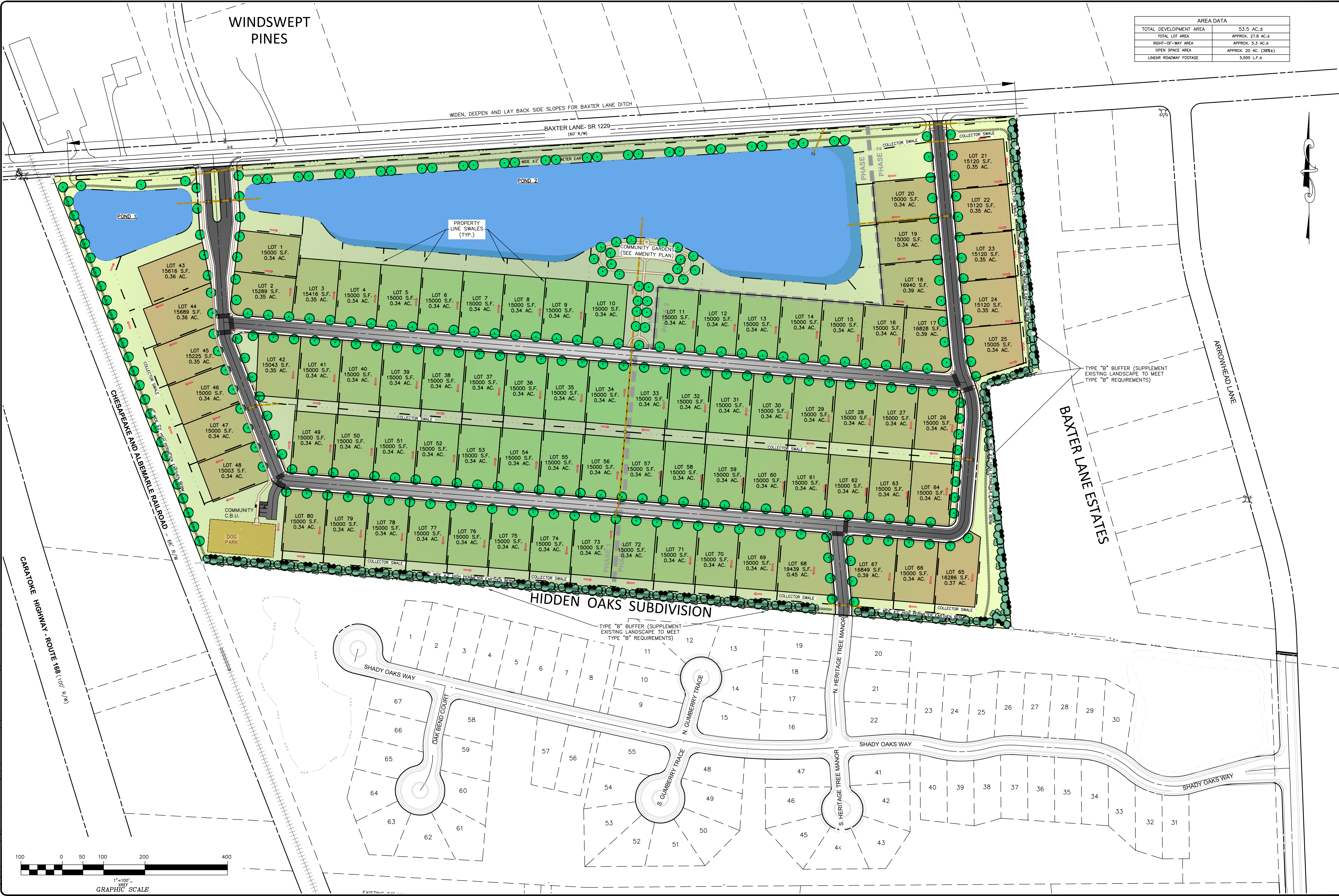
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P.O. Box 10000
Raleigh, North Carolina 27649
Tel (919) 876-1000
Fax (919) 876-1000

Engineers, Planners, Surveyors
and Environmental Specialists



AREA DATA	
TOTAL DEVELOPMENT AREA	53.5 AC.±
TOTAL LOT AREA	APPROX. 27.8 AC.±
RIGHT-OF-WAY AREA	APPROX. 5.3 AC.±
OPEN SPACE AREA	APPROX. 20 AC. (38%±)
LINEAR ROADWAY FOOTAGE	5,500 L.F.±

BISSELL
PROFESSIONAL GROUP

Stormwater Drainage, Phasing
& Landscaping Master Plan

BAXTER STATION MxR
NORTH CAROLINA
CURRITUCK COUNTY
MOYOCK TOWNSHIP

AGE RESTRICTED COMMUNITY

NO.	DATE	DESCRIPTION	BY
1	10/30/20	General Revision	MSB
2	12/4/21	Issue Submittal	MSB
3	12/4/21	Issue Submittal	MSB
4	12/24/21	COMMENTS	MSB

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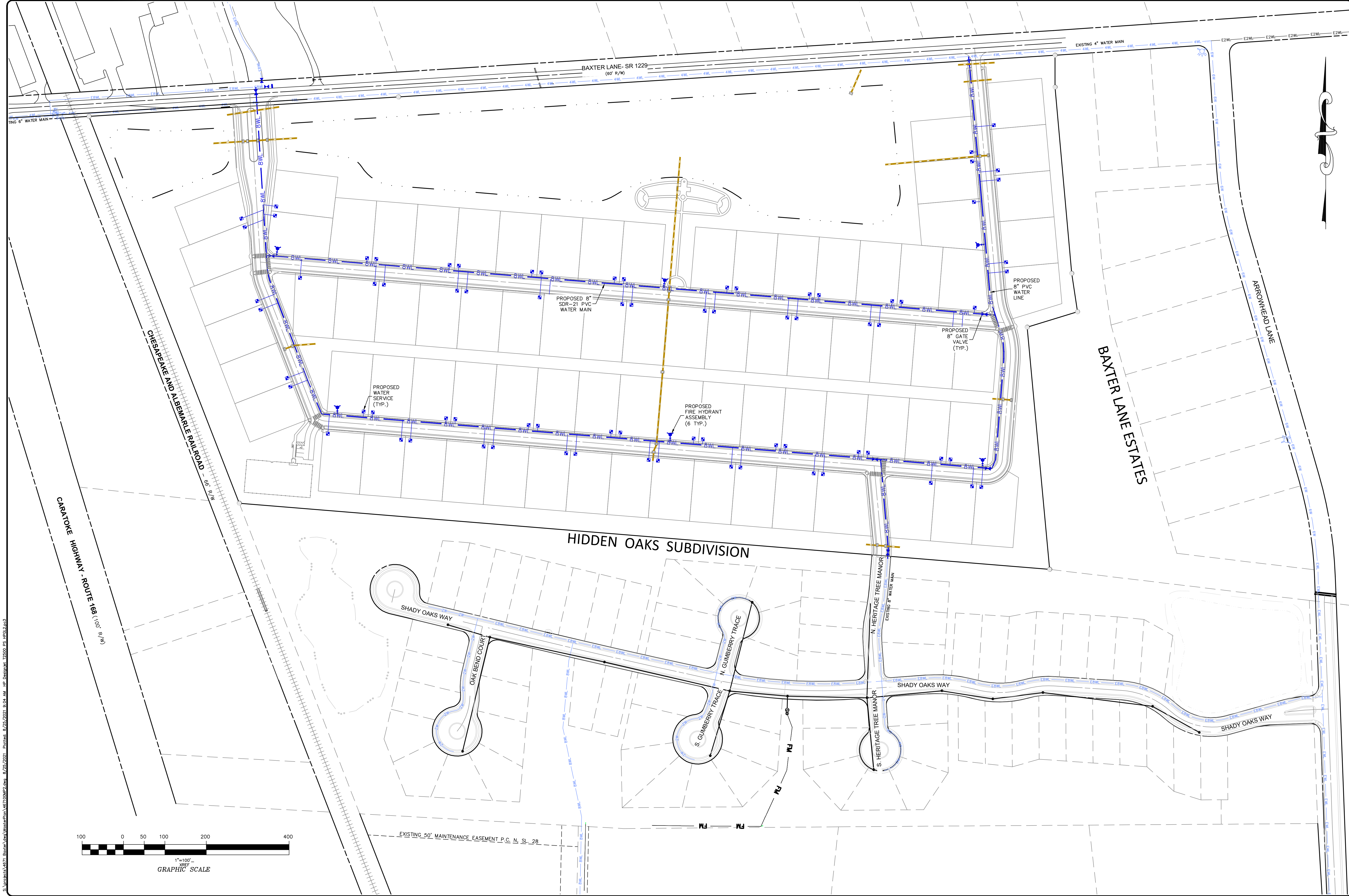
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SHEET:	3	OF	5

CAD FILE: 467100MP2
PROJECT NO: 4671

Bissell Professional Group
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City of Raleigh, North Carolina 27649
Phone: (919) 871-1760
Fax: (919) 871-1760

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REVISIONS		BY	DATE	DESCRIPTION
1	6-14-21	General	6-14-21	General
2	7-4-21	New	7-4-21	Submitted

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CAD FILE:	467100MP2	PROJECT NO.:	4671

PROJECT: **BAXTER STATION MXR**
MOYOCK TOWNSHIP
CURRITUCK COUNTY
NORTH CAROLINA

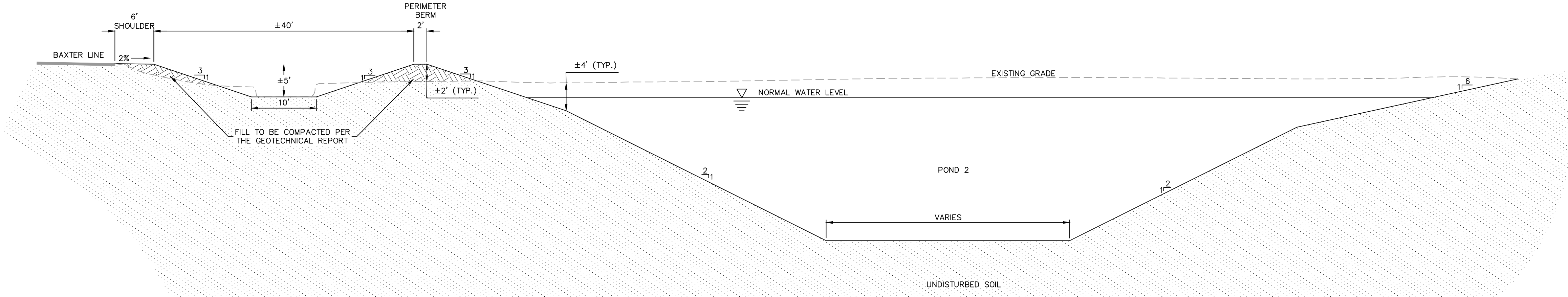
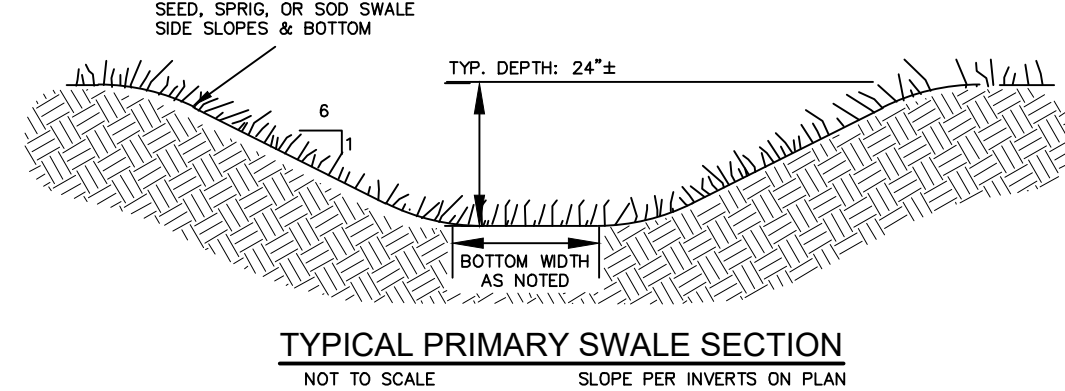
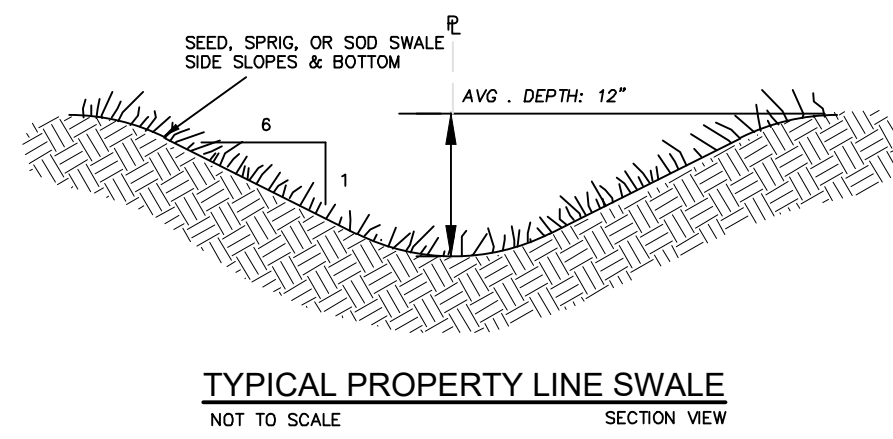
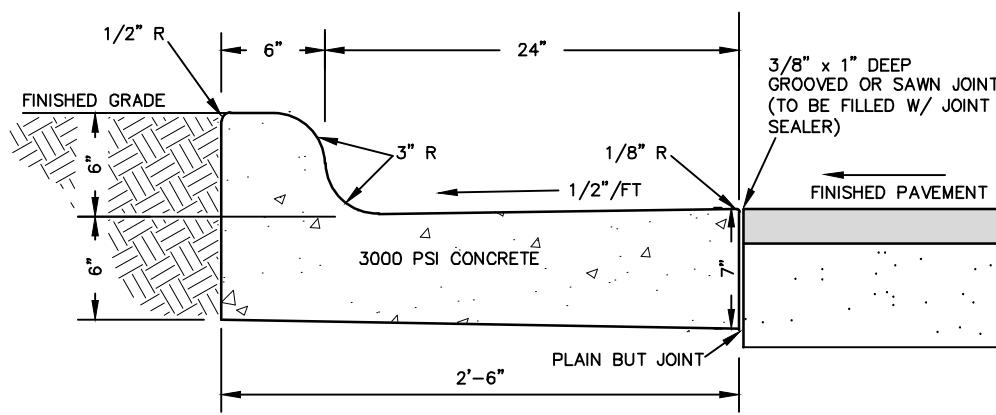
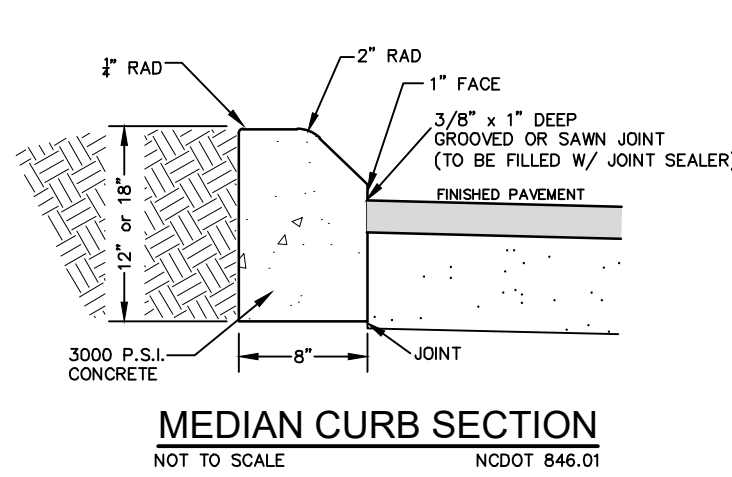
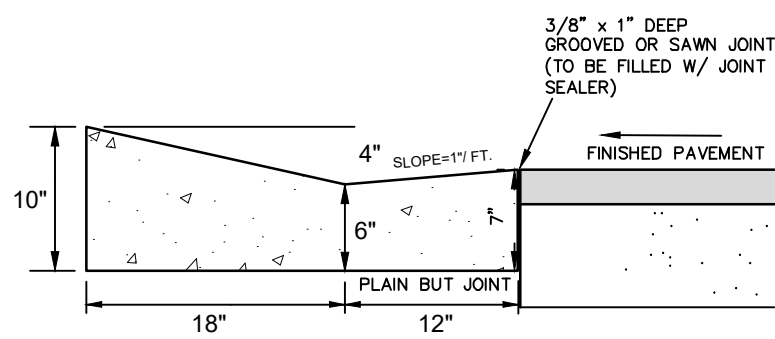
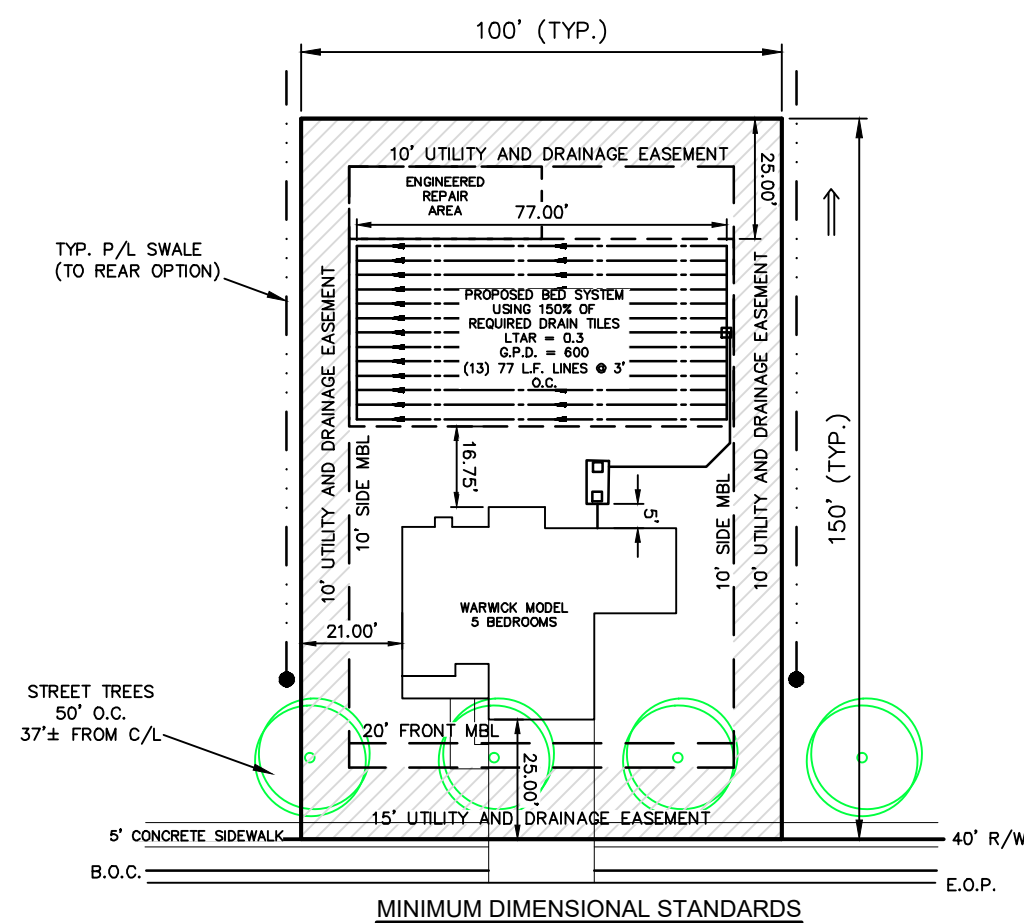
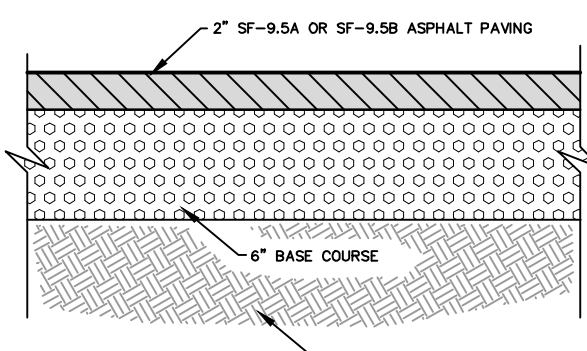
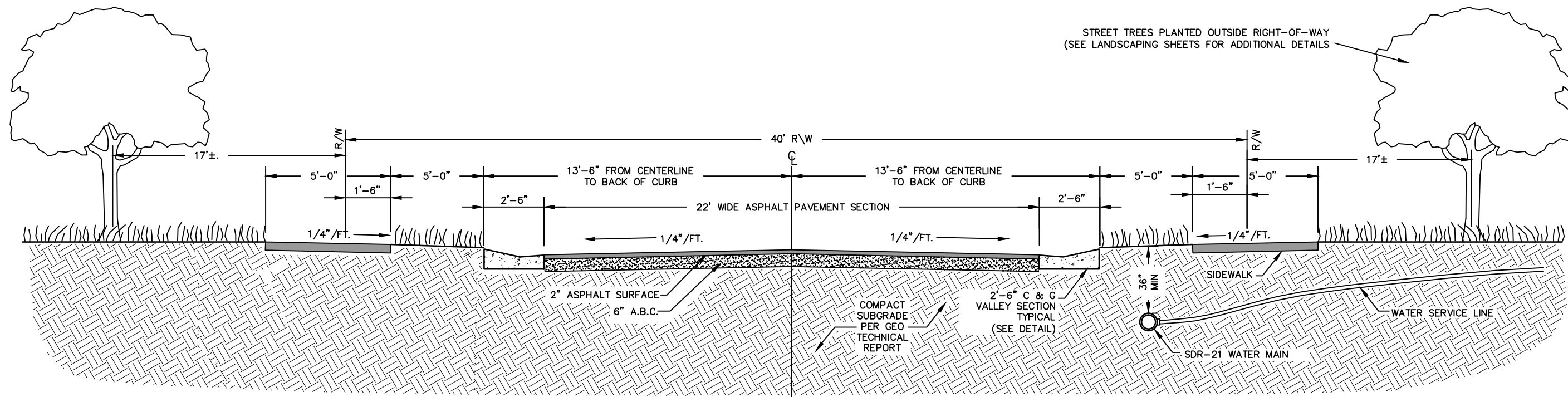
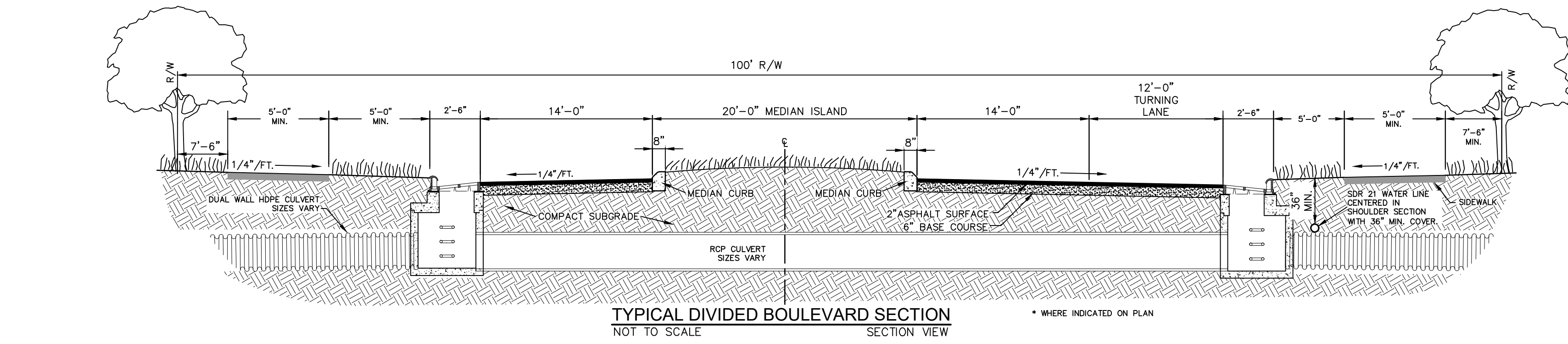
PRELIMINARY MASTER PLAN

WATER MAIN EXTENSION & WATER SERVICE PLAN

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City of Raleigh, North Carolina 27649
Tel: (919) 876-1700
Fax: (919) 876-1700



TYPICAL THROUGH BAXTER LANE DITCH, PEREMETER BERM, AND POND 2
1"=10' (H&V)
SECTION VIEW

Bissell Professional Group
Firm License # C-965
P.O. Box 1088
Charlotte, North Carolina 27249
City Phone: (704) 381-1760
Fax: (704) 381-1760

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BAXTER STATION MXR
NORTH CAROLINA
CURRITUCK COUNTY
MOYOCK TOWNSHIP

REVISIONS				BY		DATE	
NO.	DATE	DESCRIPTION	BY	DATE	DESCRIPTION	BY	DATE
1	1-16-21	General Revisions	MSB	1-16-21	General Revisions	MSB	1-16-21
2	7-6-21	New Submittal	MSB	7-6-21	New Submittal	MSB	7-6-21
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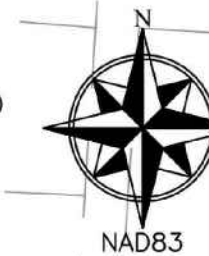
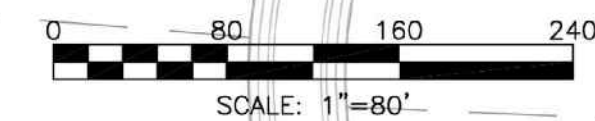
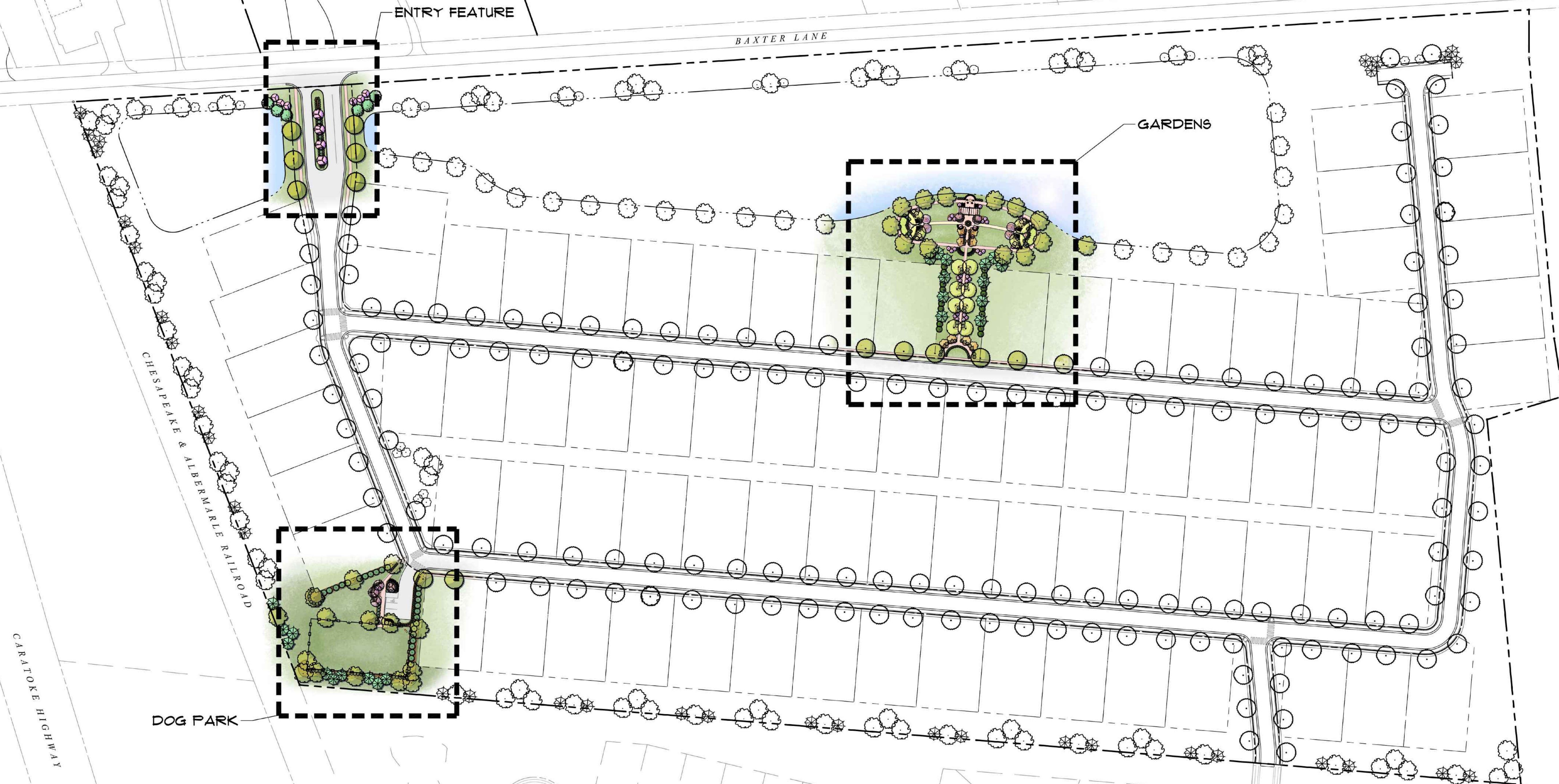
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SHEET: 5 OF 5
CAD FILE: 467100MP2
PROJECT NO: 4671

Baxter Station Amenities

Overall Master Plan

Currituck County, North Carolina
July 1, 2021

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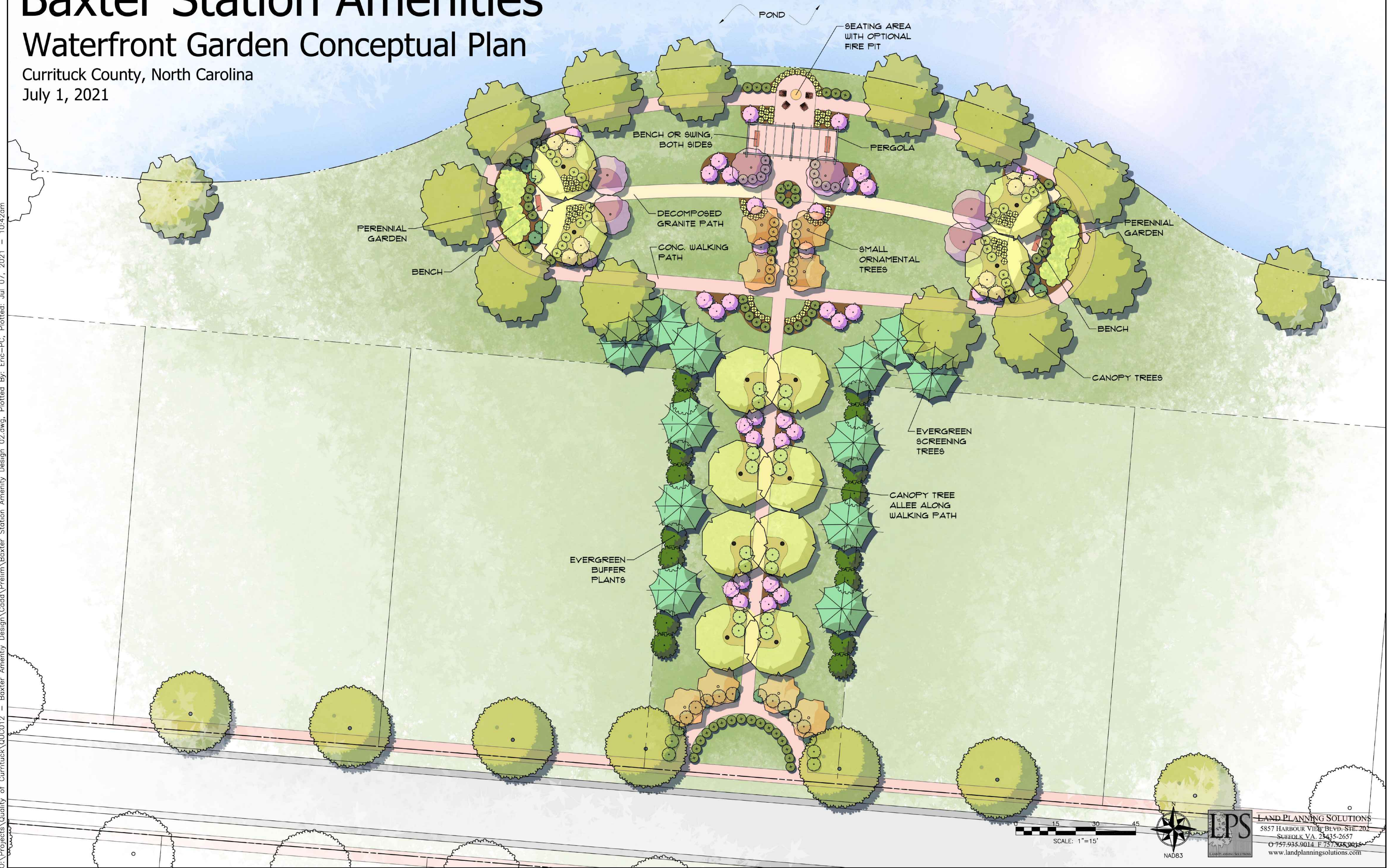
LAND PLANNING SOLUTIONS
5857 HARBOUR VIEW BLVD. STE. 202
SUFFOLK VA. 23435-2657
O 757.935.9014 F 757.935.9015
www.landplanningsolutions.com

Baxter Station Amenities

Waterfront Garden Conceptual Plan

Currituck County, North Carolina
July 1, 2021

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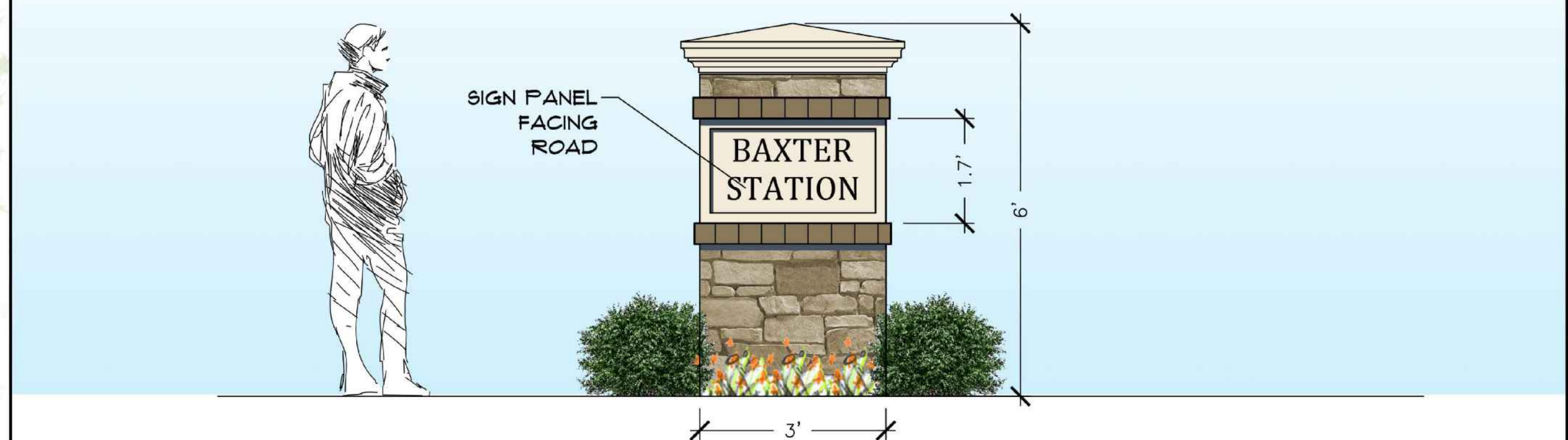
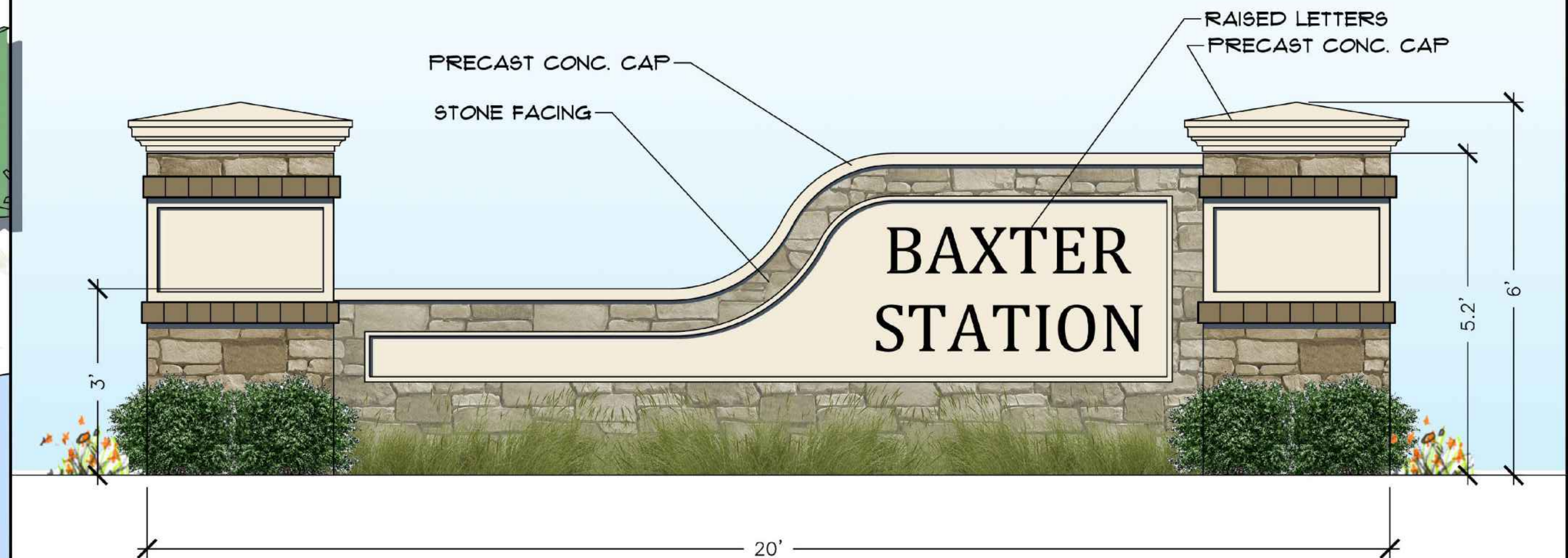
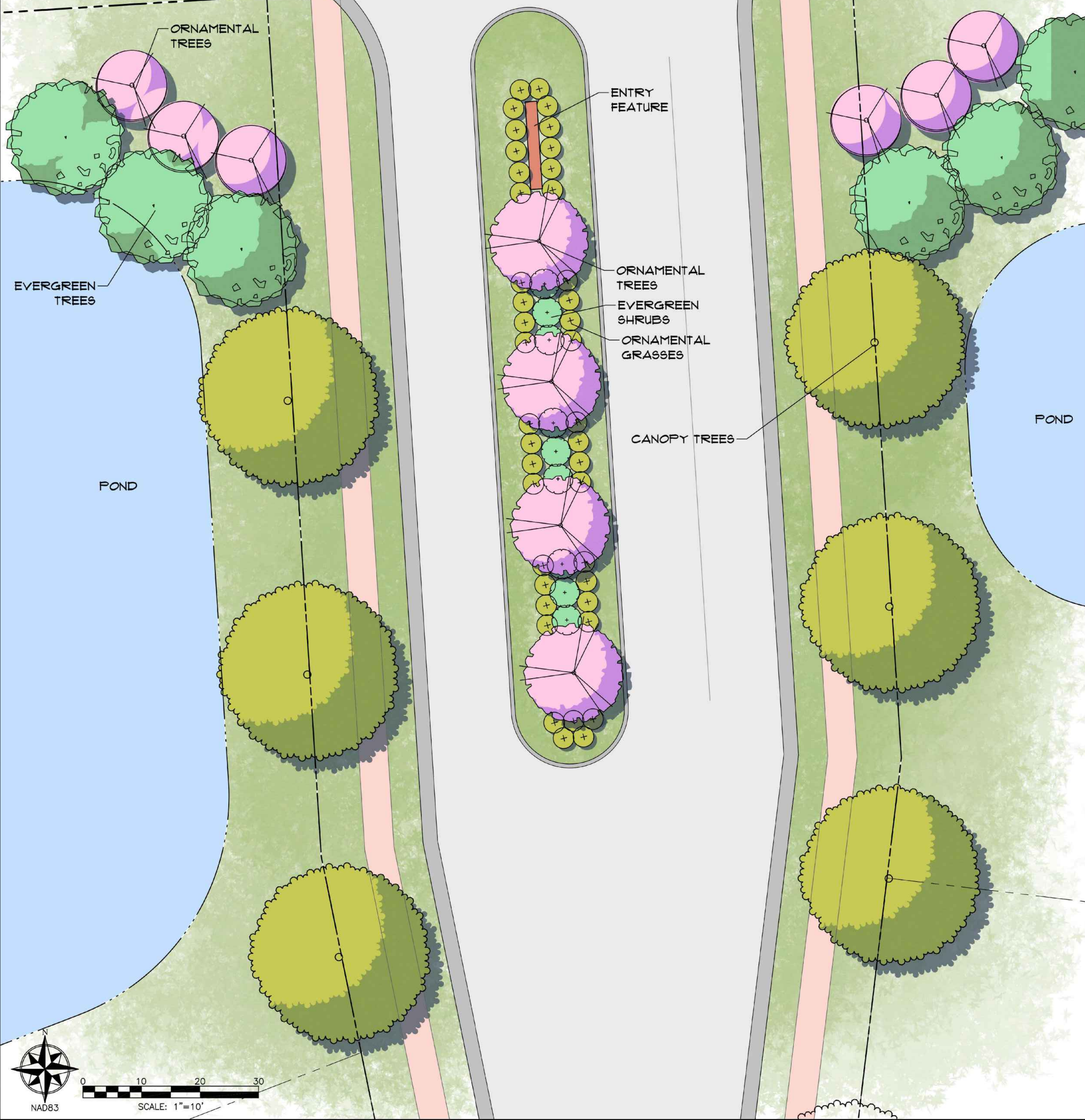


Baxter Station Amenities

Entry Feature

Currituck County, North Carolina
July 1, 2021

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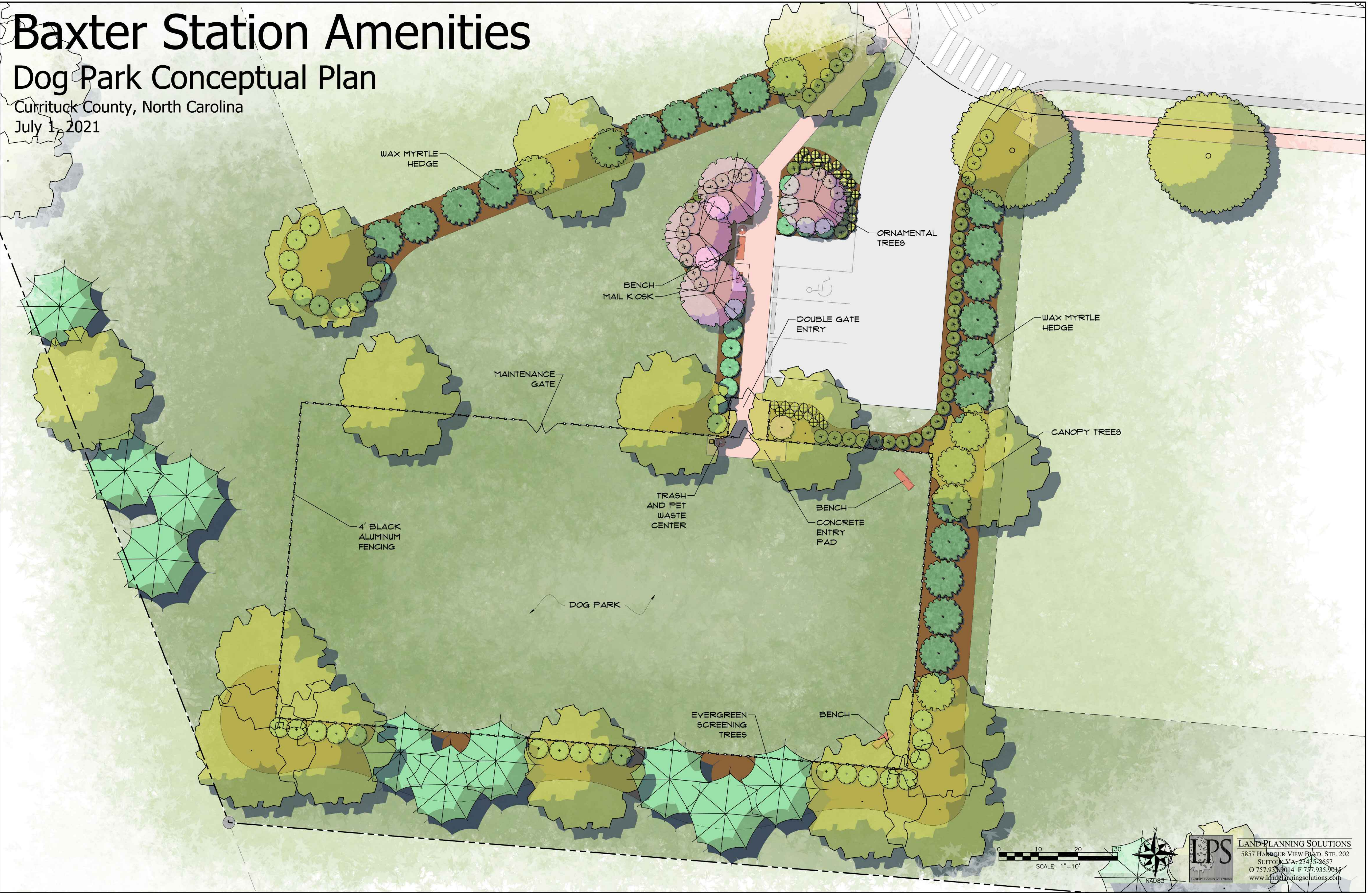
Conceptual Entry Feature

Baxter Station Amenities

Dog Park Conceptual Plan

Currituck County, North Carolina
July 1, 2021

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Currituck County

Department of Planning
 Post Office Box 70
 Currituck, North Carolina 27929
 252-232-3055
 FAX 252-232-3026

MEMORANDUM

To: Mark Bissell, Bissell Professional Group
 Justin Old, Allied Properties LLC

From: Planning Staff

Date: ~~August 11, 2021~~ September 8, 2021

Re: PB 21-20 Baxter Station C-MXR, TRC **Resubmittal** Comments

The following comments have been received for the September 8, 2021 TRC re-submittal meeting. *New comments are underlined and in italics.* The item is scheduled for the October 12, 2021 Planning Board meeting. TRC comments are valid for six months from the date of the TRC meeting.

(TRC – Please reference the 8/26/2021 memo (attached) from Mark Bissell, PE, for complete responses to your TRC comments.)

Planning, Tammy Glave, 252-232-6025 (No new comments)

Reviewed with comments:

1. The County Attorney must provide comment on the enforcement of age restrictions.
2. This development is within the LUP Rural designation, which is not allowed as proposed. An LUP amendment to reclassify the property as Full Service is required and the LUP amendment will run simultaneously with the conditional zoning request. Additional advertising requirements are necessary for an LUP amendment that may delay hearing dates. Staff supports the LUP amendment to Full Service at this location and it is Full Service in the Moyock Small Area Plan.
3. The project will be reviewed for compliance with subdivision regulations upon preliminary plat/use permit submittal.

Currituck County Building Inspections, Bill Newns (252-232-6023) (No new comments – Per applicant all items in the Fire notes and Inspections notes sections will be addressed at the SUP and/or Construction Drawing stages.)

Approved with comments:

Fire notes

1. Fire hydrants must be within 500' of all road frontages.
2. Maintain 20' width for streets
3. Provide "no street parking" signage at street entrances, cul de sacs, private alleys (where alley is part of fire access) provide "no parking signage at fire hydrants".
4. Mark fire hydrant's locations in the center of road/street with blue reflectors.
5. Dwellings greater than 4800 sq. ft. and/or greater than 2 stories will be calculated using the ISO commercial method.
6. Dwellings 4800 sq. ft. and no greater than 2 stories may use setbacks as indicated in the ISO method to determine Needed Fire Flow.

Inspections notes

7. Cluster mailbox units must be accessible (accessible route, reach ranges).
8. Accessible routes must be provided to all amenities such as pools, boardwalks, piers, docks, and other amenities within the development. Plans must be designed to the 2018 NC Building Code design loads and structures must meet ADA requirements.
9. Curb cuts at vehicular traffic areas and pedestrian crossings must be ADA compliant and have detectable warning devices installed.
10. Soil engineering reports for footings will be required for lots that have fill placed on them where the footings do not rest at a minimum of 12" below grade on undisturbed natural soil. Site preparation, the area within the foundation walls shall have all vegetation, topsoil and foreign material removed.
11. Compaction testing will be required for slabs and thickened footing areas that exceed 24" of fill. Fill material shall be free of vegetation and foreign material. The fill shall be compacted to ensure uniform support of the slab, and except where approved, the fill depths shall not exceed 24 inches for clean sand or gravel and 8 inches (203 mm) for earth.
12. Amenities must be ADA compliant.

Currituck Soil and Stormwater, Dylan Lloyd (252-232-3360)

Reviewed with comment:

- ~~1. Agreement for improvements on Baxter Ditch, including culvert replacement and realignment at end of Baxter Lane, shall be included in construction drawings.~~
- ~~2. Collector Swales are open space area and shall not be fenced in, blocked by man-made features or used as storage by any resident.~~
- ~~3. Space 2' x 2' protection berm from collector swales as to allow for 3:1 slopes.~~
- ~~4. The existing undersized culvert along Baxter Lane extension shall be replaced in concurrence with the underlying 2" waterline being relocated.~~
5. TRC comments from August have been addressed to the department's satisfaction with the exception to the Right of Entry being granted by owner / owners for the undersized culvert at the end of Baxter Lane to allow the

developer to coordinate with the county in performing this conditional request. The County Attorney's office has reached out to an heir of the original development's owner. Please call Soil and Water office with any further questions.

Currituck County Utilities, Will Rumsey & Dave Spence (Will Rumsey 252-232-2769; Dave Spence 252-232-2769)

Reviewed with comment:

1. ~~We ask as we usually do to please increase the 2" water main that ties into Baxter Ln to a 4".~~
2. How will the waterline located at the end of Baxter Lane with the drainage culvert sitting on top of it be corrected?
3. 2 inch to 8 inch waterline extension has been addressed. Would like to know plan for lowering culvert pipe and waterline at some point.

Currituck County GIS, Harry Lee (252-232-4039) (No new comment)

Reviewed without comment.

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

Approved with comments:

1. Two potential liability issues to be noted for the developer:
 - Public fire pit in the waterfront garden area may not be the best idea.
 - I would recommend that in the dog park the area be divided into two sections to maintain separation of small and large dogs.

Currituck County Economic Development, Larry Lombardi (252-232-6015) (No new comments)

Reviewed with comments:

1. Popular Activities in 55+ Communities- out of curiosity: Where's the pickle ball courts, Bocce courts? A community space to meet either indoors or outdoors, i.e., for yoga, conferences meeting, arts & crafts? Per applicant: Pickle ball and bocce courts are not proposed at this time, but there will be a community space for outdoor gatherings as shown on the waterfront garden conceptual plan. Also, there will be an extensive network of walkways and a dog park.

NC Division of Coastal Management, Charlan Owens (252-264-3901) (No new comment)

Reviewed without comment.

Albemarle Regional Health Services, Joe Hobbs (252-232-6603) (No new comment)

Reviewed with comment:

1. OWNER/DEVELOPER NEEDS TO CONSULT WITH KEVIN CARVER RS(252-232-6603) CONCERNING SEPTIC SYSTEM APPROVAL FOR EACH LOT THAT MAKES UP THIS PROPOSED SUB-DIVISION .



Currituck County

Department of Planning
 Post Office Box 70
 Currituck, North Carolina 27929
 252-232-3055
 FAX 252-232-3026

MEMORANDUM

To: Mark Bissell, Bissell Professional Group
 Justin Old, Allied Properties LLC

From: Planning Staff

Date: August 11, 2021

Re: PB 21-20 Baxter Station C-MXR, TRC Comments

The following comments have been received for the August 11, 2021 TRC meeting. In order to be scheduled for the October 12, 2021 Planning Board meeting, please address and satisfy the comments and resubmit a corrected plan by 3:00 p.m. on August 26, 2021. TRC comments are valid for six months from the date of the TRC meeting.

Planning, Tammy Glave, 252-232-6025 (No new comments)

Reviewed with comments:

1. The County Attorney must provide comment on the enforcement of age restrictions.
2. This development is within the LUP Rural designation, which is not allowed as proposed. An LUP amendment to reclassify the property as Full Service is required and the LUP amendment will run simultaneously with the conditional zoning request. Additional advertising requirements are necessary for an LUP amendment that may delay hearing dates. Staff supports the LUP amendment to Full Service at this location and it is Full Service in the Moyock Small Area Plan.
3. The project will be reviewed for compliance with subdivision regulations upon preliminary plat/use permit submittal.

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

Approved with comments:

Fire notes

1. Fire hydrants must be within 500' of all road frontages.
2. Maintain 20' width for streets
3. Provide "no street parking" signage at street entrances, cul de sacs, private alleys (where alley is part of fire access) provide "no parking signage at fire hydrants".
4. Mark fire hydrant's locations in the center of road/street with blue reflectors.

5. Dwellings greater than 4800 sq. ft. and/or greater than 2 stories will be calculated using the ISO commercial method.
6. Dwellings 4800 sq. ft. and no greater than 2 stories may use setbacks as indicated in the ISO method to determine Needed Fire Flow.

Inspections notes

7. Cluster mailbox units must be accessible (accessible route, reach ranges).
8. Accessible routes must be provided to all amenities such as pools, boardwalks, piers, docks, and other amenities within the development. Plans must be designed to the 2018 NC Building Code design loads and structures must meet ADA requirements.
9. Curb cuts at vehicular traffic areas and pedestrian crossings must be ADA compliant and have detectable warning devices installed.
10. Soil engineering reports for footings will be required for lots that have fill placed on them where the footings do not rest at a minimum of 12" below grade on undisturbed natural soil. Site preparation, the area within the foundation walls shall have all vegetation, topsoil and foreign material removed.
11. Compaction testing will be required for slabs and thickened footing areas that exceed 24" of fill. Fill material shall be free of vegetation and foreign material. The fill shall be compacted to ensure uniform support of the slab, and except where approved, the fill depths shall not exceed 24 inches for clean sand or gravel and 8 inches (203 mm) for earth.
12. Amenities must be ADA compliant.

Currituck Soil and Stormwater, Dylan Lloyd (252-232-3360)

Reviewed with comment:

1. Agreement for improvements on Baxter Ditch, including culvert replacement and realignment at end of Baxter Lane, shall be included in construction drawings.
2. Collector Swales are open space area and shall not be fenced in, blocked by man-made features or used as storage by any resident.
3. Space 2' x 2' protection berm from collector swales as to allow for 3:1 slopes.
4. The existing undersized culvert along Baxter Lane extension shall be replaced in concurrence with the underlying 2" waterline being relocated.

Currituck County Utilities, Will Rumsey & Dave Spence (Will Rumsey 252-232-2769; Dave Spence 252-232-2769)

Reviewed with comment:

1. We ask as we usually do to please increase the 2" water main that ties into Baxter Ln to a 4".
2. How will the waterline located at the end of Baxter Lane with the drainage culvert sitting on top of it be corrected?

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 County Economic Development, Larry Lombardi (252-232-6015)

Reviewed with comments:

1. Popular Activities in 55+ Communities- out of curiosity: Where's the pickle ball courts, Bocce courts? A community space to meet either indoors or outdoors, i.e., for yoga, conferences meeting, arts & crafts?

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

Reviewed without comment.

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

Reviewed with comment:

1. OWNER/DEVELOPER NEEDS TO CONSULT WITH KEVIN CARVER RS(252-232-6603) CONCERNING SEPTIC SYSTEM APPROVAL FOR EACH LOT THAT MAKES UP THIS PROPOSED SUB-DIVISION .

The following items are necessary for resubmittal:

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



August 26, 2021

Ms. Tammy Glave, CZO
Currituck County Department of Planning & Community Development
Post Office Box 70
Currituck, North Carolina 27929

Re: PB 21-20 Baxter Station C-MXR, Response to TRC Comments

Dear Tammy:

We are responding to the comments that were received following the August 11, 2021 TRC meeting, as follows:

Planning, Tammy Glave

1. Information regarding the enforcement of age restrictions has been provided for the County Attorney's review.
2. We are encouraged that Staff supports the LUP amendment to Full Service at this location, which will make it consistent with the Full Service classification in the Moyock Small Area Plan.
3. We acknowledge that the project will be reviewed for compliance with subdivision regulations upon preliminary plat/use permit submittal.

Currituck County Building Inspections, Bill Newns

All items outlined in the Fire notes and Inspections notes sections will be addressed at the SUP and/or Construction Drawing stages

Currituck Soil and Stormwater, Dylan Lloyd

1. Agreement language for the proposed improvements to Baxter Ditch, including culvert replacement and realignment at end of Baxter Lane, are included in the draft zoning conditions.
2. Collector Swales in open space areas will have easements recorded and will not be available to residents for the installation of fences, storage facilities or other man-made features.
3. Berms will be located so as to allow for 3:1 maximum slopes.
4. The existing undersized culvert along Baxter Lane extension will be replaced with concurrence from the adjacent property owners, which will include adjusting the underlying 2" waterline as necessary.

Currituck County Utilities, Will Rumsey & Dave Spence

1. The water main that ties into Baxter Lane has actually been increased to 8", as we believe that eventually there will be a larger main installed along Baxter.
2. The waterline located at the end of Baxter Lane will need to be lowered to provide proper separation to the new drainage culvert.

Currituck County Economic Development, Larry Lombardi

1. Pickle ball and bocce courts are not proposed at this time, but there will be a community space for outdoor gatherings as shown on the waterfront garden conceptual plan. Also, there will be an extensive network of walkways and a dog park.

Albemarle Regional Health Services, Joe Hobbs

1. A letter from ARHS is included approving the design concept; individual lot evaluations will be obtained at the next stage of the approval process (Preliminary Plat/SUP).

The following items are included in this resubmittal:

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

Please let us know if anything additional is needed in order to be scheduled for the October 12, 2021 Planning Board meeting.

Sincerely,

Bissell Professional Group



Mark S. Bissell, P.E.

cc: Mr. Justin Old

Baxter Station MXR Rezoning

July 20, 2021

Scheduled Time/Place: 5:30, Eagle Creek Pavilion

The meeting began at 5:30pm/Meeting Ended: at approximately 6:45pm

Attendees: (See attached sign-in sheets)

Also Justin Old, Developer
Mark Bissell, Engineer

The review procedures were outlined and an overview of the development plan and details were provided, both verbally and graphically. Comments from the community meeting that was held in December on a similar development plan were also reviewed and are attached for reference. Many of the same comments were heard regarding drainage, so only the new comments are included in this second community meeting record.

Comments from the Community	How Addressed
What size will the lots be?	A minimum of 15,000 sq. ft.
Can fewer lots be done?	The density has already been dropped from 125 to 80, and complies with MXR zoning.
Still concerned about raising the water table across the street due to berming.	We will consult with a hydrogeologist during the modeling and design.
Drainage problems should be resolved before more development is approved.	The drainage problems in question are on private property and the County cannot do this work.
Concerned about septic tanks raising the water table. How much water is being added to the site?	About 12,000 gal/day (equivalent to about 0.008 inch rainfall) will be considered in the design.
What happens if the HOA can't or won't take over?	The community has enough homes that it will be able to have professional management.
I understand from the engineering department that	The UDO requires us to model pre-

no more water was to go to the Baxter ditch but rather was to be directed to the south.	development conditions to determine how much water goes to each outlet during a 2-year wooded condition storm and then limit the post development 10-year storm to that amount for each outlet, so we would not be able to redirect flow into a different drainage system.
There is too much development in Moyock.	The demand will continue; we are trying to do it in a way that also benefits the community.
Today it could possibly work and I'm not anti-development, but why does the county allow density on soils that don't perk? There are some smaller communities that do not adhere to UDO.	We are agreeing to conditions that <u>exceed</u> the UDO requirements and agreeing to make improvements to existing problems that otherwise would not be solved.
Will there be sidewalks and a sidewalk to the park?	There will be sidewalks on both sides of the street and a connection to Hidden Oaks, which connects to the park.
Are there tree buffers?	Yes, both to Baxter Lane Estates and to Hidden Oaks, and also along Baxter Lane to buffer homes across the street

Baxter Estates
Conditional Rezoning

July 20, 2021

5:30PM

NAME	ADDRESS	TELEPHONE	E-MAIL
Cheryl Kelly	203 Green Road	252-267-1321	
Cheryl Sherrill	116 Shady Oaks Way		
William Frey	Hidden Oaks		
George Frey	" "		georgefrey@gmail.com
Jennie Turner	Carrituck County Planning	252-232-6031	jennie.turner@carrituckcounty.nc.gov
Kevin Kemp	Carrituck Co. Development	Sec. —	kevin.kemp@carrituckcounty.nc.gov
Rosanne Burling	125 Shady Oaks Way		rosanneburling@aol.com
Fred Whitman	181 ST Andrews Rd		
Larry Towell	103 Avul Road Circle	757 615 1591	larry.towell@yahoo.com
Wm Wilbanks	107 ALDEN RUN	757-777-8372	Alexander.Wilbanks@gmail.com
Aaron Waver	102 Avul Bender	757-374-9168	Avaiver@wfsystems.com
Joshua Old	131 Spruce Ln		
Kyle Kendrick	10 Bay 99 Shourdord		
David Igilda Hernandez	108 Alou Head Ln.	804 426 4909	DHERN ?

July 20, 2021
5:30PM

Packet Pg. 35

Baxter Station MXR Rezoning

December 15, 2020

Scheduled Time/Place: 4:30pm and 6:00pm, Eagle Creek Pavilion

The first meeting began at 4:30pm/Meeting Ended: at approximately 5:40pm

The second meeting began at 6:00pm/Meeting Ended at approximately 7:15pm

Attendees: (See attached sign-in sheets)

Also: Jason Litteral, Currituck County
Justin Old, Developer
Mark Bissell, Engineer

Comments from the Community	How Addressed
Windswept Pines ponds are overflowing in 5 1/2" rainfall and impacting adjacent development.	Downstream conditons were observed during flooded conditions and it was determined that drainage along Baxter Lane is restricted and preventing Windswept Pines drainage system from draining properly.
What is being proposed to the ditch on Baxter?	The ditch will be studied and modeled, and based on the results of the model it will be widened, deepened, slopes laid back, put on grade, and an easement provided for ongoing maintenance.
Will the proposed construction be crawl-space or slab?	Probably elevated slab.
Will the development be on septic tanks? Previously it was going to be sewer.	Yes, septic systems are proposed similar to at Windswept Pines. County sewer is not available at this time.
There are problems with the property line ditch between the Baxter property and Hidden Oaks.	The plan will be to clean out this ditch along with the first phase of development.
What is the timeframe?	It will take a minimum of 1 1/2 years before the first house goes under construction and 2 yrs for occupancy. Very possibly longer.
Who will do the building?	Since that will be a year and a half to two years down the road, that has not been decided.
Will the project be phased?	Yes it will be done in two phases about 40 lots each.
Will there be a traffic light at Baxter Lane and	NCDOT will need to do a signal warrant. Even

Caratoke Highway?	when the proposed project was larger, they did not think it warranted it yet. This would probably not occur until the main entrance to Currituck Station goes in and development gets under way there.
The pipe needs to be replaced and upgraded at Baxter Lane extension because there was an existing water line that kept it from being put at proper grade when it was replaced a year or so ago.	We will speak with the land owners there to see if access can be obtained (the last time the developer asked he was refused access to do any work there)
Will construction traffic go through Hidden Oaks?	No, it will be from Baxter Lane, and the connection to Hidden Oaks will not be made until Phase 2.
Will the waterline be looped?	Yes, it will be looped from Hidden Oaks to Baxter Lane which should improve pressure.
Concerned about water in ponds raising the water table.	Improving the ditch along Baxter Lane should serve to lower the water table on the other side of Baxter.
Can the second entrance farther east on Baxter Lane be eliminated?	We believe the County will want the second entrance, but will ask if it can be eliminated.

Summary: Between the two meetings, ten residents attended, from Hidden Oaks and Baxter Lane. Most questions and discussions had to do with the need for drainage improvements in the area, and a plan to address those.

CONSISTENCY WITH COMPREHENSIVE PLAN
BAXTER STATION MXR

The proposed zoning is from AG to C-MXR, with a sketch plan limiting density to approximately 1.49 units per acre. This request is for approximately 53.52 acres along Baxter Lane just off Caratoke Highway to provide new single-family development. This request is consistent with the following density and development pattern policies of the 2006 Land Use Plan, Moyock Small Area Plan, and UDO:

1. 2014 Moyock Area Small Area Plan (“MSAP”):

The 2014 MSAP “is used to assist staff and the Board of Commissioners in guiding growth as well as planning for future county improvements to infrastructure and services.” MSAP, p. 1. The plan guidance materials indicate that it was intended to:

“supplement the [2006] Land Use Plan to more specifically address the needs and issues of the [Moyock] study area over the next 10 years. The policies and guidance given in this plan are consistent with the Land Use Plan and other county policies and documents. This plan will establish a new focus for growth and development. The Board of Commissioners and staff will use the SAP to make recommendations about development proposals and other county land use policy decisions. This plan is a vital tool for staff in day to day decision making and in assisting the public with development proposals.”

MSAP, p. 7. The MSAP Future Land Use Map “should be used in conjunction with the entire plan.” MSAP, p. 30. The fact that the site is designated Full Service on the MSAP Future Land Use Map, will have County water available, is located close to 168, and is adjacent to a Full Service Area on the MSAP and 2006 LUP all support the requested density for the site. The MSAP designates this area as Full Service Area, with densities up to 3 units per acre. This is significant because only several portions of the MSAP include Full Service; the majority of the plan is Rural Area and Conservation Area. MSAP p. 30. The Full Service designations “are focal points in the community where high amounts of activity occur ...[and] ... a broad range of infrastructure and service investments ... will be made available by the public and/or private sectors.” These investments may include centralized water and sewer. MSAP p. 31. “[P]lanned commercial and residential areas with diversity in housing types is preferred. Typical densities in full service designations range from 1.5 – 3 units per acre depending on surrounding land uses.” MSAP p. 31.

Activity centers are located in full service designations, and are anticipated to be destination hubs for activity in the surrounding community. MSAP p. 32. This property is also almost adjacent to the largest Activity Center on the MSAP, the Employment Center, across Hwy 168. This center includes planned corporate parks, and supporting residential use is encouraged. The proximity of this development to Currituck Station, an area designated for significant growth, further supports the requested density.

Policy FLU 1 – promote compatibility between new development and existing development to avoid adverse impacts to the existing community.

Policy CC 1 - Encourage and foster development that is compatible with rural atmosphere, transitional areas, and a small town, main street feel consistent with the vision, policies, and future land use map of this plan.

Policy CC 2 - Encourage non-residential and mixed use development that incorporates building and site design to enhance community appearance, promote human scale, and create a unique sense of place. This may include common themed building materials, forms, and site amenities.

2. 2006 Currituck County Land Use Plan ("LUP"):

A. Land Use Compatibility Policies

i. Density: The project is located within the Rural Area of the LUP, and proposes a maximum density of 1.49 units per acre. The site is across from land zoned MXR and AG to the north, all put to residential, non-agricultural uses. To the west of the site is a General Business zoning designation, which extends along Caratoke Highway. To the east and south the land is zoned and used for residential use, zoned C-MXR and C-SFM. Directly across 168 from the property is an area proposed as G-3 and up to 12 dwelling units per acre, a much higher density than requested here. As such, the request can serve as a reasonable transition between uses.

The density guidance in the LUP is based on assumptions about available infrastructure, existing development patterns, and the presence of environmental features that do not apply to this site in the same way they may apply to Rural sites in general. There are no environmentally sensitive features or factors which suggest preservation of this portion of the development is critical. County water is available to be extended from Baxter Lane.

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. LUP, p. 9-7.

POLICY AG6: For areas experiencing intense development pressure, new residential development may be allowed to locate in COMPACT, VILLAGE-LIKE CLUSTERS, PREFERABLY NEAR EXISTING, NON-AGRICULTURAL ACTIVITIES AND SERVICES, or in other locations that will not interfere with resource production activities. Overall density shall

remain very low, with permanent open space, dedicated during the development review process, surrounding such clusters of homes. LUP, p. 9-7.

ii. **Development Patterns:** This is consistent with the County's approach to development in the Moyock area, which encourages continuation of development patterns instead of abrupt changes, holes, or leapfrogging. It is also consistent with the Board's findings in similar cases approving density in this area of Moyock. The site is also adjacent to commercial uses along 168, which is designated a Full Service Area, and thus is close to the area where more intense development is anticipated.

POLICY HN3: Currituck County shall especially encourage two forms of residential development, each with the objective of avoiding traditional suburban sprawl... 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. LUP, p. 9-7.

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. LUP, p. 9-7.

POLICY AG3: County ACTIONS CONCERNING INFRASTRUCTURE (e.g. schools, parks, and utilities) and regulations shall serve to direct new development first to targeted growth areas near existing settlements identified as Full Service Areas on the Future Land Use Map, rather than "leapfrogging" to locations in the midst of farmland and greenspace identified as Rural and Conservation areas on the Future Land Use Map. LUP, p. 9-6.

POLICY AG4: County growth management tools, including particularly zoning, should provide PROTECTION TO AGRICULTURE and other RESOURCE BASED ACTIVITIES from incompatible land uses, such as a residential subdivision in the midst of generally uninterrupted farm land. LUP, p. 9-6.

B. Moyock Area Policy Emphasis of the Land Use Plan:

Summary of Area Character: The Moyock area is the fastest growing part of Currituck County. Development densities currently range from 1 to 3 units per acre depending upon development type.

Moyock Area Policy Emphasis: The policy emphasis of this plan is on properly managing the increased urban level of growth that this area is sure to experience over the next decade and beyond. Residential development densities should be medium to high depending upon available services. In areas where on-site wastewater is proposed and other County services are limited, development density should be limited to 1-2 units per acre. However in areas where central sewer is proposed or existing, additional services are available and the character of the surrounding areas supports it, higher density ranging from 3-4 units per acre could be considered through the use of overlay zones. Clustered housing developments, with open space required by ordinance, will ... be encouraged. Given the existing development pattern and availability of services, much of the Moyock area is planned as Full Service. LUP, p. 11-4.

The applicant is proposing on-site stormwater improvements, including improvements that will benefit the surrounding community, and will connect to County water available on Baxter Lane. The Moyock Area policy consistently references densities at 1 unit per acre minimum, and recognizes that increased density is appropriate where services are available. This is consistent with the 1.49 units per acre proposed.

3. UDO:

- A.** The proposed single-family residential use is designated in the MXR District is intended to provide moderate-cost housing options for county residents within well-designed neighborhoods and developments that incorporate open space resources,” and “accommodate a wide variety of residential use types at moderate densities” UDO Sec. 3.4.6.A.
- B.** This district includes dimensional standards for single-family detached development, including a minimum lot size of 15,000 square feet, setbacks and, and buffers. UDO Sec. 3.4.6.D. Maximum density is established in the master plan for these districts, and may not exceed 2 units per acre in Full Service areas or 1 unit per acre for Limited Service areas. There is no corresponding maximum density listed for the Rural Service Area, and thus the UDO does not restrict density in the Rural designated areas of the 2006 Land Use Plan. The proposed density is thus consistent with the UDO.



Jamie S. Schwedler

Partner

t: 919.835.4529

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jamieschwedler@parkerpoe.com

Atlanta, GA
Charleston, SC
Charlotte, NC
Columbia, SC
Greenville, SC
Raleigh, NC
Spartanburg, SC
Washington, DC

December 1, 2020

Via Email: Laurie.Locicero@CurrituckCountyNC.gov

Laurie B. LoCicero, AICP
Planning and Community Development Dept.
153 Courthouse Road, Suite 110
Currituck, NC 27929

Re: Age Restrictions for Baxter Station Rezoning

Dear Ms. LoCicero:

North South Development Group, LLC is preparing to submit a conditional use district rezoning for land known as Baxter Station, along Highway 168 in Currituck County (the "Property"), to create an age-restricted community. The age restrictions are planned to be documented both as zoning conditions on the Property, and in restrictive covenants recorded against the Property. As explained below, both methods are legally enforceable land use restrictions, and the ongoing nature of the restrictions are regulated by federal and state fair housing laws. Thus, the County can accept the zoning conditions as legally enforceable on several grounds.

First, age-restricted communities can be created via conditional zoning districts and have been accepted as such by multiple jurisdictions in North Carolina. A sample condition is as follows: "The use of the property shall be limited to an age-restricted residential community which meets the federal definition of elderly housing, having at least eighty (80) percent of the occupied units occupied by at least one person fifty five (55) years of age or older per unit." This condition was accepted by the Raleigh City Council, approved this year. See attached case Z-29-19 zoning condition 1. This zoning condition would be enforceable by the County under section 9.5 of the Currituck County UDO, just like any other condition. That is, if compliance with the age restriction was not demonstrated after construction and sale of the homes, the County could issue a notice of violation and, if not corrected, pursue legal and equitable remedies. However, as explained below, compliance records are required by law, and thus determining compliance should not be any more challenging or time-consuming for the County than any other enforcement action it has initiated.

Second, the age restriction can be documented in a restrictive covenant contained in the homeowners association documents for the community ("Declaration"). This method was used in an age-restricted apartment development in Cary approved in 2018, see attached p.4, sec

PPAB 5968562v1.docx

Parker Poe Adams & Bernstein LLP PNC Plaza 301 Fayetteville Street Suite 1400 Raleigh, NC 27602-0389
t 919.828.0564 f 919.834.4564 www.parkerpoe.com

Attachment: 7 baxter-station-approvalsandforms-21aug11 (PB 21-20 Baxter Station Conditional Zoning)

December 1, 2020
Page 2

1.3.1. In the Cary case, a zoning condition was offered and a Declaration of restrictive covenants recorded to mirror the condition ("Developer of the community shall record with the applicable Register of Deeds office a Declaration of Covenants, Conditions, and Restrictions ... providing that at least eighty percent (80%) of all occupied units shall have as a resident at least one person age 55 or older"). See Wake County Register of Deeds, Book 17448, page 331. The Declaration was recorded prior to building permits being issued, and provides restrictions on persons living within the household and procedures to verify and enforce these restrictions. See Sections 1.2, 2.1, 2.2. While the Baxter Station community is intended for single-family housing, the Declaration would still be recorded prior to any sale of the first home, such that all purchasers would take title with notice of, and be bound by, the occupancy requirements, including requirements to provide proof of age of occupants on a regular basis.

Finally, regardless if established by zoning condition or restrictive covenant, federal and state laws ensure continuing compliance with the age-restricted community requirements after the development has been established. The federal Fair Housing Act, 42 U.S.C. § 3601, *et. seq* ("FHA") and North Carolina Fair Housing Act, N.C.G.S. § 41A-4, *et. seq* ("NC FHA") prohibit discrimination in the sale or rental of housing based on familial status. Familial discrimination occurs when a real estate agent or property owner treats someone different because they have a family with one or more individuals under 18 years of age. *Iniestra v. Cliff Warren Investments, Inc.*, 886 F. Supp. 2d 1161, 1166 (C.D. Cal. 2012). Both acts provide an exception for housing communities intended for and operated for occupancy by at least one person 55 years of age or older per unit. 42 U.S.C. § 3607(a)(2); N.C.G.S. § 41A-6(e). In order to qualify for the exception, at least 80% of the development's occupied units must be occupied by at least one person 55 years of age or older. 24 C.F.R. § 100.305. This occupancy must be verified by survey or other means once every two years, and the records of such occupancy should be kept available for inspection upon reasonable notice. Verification procedures allow for drivers' license, birth certificates, and passports as among the forms of acceptable evidence of age of occupants. 24 C.F.R. § 100.307. Finally, the community must publish and adhere to policies that demonstrate its intent to operate as housing designed for persons 55 years old or older, which can be evidenced by a Declaration, lease provisions, advertising to prospective residents, and public posting in common areas. 24 C.F.R. § 100.306. Thus, in order to comply with these state and federal laws and regulations after the homes are sold, the developer is responsible for ongoing investigation and certification that the occupancy standards have been met.

Because there are adequate means to enforce such a restriction by the County, the developer, and the occupants themselves, the County is able to accept an age-restricted community zoning request for consideration by staff and the Board of Commissioners. Like the ongoing maintenance obligations of the drainage conditions offered and accepted in the Flora rezoning, this restriction is able to be accepted and enforced by the County, but has even more oversight and protection due to the safeguards of federal and state law requirements.

The Baxter Station community intends to offer the following age-restriction zoning condition, followed by a Declaration confirming the same:

"The use of the property shall be limited to an age-restricted residential community where all units are occupied by occupants fifty five (55) years of age or older. Before the issuance of the first building permit for the first dwelling unit, Developer will record a restrictive covenant in the homeowners association documents restricting the use accordingly, requiring occupants to certify the age of all

December 1, 2020
Page 3

household occupants at least once every two years, and providing for enforcement of such restriction."

This condition exceeds the above-stated restrictions, complies with federal and state law, and prevents school-aged children from occupying the units. We are happy to discuss the details of such a condition, as well as any timing of recording, frequency of age confirmation, or other details staff or the Board may request.

Please contact me with any questions or to discuss further.

Sincerely,



Jamie S. Schwedler

JSS
Attachment

Attachment: 7 baxter-station-approvalsandforms-21aug11 (PB 21-20 Baxter Station Conditional Zoning)

LETTER OF TRANSMITTAL

Date: 07/22/2021

Project # 4671

To: Donna Voliva, CZO
Assistant Planning Director
Currituck County Planning and
Community Development

ADDRESS:

Project Name: Baxter Station
Cond. Rezoning-MXR

153 Courthouse Road, Ste. 110
Currituck, NC 27929

<input checked="" type="checkbox"/>	HAND DELIVERED	<input type="checkbox"/>	OVER-NITE MAIL	<input type="checkbox"/>	MAILED	<input type="checkbox"/>	FAXED
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We are sending ☒ Enclosed ☐ Attached ☐ Under separate cover via _____ the following items:

- | | | | |
|--|--|---|--|
| <input type="checkbox"/> As Requested | <input type="checkbox"/> For Client Approval | <input type="checkbox"/> For Bid Submission | <input type="checkbox"/> For Construction |
| <input type="checkbox"/> For Your Signature | <input type="checkbox"/> For Permit Approval | <input type="checkbox"/> For Distribution | <input type="checkbox"/> For Const. Record |
| <input checked="" type="checkbox"/> For Review & Comment | <input type="checkbox"/> For Your Records | <input type="checkbox"/> For Release | <input type="checkbox"/> Confidential |

COPIES	DESCRIPTION	DATE
1	APPLICATION FOR COND. REZONING	7/22/2021
1	APPLICATION FEE	7/22/2021
2	COPIES OF COMM. MTG. MINUTES	7/22/2021
2	COPIES OF AGE RESTRICTION LETTER	12/1/2020
2	COPIES OF CONSISTENCY WITH COMPREHENSIVE PLAN	7/22/2021
2	COPIES OF PLANS	7/22/2021
2	COPIES OF PROPOSED STRUCTURES	7/22/2021
1	8X5 X 11 REDUCTION OF PLANS	7/22/2021
1	CD OF ALL	7/20/2021

Thank you.

Sincerely,
BISSELL PROFESSIONAL GROUP

Marcie Respass

Marcie Respass

Attachment: 7 baxter-station-approvalsandforms-21aug11 (PB 21-20 Baxter Station Conditional Zoning)

Engineer Coordinator



ALBEMARLE REGIONAL HEALTH SERVICES
Partners in Public Health

July 15, 2021

To: North South Development Group
417 Caratoke Hwy Unit D
Moyock, NC 27958

Re: Baxter Station

Pasquotank

Perquimans

Camden

Chowan

Currituck

Bertie

Gates

Hertford

This letter is based on the test that this is a subdivision that will be under the Federal Department of Housing and Urban Development (HUD) which regulates senior communities to ensure their compliance with the Housing for Older Persons Act of 1995 (HOPA).

North South Development Group submitted applications to ARHS for site evaluations to see if soil would accept onsite sewage systems. After site evaluations were completed the following was determined:

- The soils are typical for the coastal plains in Eastern NC
- The site would need 24 inches of fill material (sand) – it will need to be done the same as property located across the road.
- The large ditch along the highway will be cleared and sloped to improve drainage.
- The septic systems will be backfilled and installed in accordance to the attached drawings.
- All lots will be required to join the public Management Entity and inspected/monitored at least once a year.
- Note : this will include all drainage.

If I can be of further assistance, please feel free to contact me at 252-338-4490

Respectfully,

Ralph L Hollowell, Jr
Environmental Health Director
License Soil Scientist



R. Battle Betts, Jr., MPA, Health Director

P.O. Box 189 • 711 Roanoke Avenue • Elizabeth City, North Carolina 27907-0189
Tel: 252-338-4400 • Fax: 252-338-4449 • www.arhs-nc.org





Conditional Rezoning Application

OFFICIAL USE ONLY:

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

Contact Information
APPLICANT:

Name: Allied Properties, LLC
 Address: 417 Caratoke Hwy., Unit D
Moyock, NC 27958
 Telephone: 252-435-2718
 E-Mail Address: jold@qhoc.com

PROPERTY OWNER:

Name: Jarvis Harvest, LLC
 Address: 701 Blue Point Drive
Wilmington, NC 28411
 Telephone: _____
 E-Mail Address: _____

LEGAL RELATIONSHIP OF APPLICANT TO PROPERTY OWNER: Contract Purchaser

Property Information

Physical Street Address: Baxter Lane
Moyock, NC 27958
 Location: _____
 Parcel Identification Number(s): 0009-000-025A-0000
 Total Parcel(s) Acreage: 53.52AC
 Existing Land Use of Property: _____

Request

Current Zoning of Property: A Proposed Zoning District: C-MXR

Community Meeting

Date Meeting Held: July 20, 2021 @5:30pm Meeting Location: Eagle Creek Pavilion

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): MXR subdivision with 80 single-family detached lots which will be an age-restricted community.

Proposed Zoning Condition(s):

See Attachment "A"

An application has been duly filed requesting that the property involved with this application be rezoned from: A to: C-MXR

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.

BY JARVIS KUEVER, LLC CHARLES T. BERRY
Property Owner (s) CHARLES T. BERRY, MGR

12/16/20
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.

Attachment "A"**Proposed Zoning Conditions – Baxter Station****Condition 1 regarding age restriction:**

The use of the property shall be limited to an age-restricted residential community and associated amenities, where all units are occupied by persons fifty five (55) years of age or older. Before the issuance of the first building permit for the first dwelling unit, Developer will record a restrictive covenant in the homeowners association documents ("Declaration") restricting the use accordingly, requiring occupants to certify the age of all household occupants at least once every two years, and providing for enforcement of such restriction.

Condition 2 regarding drainage improvements:

Drainage improvements will be provided as follows:

- a. Perform modeling of the Baxter ditch to its outlet on the Jarvis (Landing) property.
- b. Based on model results, make improvements to Baxter Lane ditch along the Baxter Station property boundary, including widening, deepening, laying back side slopes and putting on proper grade. Improvements to be completed prior to putting first plat phase of subdivision to record.
- c. Record an easement along the Baxter Station part of the ditch to provide access for ongoing maintenance.
- d. Include a provision in the Declaration that clarifies that the HOA will have the responsibility to maintain the ditch at least annually, and budget for funding within the HOA dues structure to assure that ongoing maintenance is funded.
- e. Model the development to manage the 100 year storm event and design stormwater storage accordingly, including providing berms as necessary.
- f. If Currituck County is able to obtain the necessary right of entry agreements, the existing undersized culvert at Baxter Lane Extension will be replaced with a properly sized culvert set at the proper grade.

Attachment "A"**Proposed Zoning Conditions – Baxter Station**Condition 1 regarding age restriction:

The use of the property shall be limited to an age-restricted residential community where all units are occupied by occupants fifty five (55) years of age or older. Before the issuance of the first building permit for the first dwelling unit, Developer will record a restrictive covenant in the homeowners association documents restricting the use accordingly, requiring occupants to certify the age of all household occupants at least once every two years, and providing for enforcement of such restriction.

Condition 2 regarding drainage improvements:

Drainage improvements will be provided as follows:

- a. Perform modeling of the Baxter ditch to its outlet on the Jarvis (Landing) property.
- b. Based on model results, make improvements to Baxter Lane ditch along the Baxter Station property boundary, including widening, deepening, laying back side slopes and putting on proper grade. Improvements to be completed prior to putting first plat phase of subdivision to record.
- c. Record an easement along the Baxter Station part of the ditch to provide access for ongoing maintenance.
- d. Include a provision in the covenants of Baxter Station that clarifies that the HOA will have the responsibility to maintain the Baxter Lane ditch through the subdivision at least annually, and budget for funding within the HOA dues structure to assure that ongoing maintenance is funded.
- e. Model the Baxter Station to manage the 100 year storm event and provide stormwater storage, including berms as necessary, to prevent runoff from Baxter Station during the 100 year storm event from adversely impacting offsite properties.
- f. If Currituck County is able to obtain the necessary right of entry agreements, the existing undersized culvert at Baxter Lane Extension will be replaced with a properly sized culvert set at the proper grade.

Baxter Station MXR Rezoning

July 20, 2021

Scheduled Time/Place: 5:30, Eagle Creek Pavilion

The meeting began at 5:30pm/Meeting Ended: at approximately 6:45pm

Attendees: (See attached sign-in sheets)

Also Justin Old, Developer
Mark Bissell, Engineer

The review procedures were outlined and an overview of the development plan and details were provided, both verbally and graphically. Comments from the community meeting that was held in December on a similar development plan were also reviewed and are attached for reference. Many of the same comments were heard regarding drainage, so only the new comments are included in this second community meeting record.

Comments from the Community	How Addressed
What size will the lots be?	A minimum of 15,000 sq. ft.
Can fewer lots be done?	The density has already been dropped from 125 to 80, and complies with MXR zoning.
Still concerned about raising the water table across the street due to berming.	We will consult with a hydrogeologist during the modeling and design.
Drainage problems should be resolved before more development is approved.	The drainage problems in question are on private property and the County cannot do this work.
Concerned about septic tanks raising the water table. How much water is being added to the site?	About 12,000 gal/day (equivalent to about 0.008 inch rainfall) will be considered in the design.
What happens if the HOA can't or won't take over?	The community has enough homes that it will be able to have professional management.
I understand from the engineering department that	The UDO requires us to model pre-

no more water was to go to the Baxter ditch but rather was to be directed to the south.	development conditions to determine how much water goes to each outlet during a 2-year wooded condition storm and then limit the post development 10-year storm to that amount for each outlet, so we would not be able to redirect flow into a different drainage system.
There is too much development in Moyock.	The demand will continue; we are trying to do it in a way that also benefits the community.
Today it could possibly work and I'm not anti-development, but why does the county allow density on soils that don't perk? There are some smaller communities that do not adhere to UDO.	We are agreeing to conditions that <u>exceed</u> the UDO requirements and agreeing to make improvements to existing problems that otherwise would not be solved.
Will there be sidewalks and a sidewalk to the park?	There will be sidewalks on both sides of the street and a connection to Hidden Oaks, which connects to the park.
Are there tree buffers?	Yes, both to Baxter Lane Estates and to Hidden Oaks, and also along Baxter Lane to buffer homes across the street

Baxter Estates
Conditional Rezoning

July 20, 2021

5:30PM

NAME	ADDRESS	TELEPHONE	E-MAIL
Cheryl Kelly	203 Green Road	252-267-1321	
Cheryl Sherrill	116 Shady Oaks Way		
William Frey	Hidden Oaks		
George Frey	" "		georgefrey@gmail.com
Jennie Turner	Carrihawk County Planning	252-232-6031	jennie.turner@carrihawkcounty.nc.gov
Kevin Kemp	Carrihawk Co. Development	Sec. —	kevin.kemp@carrihawkcounty.nc.gov
Rosanne Burling	125 Shady Oaks Way		rosanneburling@aol.com
Fred Whitman	181 ST Andrews Rd		
Larry Towell	103 Avul Road Circle	757 615 1591	larry.towell@yahoo.com
Wm Wilbanks	107 ALDEN RUN	757-777-8372	Alexander.Wilbanks@gmail.com
Aaron Waver	102 AVUL Bender	757-374-9168	Avaiver@wfsystems.com
Joshua Old	131 Spruce Ln		
Kyle Kendrick	100 Bay 99 Shallowford		
DAVID IGILDA HERNANDEZ	108 ARAU HEAD LN.	804 426 4909	DHERN ?

Baxter Station MXR Rezoning

December 15, 2020

Scheduled Time/Place: 4:30pm and 6:00pm, Eagle Creek Pavilion

The first meeting began at 4:30pm/Meeting Ended: at approximately 5:40pm

The second meeting began at 6:00pm/Meeting Ended at approximately 7:15pm

Attendees: (See attached sign-in sheets)

Also: Jason Litteral, Currituck County
Justin Old, Developer
Mark Bissell, Engineer

Comments from the Community	How Addressed
Windswept Pines ponds are overflowing in 51/2" rainfall and impacting adjacent development.	Downstream conditons were observed during flooded conditions and it was determined that drainage along Baxter Lane is restricted and preventing Windswept Pines drainage system from draining properly.
What is being proposed to the ditch on Baxter?	The ditch will be studied and modeled, and based on the results of the model it will be widened, deepened, slopes laid back, put on grade, and an easement provided for ongoing maintenance.
Will the proposed construction be crawl-space or slab?	Probably elevated slab.
Will the development be on septic tanks? Previously it was going to be sewer.	Yes, septic systems are proposed similar to at Windswept Pines. County sewer is not available at this time.
There are problems with the property line ditch between the Baxter property and Hidden Oaks.	The plan will be to clean out this ditch along with the first phase of development.
What is the timeframe?	It will take a minimum of 1 1/2 years before the first house goes under construction and 2 yrs for occupancy. Very possibly longer.
Who will do the building?	Since that will be a year and a half to two years down the road, that has not been decided.
Will the project be phased?	Yes it will be done in two phases about 40 lots each.
Will there be a traffic light at Baxter Lane and	NCDOT will need to do a signal warrant. Even

Caratoke Highway?	when the proposed project was larger, they did not think it warranted it yet. This would probably not occur until the main entrance to Currituck Station goes in and development gets under way there.
The pipe needs to be replaced and upgraded at Baxter Lane extension because there was an existing water line that kept it from being put at proper grade when it was replaced a year or so ago.	We will speak with the land owners there to see if access can be obtained (the last time the developer asked he was refused access to do any work there)
Will construction traffic go through Hidden Oaks?	No, it will be from Baxter Lane, and the connection to Hidden Oaks will not be made until Phase 2.
Will the waterline be looped?	Yes, it will be looped from Hidden Oaks to Baxter Lane which should improve pressure.
Concerned about water in ponds raising the water table.	Improving the ditch along Baxter Lane should serve to lower the water table on the other side of Baxter.
Can the second entrance farther east on Baxter Lane be eliminated?	We believe the County will want the second entrance, but will ask if it can be eliminated.

Summary: Between the two meetings, ten residents attended, from Hidden Oaks and Baxter Lane. Most questions and discussions had to do with the need for drainage improvements in the area, and a plan to address those.



Attachment: 11 Model Homes (PB 21-20 Baxter Station Conditional Zoning)



Attachment: 11 Model Homes (PB 21-20 Baxter Station Conditional Zoning)







Attachment: 11 Model Homes (PB 21-20 Baxter Station Conditional Zoning)



Attachment: 11 Model Homes (PB 21-20 Baxter Station Conditional Zoning)



Attachment: 11 Model Homes (PB 21-20 Baxter Station Conditional Zoning)

CONSISTENCY WITH COMPREHENSIVE PLAN
BAXTER STATION MXR

The proposed zoning is from AG to C-MXR, with a sketch plan limiting density to approximately 1.49 units per acre. This request is for approximately 53.52 acres along Baxter Lane just off Caratoke Highway to provide new single-family development. This request is consistent with the following density and development pattern policies of the 2006 Land Use Plan, Moyock Small Area Plan, and UDO:

1. 2014 Moyock Area Small Area Plan (“MSAP”):

The 2014 MSAP “is used to assist staff and the Board of Commissioners in guiding growth as well as planning for future county improvements to infrastructure and services.” MSAP, p. 1. The plan guidance materials indicate that it was intended to:

“supplement the [2006] Land Use Plan to more specifically address the needs and issues of the [Moyock] study area over the next 10 years. The policies and guidance given in this plan are consistent with the Land Use Plan and other county policies and documents. This plan will establish a new focus for growth and development. The Board of Commissioners and staff will use the SAP to make recommendations about development proposals and other county land use policy decisions. This plan is a vital tool for staff in day to day decision making and in assisting the public with development proposals.”

MSAP, p. 7. The MSAP Future Land Use Map “should be used in conjunction with the entire plan.” MSAP, p. 30. The fact that the site is designated Full Service on the MSAP Future Land Use Map, will have County water available, is located close to 168, and is adjacent to a Full Service Area on the MSAP and 2006 LUP all support the requested density for the site. The MSAP designates this area as Full Service Area, with densities up to 3 units per acre. This is significant because only several portions of the MSAP include Full Service; the majority of the plan is Rural Area and Conservation Area. MSAP p. 30. The Full Service designations “are focal points in the community where high amounts of activity occur ...[and] ... a broad range of infrastructure and service investments ... will be made available by the public and/or private sectors.” These investments may include centralized water and sewer. MSAP p. 31. “[P]lanned commercial and residential areas with diversity in housing types is preferred. Typical densities in full service designations range from 1.5 – 3 units per acre depending on surrounding land uses.” MSAP p. 31.

Activity centers are located in full service designations, and are anticipated to be destination hubs for activity in the surrounding community. MSAP p. 32. This property is also almost adjacent to the largest Activity Center on the MSAP, the Employment Center, across Hwy 168. This center includes planned corporate parks, and supporting residential use is encouraged. The proximity of this development to Currituck Station, an area designated for significant growth, further supports the requested density.

Policy FLU 1 – promote compatibility between new development and existing development to avoid adverse impacts to the existing community.

Policy CC 1 - Encourage and foster development that is compatible with rural atmosphere, transitional areas, and a small town, main street feel consistent with the vision, policies, and future land use map of this plan.

Policy CC 2 - Encourage non-residential and mixed use development that incorporates building and site design to enhance community appearance, promote human scale, and create a unique sense of place. This may include common themed building materials, forms, and site amenities.

2. 2006 Currituck County Land Use Plan ("LUP"):

A. Land Use Compatibility Policies

i. Density: The project is located within the Rural Area of the LUP, and proposes a maximum density of 1.49 units per acre. The site is across from land zoned MXR and AG to the north, all put to residential, non-agricultural uses. To the west of the site is a General Business zoning designation, which extends along Caratoke Highway. To the east and south the land is zoned and used for residential use, zoned C-MXR and C-SFM. Directly across 168 from the property is an area proposed as G-3 and up to 12 dwelling units per acre, a much higher density than requested here. As such, the request can serve as a reasonable transition between uses.

The density guidance in the LUP is based on assumptions about available infrastructure, existing development patterns, and the presence of environmental features that do not apply to this site in the same way they may apply to Rural sites in general. There are no environmentally sensitive features or factors which suggest preservation of this portion of the development is critical. County water is available to be extended from Baxter Lane.

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. LUP, p. 9-7.

POLICY AG6: For areas experiencing intense development pressure, new residential development may be allowed to locate in COMPACT, VILLAGE-LIKE CLUSTERS, PREFERABLY NEAR EXISTING, NON-AGRICULTURAL ACTIVITIES AND SERVICES, or in other locations that will not interfere with resource production activities. Overall density shall

remain very low, with permanent open space, dedicated during the development review process, surrounding such clusters of homes. LUP, p. 9-7.

ii. **Development Patterns:** This is consistent with the County's approach to development in the Moyock area, which encourages continuation of development patterns instead of abrupt changes, holes, or leapfrogging. It is also consistent with the Board's findings in similar cases approving density in this area of Moyock. The site is also adjacent to commercial uses along 168, which is designated a Full Service Area, and thus is close to the area where more intense development is anticipated.

POLICY HN3: Currituck County shall especially encourage two forms of residential development, each with the objective of avoiding traditional suburban sprawl... 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. LUP, p. 9-7.

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. LUP, p. 9-7.

POLICY AG3: County ACTIONS CONCERNING INFRASTRUCTURE (e.g. schools, parks, and utilities) and regulations shall serve to direct new development first to targeted growth areas near existing settlements identified as Full Service Areas on the Future Land Use Map, rather than "leapfrogging" to locations in the midst of farmland and greenspace identified as Rural and Conservation areas on the Future Land Use Map. LUP, p. 9-6.

POLICY AG4: County growth management tools, including particularly zoning, should provide PROTECTION TO AGRICULTURE and other RESOURCE BASED ACTIVITIES from incompatible land uses, such as a residential subdivision in the midst of generally uninterrupted farm land. LUP, p. 9-6.

B. Moyock Area Policy Emphasis of the Land Use Plan:

Summary of Area Character: The Moyock area is the fastest growing part of Currituck County. Development densities currently range from 1 to 3 units per acre depending upon development type.

Moyock Area Policy Emphasis: The policy emphasis of this plan is on properly managing the increased urban level of growth that this area is sure to experience over the next decade and beyond. Residential development densities should be medium to high depending upon available services. In areas where on-site wastewater is proposed and other County services are limited, development density should be limited to 1-2 units per acre. However in areas where central sewer is proposed or existing, additional services are available and the character of the surrounding areas supports it, higher density ranging from 3-4 units per acre could be considered through the use of overlay zones. Clustered housing developments, with open space required by ordinance, will ... be encouraged. Given the existing development pattern and availability of services, much of the Moyock area is planned as Full Service. LUP, p. 11-4.

The applicant is proposing on-site stormwater improvements, including improvements that will benefit the surrounding community, and will connect to County water available on Baxter Lane. The Moyock Area policy consistently references densities at 1 unit per acre minimum, and recognizes that increased density is appropriate where services are available. This is consistent with the 1.49 units per acre proposed.

3. UDO:

- A.** The proposed single-family residential use is designated in the MXR District is intended to provide moderate-cost housing options for county residents within well-designed neighborhoods and developments that incorporate open space resources,” and “accommodate a wide variety of residential use types at moderate densities” UDO Sec. 3.4.6.A.
- B.** This district includes dimensional standards for single-family detached development, including a minimum lot size of 15,000 square feet, setbacks and, and buffers. UDO Sec. 3.4.6.D. Maximum density is established in the master plan for these districts, and may not exceed 2 units per acre in Full Service areas or 1 unit per acre for Limited Service areas. There is no corresponding maximum density listed for the Rural Service Area, and thus the UDO does not restrict density in the Rural designated areas of the 2006 Land Use Plan. The proposed density is thus consistent with the UDO.



Jamie S. Schwedler

Partner

t: 919.835.4529

f: 919.835.4618

jamieschwedler@parkerpoe.com

Atlanta, GA
Charleston, SC
Charlotte, NC
Columbia, SC
Greenville, SC
Raleigh, NC
Spartanburg, SC
Washington, DC

December 1, 2020

Via Email: Laurie.Locicero@CurrituckCountyNC.gov

Laurie B. LoCicero, AICP
Planning and Community Development Dept.
153 Courthouse Road, Suite 110
Currituck, NC 27929

Re: Age Restrictions for Baxter Station Rezoning

Dear Ms. LoCicero:

North South Development Group, LLC is preparing to submit a conditional use district rezoning for land known as Baxter Station, along Highway 168 in Currituck County (the "Property"), to create an age-restricted community. The age restrictions are planned to be documented both as zoning conditions on the Property, and in restrictive covenants recorded against the Property. As explained below, both methods are legally enforceable land use restrictions, and the ongoing nature of the restrictions are regulated by federal and state fair housing laws. Thus, the County can accept the zoning conditions as legally enforceable on several grounds.

First, age-restricted communities can be created via conditional zoning districts and have been accepted as such by multiple jurisdictions in North Carolina. A sample condition is as follows: "The use of the property shall be limited to an age-restricted residential community which meets the federal definition of elderly housing, having at least eighty (80) percent of the occupied units occupied by at least one person fifty five (55) years of age or older per unit." This condition was accepted by the Raleigh City Council, approved this year. See attached case Z-29-19 zoning condition 1. This zoning condition would be enforceable by the County under section 9.5 of the Currituck County UDO, just like any other condition. That is, if compliance with the age restriction was not demonstrated after construction and sale of the homes, the County could issue a notice of violation and, if not corrected, pursue legal and equitable remedies. However, as explained below, compliance records are required by law, and thus determining compliance should not be any more challenging or time-consuming for the County than any other enforcement action it has initiated.

Second, the age restriction can be documented in a restrictive covenant contained in the homeowners association documents for the community ("Declaration"). This method was used in an age-restricted apartment development in Cary approved in 2018, see attached p.4, sec

PPAB 5968562v1.docx

Parker Poe Adams & Bernstein LLP PNC Plaza 301 Fayetteville Street Suite 1400 Raleigh, NC 27602-0389
t 919.828.0564 f 919.834.4564 www.parkerpoe.com

Attachment: 13 Schwedler Ltr 12-1-2020 (PB 21-20 Baxter Station Conditional Zoning)

December 1, 2020
Page 2

1.3.1. In the Cary case, a zoning condition was offered and a Declaration of restrictive covenants recorded to mirror the condition ("Developer of the community shall record with the applicable Register of Deeds office a Declaration of Covenants, Conditions, and Restrictions ... providing that at least eighty percent (80%) of all occupied units shall have as a resident at least one person age 55 or older"). See Wake County Register of Deeds, Book 17448, page 331. The Declaration was recorded prior to building permits being issued, and provides restrictions on persons living within the household and procedures to verify and enforce these restrictions. See Sections 1.2, 2.1, 2.2. While the Baxter Station community is intended for single-family housing, the Declaration would still be recorded prior to any sale of the first home, such that all purchasers would take title with notice of, and be bound by, the occupancy requirements, including requirements to provide proof of age of occupants on a regular basis.

Finally, regardless if established by zoning condition or restrictive covenant, federal and state laws ensure continuing compliance with the age-restricted community requirements after the development has been established. The federal Fair Housing Act, 42 U.S.C. § 3601, *et. seq* ("FHA") and North Carolina Fair Housing Act, N.C.G.S. § 41A-4, *et. seq* ("NC FHA") prohibit discrimination in the sale or rental of housing based on familial status. Familial discrimination occurs when a real estate agent or property owner treats someone different because they have a family with one or more individuals under 18 years of age. *Iniestra v. Cliff Warren Investments, Inc.*, 886 F. Supp. 2d 1161, 1166 (C.D. Cal. 2012). Both acts provide an exception for housing communities intended for and operated for occupancy by at least one person 55 years of age or older per unit. 42 U.S.C. § 3607(a)(2); N.C.G.S. § 41A-6(e). In order to qualify for the exception, at least 80% of the development's occupied units must be occupied by at least one person 55 years of age or older. 24 C.F.R. § 100.305. This occupancy must be verified by survey or other means once every two years, and the records of such occupancy should be kept available for inspection upon reasonable notice. Verification procedures allow for drivers' license, birth certificates, and passports as among the forms of acceptable evidence of age of occupants. 24 C.F.R. § 100.307. Finally, the community must publish and adhere to policies that demonstrate its intent to operate as housing designed for persons 55 years old or older, which can be evidenced by a Declaration, lease provisions, advertising to prospective residents, and public posting in common areas. 24 C.F.R. § 100.306. Thus, in order to comply with these state and federal laws and regulations after the homes are sold, the developer is responsible for ongoing investigation and certification that the occupancy standards have been met.

Because there are adequate means to enforce such a restriction by the County, the developer, and the occupants themselves, the County is able to accept an age-restricted community zoning request for consideration by staff and the Board of Commissioners. Like the ongoing maintenance obligations of the drainage conditions offered and accepted in the Flora rezoning, this restriction is able to be accepted and enforced by the County, but has even more oversight and protection due to the safeguards of federal and state law requirements.

The Baxter Station community intends to offer the following age-restriction zoning condition, followed by a Declaration confirming the same:

"The use of the property shall be limited to an age-restricted residential community where all units are occupied by occupants fifty five (55) years of age or older. Before the issuance of the first building permit for the first dwelling unit, Developer will record a restrictive covenant in the homeowners association documents restricting the use accordingly, requiring occupants to certify the age of all

December 1, 2020
Page 3

household occupants at least once every two years, and providing for enforcement of such restriction."

This condition exceeds the above-stated restrictions, complies with federal and state law, and prevents school-aged children from occupying the units. We are happy to discuss the details of such a condition, as well as any timing of recording, frequency of age confirmation, or other details staff or the Board may request.

Please contact me with any questions or to discuss further.

Sincerely,



Jamie S. Schwedler

JSS
Attachment

Attachment: 13 Schwedler Ltr 12-1-2020 (PB 21-20 Baxter Station Conditional Zoning)



Currituck County Agenda Item Summary Sheet

Agenda ID Number – (ID # 3264)

Agenda Item Title: Consideration of Agreement for Professional Services for Phase I Drainage Improvements for Ocean Sands North and Crown Point Service District for Watershed Improvements, and Authorize County Manager to Execute Agreement.

Submitted By: Samantha Evans – County Manager

Presenter of Item:

Board Action: Action

Brief Description of Agenda Item:

Consideration of agreement with Albemarle & Associates, Ltd. for engineering and design services for the implementation of Phase I of the drainage improvements and permanent discharge pipes identified in the "Report and Recommendations for Stormwater and Groundwater Management for the Ocean Sands North and Crown Point Watershed Improvement District" dated December 2018. In addition, approval will authorize the County Manager to sign the agreement on behalf of the County.

Is this item regulated by plan, regulation or statute?

Manager Recommendation:

CONTRACT #
REQ #

**NORTH CAROLINA
CURRITUCK COUNTY**

**AGREEMENT FOR PROFESSIONAL SERVICES FOR PHASE I DRAINAGE
IMPROVEMENTS FOR OCEAN SANDS NORTH AND CROWN POINT SERVICE
DISTRICT FOR WATERSHED IMPROVEMENTS**

This Agreement, made as of the ____ day of _____, 2021 by and between the County of Currituck, North Carolina, a body corporate and politic existing pursuant to the laws of the State of North Carolina (hereinafter, the "Owner") and **Albemarle & Associates, Ltd.**, a professional engineering firm with a partner or principal registered in North Carolina as a licensed engineer and with offices in North Carolina (hereinafter, the "Consultant").

WITNESSETH:

That the Owner and Consultant, for the consideration herein named, do hereby agree as follows:

ARTICLE 1

1.1 Scope of Work

1.1.1 This Agreement is for professional engineering services to be rendered by Consultant and/or its Subconsultants to Owner with respect to a project known as **Phase I Drainage Improvements for Ocean Sands North and Crown Point (OSN & CP) Service District for Watershed Improvements** (hereinafter, the "Project"). The Project is located within the Oceans Sands North and Crown Point Service District for Watershed Improvements in Corolla, North Carolina. The Consultant will provide engineering and design services for the implementation of Phase I of the drainage improvements outlined in the "Report and Recommendations for Stormwater and Groundwater Management for the Ocean Sands North and Crown Point Watershed Improvement District" (hereinafter, the "Report") dated December 2018, and for the permanent discharge pipes as outlined in Appendix D – Floodwater Management Plan of the Report.

1.1.2 By its execution of this Agreement, the Consultant represents and agrees that it is qualified and fully capable to perform and provide the professional engineering services and other

Attachment: Albemarle & Associates agreement Phase 1 10-26-21 (Albemarle & Associates agreement)

services required or necessary under this Agreement in a fully competent, professional and timely manner, and that its Subconsultants are also fully capable and qualified to perform and provide the services that they will provide hereunder.

1.1.3 The services to be performed under this Agreement consist of Basic Services, as described and designated in Article 4 hereof to this Agreement, and such Additional Services as are designated in Article 5 of this Agreement or as may from time-to-time be agreed upon by the Owner and Consultant by Amendment or Addendum to this Agreement. Compensation to the Consultant for Basic Services under this Agreement shall be as set forth herein, and compensation for Additional Services shall be as set forth herein or in any Amendment or Addendum providing for them. All services performed by the Consultant not identified as Additional Services in Article 5 or in a written Amendment or Agreement entered into by the Owner and the Consultant and providing for additional compensation for such additional services relating to the Project shall be deemed to be Basic Services which are provided without additional compensation.

ARTICLE 2

2.1 Definitions

- 2.1.1 Additional Services - See Section 1.1.3 and Article 5.
- 2.1.2 Basic Services - See Article 4.
- 2.1.3 Compensation for Basic Services - See Section 7.1 and 7.2.
- 2.1.4 County Board of Commissioners - The Board of Commissioners of Currituck County.
- 2.1.5 County Manager - The employee of Currituck County bearing that title.
- 2.1.6 Project - All phases of the Project as described in Article 1, Article 3, and Article 4.

ARTICLE 3

RESPONSIBILITIES OF THE CONSULTANT

3.1 Services to be Provided

3.1.1 The Consultant and its Subconsultants shall provide the Owner with all engineering, surveying and design services required to satisfactorily complete the Project within the time limitations set forth herein and in accordance with the Standard of Care in Section 3.2.1. Such services may include:

- Surveying
- Hydrologic analysis
- Geotechnical engineering
- Civil engineering
- Permitting
- Construction inspection
- Construction administration
- All other services customarily furnished by a Consultant and its Subconsultants with respect to projects and activities similar to the Project.

All services of the Consultant shall be provided in accordance with the terms and conditions of this Agreement.

3.2. Standard of Care

3.2.1 The Consultant and its Subconsultants shall exercise reasonable care and diligence in performing its services under this Agreement in accordance with generally accepted standards of engineering practice in the location of the project ("Standard of Care") and in accordance with federal, state and local laws and regulations applicable to the performance of these services. The Consultant shall serve as a representative of the Owner in accordance with the terms and conditions of this Agreement.

3.2.2 The Consultant shall be responsible for all errors or omissions caused by its negligence, in the drawings, specifications, and other documents prepared by the Consultant or its Subconsultants subject to Section 3.2.6 *infra*. It shall be the responsibility of the Consultant throughout the period of performance under this Agreement to meet the Standard of Care in Section 3.2.1.

3.2.3 The Consultant shall correct, at no additional cost to the extent caused by its negligence, to the Owner any and all errors, omissions, discrepancies, ambiguities, mistakes or conflicts in the drawings, specifications and other documents prepared by the Consultant or its Subconsultants.

3.2.4 The Consultant shall make reasonable efforts to assure that all drawings, specifications and other documents prepared by the Consultant or its Subconsultants hereunder are in accordance with applicable laws, statutes, building codes and regulations and that all necessary or appropriate applications for approvals are submitted to federal, state and local governments or

agencies in a timely manner so as not to delay the design or construction activities of the Project. Where existing conditions make it technically or economically infeasible to bring the Project design up to current codes, the Consultant will inform the Owner of the inherent design limitations.

3.2.5 Subject to the Standard of Care, the Consultant and its Subconsultants shall perform all services in a timely manner in accordance with all design schedules for the Project identified herein.

3.2.6 The Consultant shall reimburse the Owner, as stipulated in 3.2.6.A and 3.2.6.B for costs, damages and expenses, including reasonable attorney's fees, incurred by the Owner when such costs, damages and expenses are the result of any negligent error, omission or delay of the Consultant or its Subconsultants.

A. To the extent that the cost to the Owner for all errors, premium value of omissions or delays of the Consultant is less than one-half of one percent (0.5%) of the Total Project Cost identified in Article 7, the Consultant shall not be liable to the Owner for such costs.

B. If the aggregate cost to the Owner for such errors, premium value of omissions or delays of the Consultant amounts to more than one-half of one percent (0.5%) of the Total Project Cost identified in Article 7, the Consultant shall reimburse the Owner for all such costs in excess of said one-half of one percent (0.5%).

3.3 Consultant's Subconsultants

3.3.1 The Consultant's Subconsultants for the Project, along with their key project personnel are:

- Edwin Andrews & Associates, P.E.
- Rummel, Klepper & Kahl, L.L.P.
- Seaboard Surveying and Planning, Inc.
- Environmental Professionals, Inc.

Consultant shall notify Owner if changes to the Subconsultants listed above occurs during the life of the Project.

3.3.2 All of the Consultant's contracts with its Subconsultants shall be in writing and shall expressly provide that if this Agreement is terminated for any reason, the Owner may, at its sole option, take the assignment of the Subconsultants' contract with the Consultant, that such assignment shall automatically take place upon notification in writing by the Owner to the

Consultants and the Subconsultants shall continue to be bound by the contract after such assignment. A copy of each contract between the Consultant and a Subconsultant shall be furnished to the Owner within seven (7) days of its execution.

ARTICLE 4

BASIC SERVICES

4.1 Basic Services

4.1.1 The Consultant and its Subconsultants shall perform as Basic Services that work and services described herein:

4.2 Surveying Services

4.2.1 Surveying services shall include:

- a. Determination of pertinent property boundaries along Phase I routes.
- b. Topo of 20' wide corridor along Phase I routes.
- c. Location of underground utilities as flagged by others within corridor.
- d. Location of any physical improvements within or near corridor/route, such as roads, driveways, fences, overhead utilities, and shorelines.
- e. Set one vertical control point at each of the eight (8) well locations.
- f. Topo along & wetlands location at the Southern Outer Banks Water Plant site.
- g. Wetlands map of Southern Outer Banks Water Plant site (not a complete boundary).
- h. Brush hogging open space areas for access by surveyors, geotechnical and design personnel.
- i. Wetland location, mapping and permitting for all areas including well, pipeline and ditches.
- j. Easement plat of infrastructure on county property.

4.3 Hydrologic Analysis

4.3.1 Hydrologic services necessary for project design will include:

- a. Two (2) geotech borings at each of the eight (8) well sites for a total of sixteen (16) borings.

- b. Test Wells – Aquifer Test for six (6) proposed Well Fields:
 - Aquifer Test Pumping Wells – Two (2) each
 - Aquifer Observation Wells – Two (2) each
 - Data Loggers – Three (3) each
 - 24 hour aquifer tests – Two (2) each
- c. Full well field installation and testing of two (2) test wells in Oceans Sands Section M to determine suitability for use as final wells:
 - Test Pumping Wells at the 5 untested well sites Section M – Ten (10) each
 - Capacity test 8 hours each – Ten (10) each
- d. Interference Test Ocean Sands Section M (2 sites)
 - Test Pumping Wells to complete wells at Section M & Crown Point – Six (6) each
 - One (1) simultaneous capacity test 24 hours
- e. Update the hydrologic model developed during the initial study.
- f. Provide groundwater design analysis between system cost, operations, and environmental impacts.
- g. Provide analysis between adequate pre-storm capacity and minimization of stormwater emergence to the surface.

4.4 Design Phase Services

4.4.1 Consultant shall:

- a. Attend a kick-off meeting with representatives of the Owner and the OSN & CP Service District for Watershed Improvements Advisory Board.
- b. Review the “Report and Recommendations for Stormwater and Groundwater Management for the Ocean Sands North and Crown Point Watershed Improvement District” to identify potential concept flaws, cost considerations and alternative ideas to improve functionality, design intent or construction costs.
- c. Complete design of outfall based upon survey information; outfall design anticipated to be a settling basin and a series of concrete trenches for uniform dispersion.

- d. Address disposal impacts including change to hydrology, impacts to flora and fauna and long-term ability to accept and manage discharge flows and rates.
- e. Meet with NC DEQ to determine permitting needs and obtain other permits including but not limited to NC DEQ, USACE and NCDOT.
- f. Develop permitting applications, plans and specifications necessary to obtain anticipated permits.
- g. Build a hydraulic model of the initial and build-out system to confirm pipe sizing and pump selections using existing AutoCAD drawings of the concept design provided in the Report.
- h. Coordinate with Dominion Energy to provide electrical service.
- i. Design three (3) emergency pumping facilities to include plans, specifications, bid documents, and bidding. Consultant will also conduct weekly construction inspections during construction scheduled to begin in February 2022 and be completed in May 2022.
- j. Pump station designs to include gravel packed wells, well pump, motor, architectural enclosure, VFD, generator and other associated appurtenances.
- k. Provide internet-based SCADA and telemetry design. Design of the PLC including control of pumping rates based on water level and pre-storm events, pumping rate, run time.
- l. Provide monitoring wells for groundwater levels and chloride intrusion with remote broadcasting of real time data.
- m. Complete non-mechanical drainage design including restoration of existing ditches and proposed ditches and swales as shown in Figure 22 of the Report. Design of ditching and drainage piping for interconnectivity sub-catchment areas and the lake per Figure 22 to include the proposed improvements in open spaces in Ocean Sands Section I.
- n. Conduct an Instrumentation and Controls Workshop to review system functionality intent and preferences as well as instrumentation and controls preferences.
- o. Prepare preliminary construction documents in general accordance with the following drawing list:

Sheet Title	
1	Cover Page
2	Index and Legend
3	14-inch Pipe Profile (650 LF)
4	12-inch Pipe Profile (690 LF)
4-5	10-inch Pipe Profile (1390 LF)
6-7	6-inch Pipe Profile (2480 LF)
8-9	4-inch Pipe Profile (1,530 LF)
10	Trenchless crossing
11-14	8 PS & Well Site Plans
15-17	Typical PS Details
18-20	Disposal Site Plans and Details
21-25	Standard Details/Swales
1-5	Emergency Pumping Plan Set

*Assumes 40 scale topographic survey.

Consultant will submit electronic sets of preliminary construction documents reflecting 65% and 90% completion. The 65% submittal will reflect progress plan and profile drawings of the disposal site, the conveyance system, generic pumping station drawings and groundwater pumping sites. The submittal will also include 65% complete plan and profile drawings and details, and opinions of probable construction cost. The 90% submittal will reflect substantially completed design of the disposal site, the conveyance system, generic pumping station drawings and groundwater pumping sites based on the hydraulic modelling results and recommendations of the Report and comments received on the 65% submittal. The submittal will also include 90% complete drawings, technical specifications, and an opinion of probable construction cost.

- p. Prepare final construction documents. Consultant will submit electronic final construction documents reflecting the recommendations of the Report and comments received on the 65% and 90% documents submittal review comments.
- q. Attend a total of five (5) virtual or in person design review meetings with Owner and other project design team representatives, one for each submittal to review the design and discuss any concerns/comments and preferences

identified. Consultant will prepare and distribute minutes documenting discussions, issues, resolutions and action items.

- r. Prepare and deliver a final opinion of probable construction cost for design prior to advertisement for bids.
- s. Prepare construction quantities and measurement and payment descriptions for items of their responsibility for inclusion in the front-end documents. Consultant will prepare a liquidated damages recommendation and associated justification letter for inclusion in the construction contract.

4.5 Pre-Construction Phase Services

4.5.1 Advertisement and receipt of bids will be performed by the Owner. Consultant will support with the following bid phase services:

- a. Attend pre-bid meeting including review of Owner prepared agenda and recording/preparation of meeting minutes for issuance as an addendum to the bid documents.
- b. Respond to bidder and supplier questions and where appropriate prepare addenda to clarify or amend the bid documents for issuance by the Owner.
- c. Review bids received and prepare a tabulation of bids, review the qualifications of the apparent low bidder and provide a recommendation of award of the construction project.
- d. Assist the Owner in awarding the contract including provision of conformed documents.

4.6 Construction Phase Services

4.6.1 Consultant will provide the following services during the construction phase:

- a. Facilitate a preconstruction meeting with the Owner and Contractor prior to the commencement of construction.
- b. Provide two (2) weekly inspections of the work in progress.
- c. Provide specialized inspections of well installation.
- d. Provide start up assistance and training services.
- e. Review submittals, pay requests and other information provided by the Contractor.

- f. Respond to RFI's from the Contractor.
- g. Facilitate monthly progress meetings and prepare meeting minutes.
- h. Attend testing for force mains and start-up of pump stations to include verification of controls and operational parameters.
- i. Inspect entire project limits to develop final "punch list" for Contractor.
- j. Verify close out procedures for the completed project.
- k. Provide record drawings.

ARTICLE 5

ADDITIONAL SERVICES

5.1 Additional Services not included in Basic Services that may be performed by Consultant or its Subconsultants at Owner's request pursuant to this Agreement are:

5.1.1 Providing fully detailed presentation models or professional artist's renderings.

5.1.2 Making major revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given by the Owner or are due to causes beyond the control and without the fault or negligence of the Consultant, including but not limited to Owner or contractor delays.

5.1.3 Preparing supporting data and other services in connection with a significant Owner-initiated change order, but only if Consultant can demonstrate that such services cause a direct increase in Consultant's cost of rendering its Basic Services hereunder.

5.1.4 Preparing to serve or serving as an expert witness for the Owner in connection with arbitration or legal proceedings unless the subject matter of the proceedings includes matters arising out of or related to the Consultant's or Subconsultant's performance of service with respect to the Project; however, preparing to serve or serving as a fact witness for the Owner in such proceedings or rendering testimony necessary to secure governmental approval of zoning or land use clearances for the Project shall not constitute an Additional Service.

5.1.5 Providing professional services made necessary by the default of a contractor.

5.1.6 Providing additional or extended services during the Construction Phase made necessary by (a) defective work of the contractor(s); (b) prolongation of more than sixty (60) days, provided the prolongation is not due to the fault or negligence of the Consultant, its employees, consultants or agents; or (c) default under the construction contract due to delinquency or insolvency.

5.1.7 Providing additional services and costs necessitated by special out-of-town travel required by the Consultant and approved in advance in writing by the Owner, other than visits to the Project and other than travel reasonably required to fully accomplish the Basic Services.

5.1.8 Attending special public hearings for the Project, other than those listed herein, which are called by the County Board of Commissioners.

ARTICLE 6

DURATION OF CONSULTANT'S SERVICES

6.1 Scheduling of Services

6.1.1 The Consultant's schedule for the performance of its activities shall be reduced to writing and submitted to the Owner for review and approval, ("Design Schedule"). As a part of the Design Schedule, the Consultant shall also prepare and submit to the Owner for review and approval a schedule of all known items of information, approvals or decisions to be furnished or made by the Owner, including the dates by which the Owner shall have all information necessary from the Consultant with respect to that item, approval or decision and the date by which the item of information, approval or decision should be communicated to the Consultant. The Owner shall always have a reasonable time within which to provide such item of information, approval or decision and shall not have any responsibility for any delay occurring by reason of the Owner's being unable, through no fault of the Owner, to supply such item of information, approval or decision. However, if after having a reasonable time to perform, any delay by the Owner in its obligations under the Design Schedule requires modification of the Design Schedule or a change to Consultant's Compensation under Article 7, the Owner shall be required to allow appropriate and reasonable modifications to the Design Schedule and/or Consultant's Compensation to adjust for said delay.

6.1.2 Should the Owner determine that the Consultant is behind the Design Schedule, it may require the Consultant to expedite and accelerate its efforts, including providing additional manpower and/or overtime, as necessary, to perform its services at no additional cost to the Owner.

6.1.3 The commencement date for the Consultant's Basic Services shall be the date of delivery to the Consultant from the Owner of a fully executed original of this Agreement.

6.2 Adjustments to the Schedule

6.2.1 If the Consultant's work on the Project is or will be delayed for more than thirty (30) days through no fault of the Consultant, or if the Owner increases or decreases the scope or size of the Project by ten percent (10%) of currently estimated Total Project Cost, the Consultant shall give prompt written notice to the Owner. Provided that such notice has been given, the Consultant may request in writing an adjustment in schedule which shall be granted by the Owner to the extent reasonable.

ARTICLE 7 CONSULTANT'S COMPENSATION

7.1 Compensation for Basic Services

7.1.1 Compensation for Basic Services shall include all compensation due the Consultant from the Owner for all services under this Agreement except for Additional Services.

7.2 Breakdown of Compensation for Basic Services

Compensation for Basic Services consists of the following compensation for the following separate categories of services.

7.2.1	Surveying Services	Lump sum fee of	\$	68,750.00
7.2.2	Hydrologic Analysis	Lump sum fee of	\$	115,300.00
7.2.3	Design Phase Services & Permitting	Lump sum fee of	\$	354,600.00
7.2.4	Pre-Construction Phase Services	Lump sum fee of	\$	10,400.00
7.2.5	Construction Phase Services	Lump sum fee of	\$	71,500.00
7.2.6	Emergency Pumping Facility/Design	Lump sum fee of	\$	27,900.00

7.3 Payment for Basic Services Rendered

7.3.1 Payments will be made monthly by the Owner within 30 calendar days of receipt of an invoice which is in form and substance acceptable to the Owner. In the event the Owner finds any part or parts of all or any portion of an invoice presented by the Consultant not to be acceptable, it shall identify to the Consultant the part or parts which are not acceptable and shall pay the part or parts of the invoice which are acceptable, if any. No deductions shall be made from the

Consultant's fees for basic services except in accordance with this Agreement or to reimburse the Owner for costs or expenses incurred or anticipated to be incurred for which the Consultant is liable.

7.3.2 If the Owner increases or decreases the scope of the Project by ten percent (10%) or more of the currently estimated Total Project Cost, the compensation for Basic Services shall be equitably adjusted.

7.4 Compensation for Additional Services

7.4.1 With respect to Additional Services performed by the Consultant or its Subconsultants in accordance with Article 5 or any Addendum or Amendment to this Agreement, the Consultant and/or its Subconsultants shall be compensated at the following hourly rates, unless the Owner and the Consultant otherwise agree in writing:

Albemarle & Associates, Ltd.

Principal (PE/PLS)	\$220.00 / Hour
Engineer (PE)/ Surveyor (PLS)/Planner (AICP)	\$185.00 / Hour
Civil Engineer/Project Manager/Project Planner	\$150.00 / Hour
Project Technician	\$125.00 / Hour
CADD Technician	\$100.00 / Hour
Administrative	\$ 80.00 / Hour

Edwin Andrews & Associates, P.E.

Professional Geologist	\$160.00 / Hour
Well Contractor	\$110.00 / Hour

Rummel, Klepper & Kahl, L.L.P.

Director-in-Charge	\$258.00 / Hour
Lead Discipline Engineer	\$232.00 / Hour
Project Manager	\$185.00 / Hour
Project Engineer/Sr. Scientist	\$137.00 / Hour
Staff Engineer/ Scientist	\$112.00 / Hour
CADD/GIS Technician	\$ 87.00 / Hour
Clerical	\$ 80.00 / Hour

Seaboard Surveying and Planning, Inc.

Professional Land Surveyor (PLS)	\$175.00 / Hour
Survey Crew	\$156.00 / Hour
CADD Technician	\$ 96.00 / Hour
Administrative	\$ 50.00 / Hour

Environmental Professionals, Inc.

Environment Consultant	\$185.00 / Hour
Administrative	\$ 50.00 / Hour

7.5 Reimbursable Expenses

7.5.1 Reimbursable expenses are in addition to the fees for Basic Services and Additional Services and shall not exceed an amount of \$17,000.00, and are for the following expenditures to the extent reasonable and actually incurred by the Consultant, its employees, or its Subconsultants with respect to the Project:

7.5.2 Mileage at a rate of \$0.56 per mile.

7.5.3 Lodging at the FY2022 Per Diem Standard Rate of \$96.00 per night.

7.5.4 Actual expenditures for postage, reproductions, photography, and long distance telephone charges directly attributable to this Project.

7.5.5 The actual cost of reproduction of plans and specifications excluding documents for exclusive use by the Consultant.

7.5.6 The actual cost of permit fees.

7.5.7 Neither the Consultant nor its Subconsultants shall be entitled to any mark-up on actual expenses which are incurred.

7.6 Accounting Records

7.5.1 Accounting records of the Consultant's compensation for Additional Services and Reimburseable Expenses pertaining to the Project shall be maintained by the Consultant and its Subconsultants in accordance with generally accepted accounting practices and shall be available for inspection by the Owner or the Owner's representatives at mutually convenient times for a period of three (3) years after issuance of the Certificate of Final Completion for the Project.

ARTICLE 8

RESPONSIBILITIES OF THE OWNER

8.1 Cooperation and Coordination

8.1.1 The Owner shall meet with the Consultant as necessary at mutually convenient times to provide information necessary to enable the Consultant to develop a detailed written analysis and complete needs summary of the Project.

8.1.2 The Owner shall examine documents submitted by the Consultant and shall make reasonable efforts to render decisions pertaining thereto no later than the dates specified in the schedule for such decisions described in Article 6.1.1.

8.1.3 The County Engineer shall be the Owner's Project Manager and shall act in the Owner's behalf and as its representative with respect to the Project and shall have the authority to render decisions and approve changes in the scope of the Project within guidelines established by the County Manager and the County Board of Commissioners and shall be available during working hours as often as may be reasonably required to render decisions and to furnish information.

8.2 Permits and Approvals

8.2.1 The Consultant shall secure in the name of the Owner and the Owner shall pay for all necessary permits, licenses, and approvals for the Project. The Owner shall reimburse the Consultant for the actual cost of permit fees in accordance with Section 7.5.6 of this Agreement. The Consultant shall provide the Owner with a schedule of all required approvals and of the dates by which application for such approvals must be made in order to avoid any risk of delay to the Project, prepare necessary application forms, present documents requiring approval by the Owner and submit documents with the Owner's approval to the appropriate approval agency. The Owner shall secure and pay for all necessary easements, assessments, and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

ARTICLE 9 INSURANCE

9.1 General Requirements

9.1.1 The Consultant shall purchase and maintain and shall cause each of its Subconsultants to purchase and maintain during the period of performance of this Agreement and for five years after issuance of a Certificate of Final Completion of the Project insurance for protection from claims under workers' or workmen's compensation acts; Comprehensive General Liability Insurance (including broad form contractual liability and complete operations, explosions, collapse, and underground hazards coverage) covering claims arising out of or relating to bodily injury, including bodily injury, sickness, disease or death of any of the Consultant's or Subconsultants' employees or any other person and to real and personal property including loss of use resulting thereof; Comprehensive Automobile Liability Insurance, including hired and non-owned vehicles, if any, covering personal injury or death, and property damage; and Professional Liability Insurance, covering personal injury, bodily injury and property damage and claims arising

out of or related to the performance under this Agreement by the Consultant or its agents, Subconsultants and employees.

9.1.2 The minimum insurance ratings for any company insuring the Consultant shall be Best's A-. Should the ratings of any insurance carrier insuring the Consultant fall below the minimum rating, the Owner may, at its option, require the Consultant to purchase insurance from a company whose rating meets the minimum standard.

9.2 Limits of Coverage

9.2.1 Minimum limits of insurance coverage shall be as follows:

INSURANCE DESCRIPTION	MINIMUM REQUIRED COVERAGE
· Worker's Compensation	Limits for Coverage A - Statutory State of N.C. Coverage B - Employers Liability \$500,000 each accident and policy limit and disease each employee
· Commercial General Liability	\$1,000,000 Each Occurrence \$2,000,000 Aggregate
· Automobile Liability Combined Single Limit	\$500,000
· Professional Liability	\$1,000,000 each claim and aggregate

9.2.2 All insurance policies (with the exception of Worker's Compensation and Professional Liability) required under this Agreement shall name the Owner as an additional insured party for the insurance.

9.3 Proof of Coverage

9.3.1 Evidence of such insurance shall be furnished to the Owner, together with evidence that each policy provides that the Owner shall receive not less than thirty (30) days prior written notice of any cancellation, non-renewal or reduction of coverage of any of the policies. Upon notice of such cancellation, non-renewal or reduction, the Consultant shall procure substitute insurance so as to assure the Owner that the minimum limits of coverage are maintained continuously throughout the periods specified herein.

9.4 Indemnity

9.4.1 The Consultant agrees to indemnify and hold harmless the Owner from all loss, liability, claims or expense, including reasonable attorney's fees, arising out of or related to the Project and arising from bodily injury including death or property damage to any person or persons to the extent caused by the negligence or misconduct of the Consultant except to the extent same are caused by the negligence or misconduct of the Owner. It is the intent of this provision to require the Consultant to indemnify the Owner to the fullest extent permitted under North Carolina law.

9.4.2 The Owner agrees to indemnify and hold harmless the Consultant from all loss, liability, claims or expense, including attorney's fees, arising out of or related to the Project and arising from bodily injury including death or property damage to any person or persons caused in whole or in part by the negligence or misconduct of the Owner except to the extent same are caused by the negligence or misconduct of the Consultant. It is the intent of this provision to require the Owner to indemnify the Consultant to the fullest extent permitted under North Carolina law.

9.5 Owner's Insurance Option

9.5.1 At any time during the performance of this Agreement, the Owner may, at its sole option, provide for itself, for the Consultant and for its Subconsultants any or all of the insurance coverage required under the Article.

9.5.2 If the Owner elects to provide such coverage it shall notify the Consultant in writing and provide to the Consultant such certificate or certificates of coverage as may be applicable.

ARTICLE 10

AMENDMENTS TO THE AGREEMENT

10.1 Changes in the Consultant's Basic Services

10.1.1 Changes in the Basic Services and entitlement to additional compensation or a change in duration of this Agreement shall be made by a written Amendment to this Agreement executed by the Owner and the Consultant. The Consultant shall proceed to perform the Services required by the Amendment only after receiving a fully executed Amendment from the Owner or a written notice from the Owner directing the Consultant to proceed, whichever is earlier.

10.2 Owner Changes

10.2.1 The Owner may, without invalidating this Agreement, make written changes in the Consultant's Basic Services or Additional Services of this Agreement by preparing and executing an Amendment to the Agreement. Within three (3) days of receipt of such an Amendment, the Consultant shall notify the Owner in writing of any change contained therein that the Consultant believes significantly increases or decreases the Consultant's services with respect to the Project and request an adjustment in compensation with respect thereto. If the Amendment significantly increases or decreases the Consultant's services, the Consultant's compensation may be equitably adjusted.

ARTICLE 11 **TERMINATION AND SUSPENSION**

11.1 Termination for Convenience of the Owner

11.1.2 This Agreement may be terminated without cause by either Party and for its convenience upon seven (7) days written notice to the nonterminating party.

11.2 Other Termination

11.2.1 After seven (7) days written notice to the other party of its material breach of the Agreement, this Agreement may be terminated by the noticing party, provided that the other party has not taken reasonable actions to remedy the breach.

11.3 Compensation After Termination

11.3.1 In the event of termination for the convenience of the Owner, the Consultant shall be paid that portion of its fees and expenses that it has earned up to the date of termination, plus five percent (5%) of its compensation for Basic Services earned to date or of its unearned compensation for Basic Services, whichever is less, less any costs or expenses incurred or anticipated to be unearned by the Owner due to errors or omissions of the Consultant.

11.3.2 In the event of termination by reason of a material breach of the Agreement by the Owner, the Consultant shall be entitled to the same compensation as it would have received had the Owner terminated the Agreement for convenience, and the Consultant expressly agrees that said

compensation is fair and appropriate as liquidated damages for any and all costs and damages it might incur as a result of such termination.

11.3.3 In the event of termination by reason of a material breach of the Agreement by the Consultant, the Consultant shall be paid that portion of its fees and expenses that it has earned to the date of termination, less any costs or expenses incurred or anticipated to be incurred by the Owner due to errors or omissions of the Consultant or by reason of the Consultant's breach of this Agreement.

11.3.4 Should this Agreement be terminated, the Consultant as provided under this Article 11, the Owner shall be granted, at no additional cost, ownership of all documents, drawings, and electronic data bases relating to the Project, including the ownership and use of all drawings, specifications, documents and materials relating to the Project prepared by or in the possession of the Consultant. The Consultant shall turn over to the Owner within seven (7) days and in good unaltered condition reproduces of all original drawings, specifications, documents, electronic data bases and materials. In the event of such termination, and should the Owner use such drawings for completion of the Project, the Owner shall, to the extent authorized by law, indemnify, defend, and hold the Consultant harmless from and against any cost, expense, damage or claim arising out of the loss of life, personal injury or damage to tangible property occasioned wholly or in part by any act or omission by the Owner, its Contractor(s), agents or employees in connection with Owner's use of such drawings, plans, specifications, renderings, models and other work provided as part of Basic Services and Additional Services. The Consultant specifically agrees to incorporate the provisions of this paragraph in all contracts for the services of Consultant's Subconsultants. The Owner agrees that the Consultant may retain one set of drawings for its records.

11.3.5 Should this Agreement be terminated at no fault of the Owner, the Owner shall, nevertheless, have the right to require the Consultant and/or its Subconsultants to perform such additional effort as may be necessary to providing professionally certified and sealed drawings and to delivering to the Owner such certified and sealed drawings with respect to any phase or item of the project, for which effort the Consultant shall be compensated in accordance with this Agreement.

11.4 Suspension

11.4.1 The Owner may order the Consultant in writing to suspend, delay or interrupt all or any part of its Services on the Project for the convenience of Owner.

11.4.2 In the event the Consultant believes that any suspension, delay or interruption of any or all of the Work on the Project, may require an extension of the duration of Basic Services or an increase in the level of staffing by Consultant, it shall so notify the Owner and propose an amendment of the project schedule for consideration of the Owner. Such amendment or extension shall be effective only upon the written approval of the Owner, which will not be withheld unreasonably. In the event the duration of Basic Services is extended or shortened or the level of staffing by the Consultant is increased or decreased, the Consultant's compensation for Basic Services may be equitably adjusted.

11.4.3 A suspension, delay or interruption of the Project shall not terminate this Agreement; provided, however, that if such suspension, delay or interruption causes a suspension of the Consultant's services for a period exceeding ninety (90) days, the Consultant's compensation for Basic Services may be equitably adjusted.

11.5 Waiver

11.5.1 The payment of any sums by the Owner under this Agreement or the failure of the Owner to require compliance by the Consultant with any provisions of this Agreement or the waiver by the Owner of any breach of this Agreement shall not constitute a waiver of any claim for damages by the Owner for any breach of this Agreement or a waiver of any other required compliance with this Agreement by the Consultant.

ARTICLE 12 ADDITIONAL PROVISIONS

12.1 Confidentiality

12.1.1 The Consultant shall use its best efforts not to disclose or permit the disclosure of any confidential information relating to the Project, except to its agents, employees and other consultants who need such confidential information in order to properly perform their duties relative to this Agreement.

12.2 Limitation and Assignment

12.2.1 The Owner and the Consultant each bind themselves, their successors, assigns and legal representatives to the terms of this Agreement. Neither the Owner nor the Consultant shall assign or transfer its interest in this Agreement without the written consent of the other.

12.3 Governing Law

12.3.1 This Agreement and the duties, responsibilities, obligations and rights of respective parties hereunder shall be governed by the laws of the State of North Carolina.

12.4 Dispute Resolution

12.4.1 Any and all suits or actions to enforce, interpret or seek damages with respect to any provision of, or the performance or non-performance of, this Agreement shall be brought in the General Court of Justice of North Carolina sitting in Currituck County, North Carolina, and it is agreed by the parties that no other court shall have jurisdiction or venue with respect to such suits or actions.

12.5 Extent of Agreement

12.5.1 This Agreement represents the entire and integrated agreement between the Owner and the Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and the Consultant.

12.6 Severability

12.6.1 If any provision of this Agreement is held as a matter of law to be unenforceable, the remainder of this Agreement shall be enforceable without such provision.

12.7 Ownership of Documents

12.7.1 All designs, drawings, specifications, design calculations, notes and other works developed in the performance of this agreement shall become the property of the Owner and may be used on any other project without additional compensation to the Consultant. The use of the documents by the Owner or by any person or entity for any purpose other than the Project as set forth in this Agreement shall be at the full risk of the Owner or such person or entity.

IN WITNESS WHEREOF, the parties, by and through their authorized agents, have hereunder set their hands and seal, all as of the day and year first above written.

County of Currituck, North Carolina

Donald I. McRee, Jr.
Interim County Manager/County Attorney

ATTEST:

Leeann Walton, Clerk to the Board

[COUNTY SEAL]

Albemarle & Associates, Ltd.

By: _____

Its: _____

ATTEST:

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Sandra Hill
Finance Officer



Currituck County Agenda Item Summary Sheet

Agenda ID Number – (ID # 3266)

Agenda Item Title: Discussion of service contract with Corolla Volunteer Fire and Rescue Squad Inc.

Submitted By: Samantha Evans – County Manager

Presenter of Item:

Board Action: Action

Brief Description of Agenda Item:

Discussion of service contract with Corolla Volunteer Fire and Rescue Squad Inc.

Is this item regulated by plan, regulation or statute?

Manager Recommendation:

STATE OF NORTH CAROLINA
COUNTY OF CURRITUCK

CONTRACT FOR FIRE PROTECTION AND RESCUE SERVICES

THIS AGREEMENT, effective as of July 1, 2021, by and between the **COUNTY OF CURRITUCK**, a body politic and corporate the State of North Carolina (the “County”), and **COROLLA FIRE AND RESCUE SQUAD, INC.**, a non-profit corporation organized pursuant to the laws of the State of North Carolina (“CFRS”);

RECITALS

WHEREAS, CFRS is an incorporated non-profit corporation formed pursuant to Chapter 55A of the North Carolina General Statutes for the purposes of providing fire protection services;

WHEREAS, Chapter 69, Article 3A of the North Carolina General Statutes authorizes counties to provide for fire protection within a fire protection district by contracting with an incorporated non-profit volunteer fire department and, pursuant to said statute, a fire protection district has been previously established within the boundaries of Poplar Branch Township which acts to utilize the services of a incorporated non-profit volunteer fire department (the “District”);

WHEREAS, the County and CFRS have previously entered into an annual contract which acted to commission CFRS to provide fire protection and rescue services within the Poplar Branch Township fire protection district, as well as establishing the rights, obligations and liabilities of the aforesaid parties;

WHEREAS, effective July 1, 2018, the Board of Commissioners of the County have established a tax service district within the boundaries of Poplar Branch Township to provide a source of revenue to fund the salaries and benefits of career firefighters employed by the County to provide, support to CFRS in fire protection and rescue services through an auto-aid arrangement (“Auto-Aid Department”); and

WHEREAS, the County and CFRS now wish to enter into a contract which acts to commission CFRS to provide fire protection and rescue services working within the regime of an Auto-Aid Department, in which CFRS and career firefighters are jointly responsible for fire suppression responsibility;

WHEREAS, CFRS has secured equipment, land and buildings for the operation of Fire Stations within the District;

WHEREAS, The County and CFRS desire to enter into this Agreement for CFRS to furnish fire protection and rescue services for and within the described District.

AGREEMENT

NOW, THEREFORE, for and in consideration of the promises and covenants contained in this contract and other valuable consideration, the County and CFRS agree as follows:

1. **Definitions:** The following definitions shall apply throughout:
 - a. “County Manager or his designee” shall mean the individual hired by Currituck County to perform the duties provided in North Carolina General Statute 152A-234.
 - b. “CFRS Fire Chief” shall mean the individual serving as the fire chief of CFRS.
 - c. “CCFEMS” shall mean the Currituck County Fire & Emergency Medical Services.
 - d. “FEAB” shall mean the Fire & EMS Advisory Board created to advise the County Board of Commissioners on matters pertaining to the provision of fire protection and emergency medical services within the County.
2. **Term.** The term of this contract shall be from July 1, 2021 to June 30, 2022 (the “Term”).
3. **Consideration.** For and in consideration of CFRS’ services herein, the County has appropriated a budgetary amount in the general fund in the amount of _____ hereafter referred to as “CFRS Budget”.
 - a. The County reserves the right to amend CFRS Budget during the Term, provided that prior written notice is provided to CFRS.
 - b. The County shall maintain all bookkeeping records pertaining to the CFRS Budget and, upon submission of invoices from CFRS to the County Finance Department, shall pay CFRS invoices from funds allocated to the CFRS Budget. Invoices will be paid on the schedule published on the County’s website and the County Finance Department will issue monthly reports to CFRS reflecting prior month expenditures. Upon request, CFRS will provide the County with a financial report showing year-to-date spending against budget for each budget line item.
 - c. None of the budgeted amount shall be paid in cash directly to CFRS, nor does CFRS maintain a cash reserve of any taxpayer funds in a bank account maintained by CFRS or an affiliate of CFRS.
 - d. CFRS shall provide invoices, purchase orders and other necessary supporting documentation to County Finance prior to the payment of any invoices. Upon request, CFRS shall furnish the County with any additional financial records required to permit the County to determine the appropriate use and expenditure of public funds by CFRS. Such request shall be fulfilled promptly but in no event more than ten (10) days of the County’s request.
 - e. The County and CFRS agree that, because County Finance acts a “paying agent” for all CFRS expenses paid using public funds, there is not requirement that

CFRS prepare financial statements or procure an external audit by a Certified Public Accounting firm.

4. ***Services Furnished by CFRS.*** CFRS, with the support of the County under the Auto-Aid Agreement between the parties, shall provide fire protection and rescue services within the District as contracted for by the County's Board of Commissioners and shall provide the necessary equipment, volunteer personnel, and supplies necessary to the provision of fire protection and services within the District. CFRS shall furnish fire protection to all persons and property located In the District in an efficient and workmanlike manner.
5. ***Financial Transparency.*** At each Monthly Business Meeting of the Fire Department, the CFRS Treasurer, or his/her designee, shall present a financial report to the full membership of CFRS disclosing the year-to-date spending against budget for each line item within the budget. Upon request, this report will be provided to County Finance for inspection and review. The parties acknowledge that no funds provided by the County pursuant to this Agreement reside in a CFRS bank account.
6. ***Decision Making Process Open to Public.***
 - a. To ensure public trust, CFRS agrees that both its Board of Directors meetings and Monthly Business Meetings, as described in the Bylaws of CFRS, shall be open to the public. The schedule for said meetings shall be posted on CFRS' website and notifications will be placed on CFRS' social media pages noting the day, date, time and location of the meetings. The parties agree that public notice of a Board of Directors meeting called in the midst of a declared disaster or emergency to make decisions required to respond to that disaster or emergency is not practical, and therefore not required.
 - b. To ensure the ability of the public to review CFRS' decision-making processes and spending decisions, the Fire Department agrees to take minutes of all meetings that would enable a person not in attendance to have a reasonable understanding of what happened at the meeting, and to make minutes of those meetings available to the public by the time of CFRS' next Board of Directors meeting or Monthly Business Meeting of the membership, as applicable.
 - c. Notwithstanding CFRS' reliance on public funds, there are matters on which a Board of Directors must act that are non-public in nature. The County and CFRS agree that, in the course of a public meeting, the Board of Directors may decide to close the meeting under the following circumstances:
 - i. To consult with an attorney (to preserve attorney-client privilege) for an actual claim, judicial action, mediation, arbitration, etc. (does not include closing a meeting for "legal advice" or general legal information);
 - ii. To discuss purchase, exchange or lease of real property;

- iii. To discuss the terms of an actual or proposed employment contract;
- iv. To deal with personnel matters concerning a member and/or employee (does not include general personnel policy discussion/action);
- v. To request (or hear a report on) an investigation of alleged criminal misconduct directly concerning CFRS, a member or employee;
- vi. To make decisions on matters other than those that directly or indirectly involve public funds;
- vii. CFRS agrees to keep an agenda and minutes for any closed meeting or part of a meeting, which shall be made available for public examination at the next Board of Directors meeting, except for minutes of closed sessions dealing with criminal matters, personnel matters, sessions concerning matters other than those that directly or indirectly involving public funds, and, unless the Board decides otherwise, matters of attorney-client privilege. CFRS agrees that the agenda and minutes of any closed meeting or part of a meeting shall meet the same standards as minutes of all public meetings and shall include a statement of the purpose of conducting the meeting in closed session.
- viii. The County and CFRS further agree that a “meeting” exists for purposes of this section when a majority of CFRS Board of Directors members get together physically, or via conference call or other electronic means for the purpose of transaction business, and that a social gathering of CFRS Board of Directors members at which business is not (and will not be) transacted is not a “meeting” for purposes of this section.
- ix. Notwithstanding the provisions of this Section, the County shall have access to all meeting agenda(s) and minutes, including any closed meeting or part of a meeting upon request; provided, however, any minutes relating to the compensation of CFRS employees or independent contractors which are paid with public funds provided by the County under this Agreement shall not be made available to the County.

7. ***Non-Compliance by CFRS.*** If the County has a reasonable belief that CFRS has violated any provision of this Agreement, the County will provide the CFRS written notice of the possible noncompliance and initiate an audit to verify compliance. If the County determines that CFRS has failed to render the fire protection and services as provided in this Agreement or has otherwise operated in a manner that violates the provisions of this Agreement, then the County shall give CFRS ninety (90) days advance written notice that the funds allocated are subject to suspension and shall additionally provide a list of the improvements needed for compliance. If during the ninety (90) day period, CFRS makes improvements satisfactory to the County, no suspension shall occur. During the ninety (90) day period, CFRS is not relieved of its responsibility to provide fire protection and emergency services in a manner otherwise consistent with the terms of this Agreement, then the County may suspend payment of any and all invoices provided by CFRS to the County for payment pursuant to the budget.

8. ***Authority to Maintain Delivery of Services.*** In the event that CFRS's Board of Directors determines that CFRS is unable to reliably deliver the services described in this Agreement, for reasons including, but not limited to, resignation or withdrawal of volunteers, the resignation of the CFRS Fire Chief or other withdrawal or loss of ability to deliver services, CFRS' Board of Directors shall immediately notify the County at which time CFRS authorizes the County or its agents to use the stations and equipment used to provide fire protection and EMS services within the District as necessary to maintain the delivery of fire and EMS services within the boundaries of the District (to the extent that CFRS exercises operational control and/or ownership interest over the facilities and equipment), so that an interruption of CFRS's ability to deliver fire services will not interfere with the standards of fire protection services provided for in this Agreement. Should such use of the facilities and equipment currently used for fire protection within the District become necessary, upon the request of the CFRS Board, the County and the CFRS Board will jointly select an independent third-party trustee who will regularly evaluate the County's use of the facilities, equipment and resources within the District on behalf of CFRS. During the time that CFRS is unable to provide services, CFRS' Board shall cooperate with the County. The County's Board of Commissioners, in consultation with the independent third-party trustee, shall determine if CFRS is able to resume delivery of reliable service.
9. ***Financial Mismanagement.*** CFRS agrees that, if its financial records are judged to be unsuitable for the establishment of a budget by the County's Finance Director, CFRS' Board will notify the County and the CFRS Board and County Finance will determine which steps are necessary to rectify the deficiency. If CFRS is unable to rectify the deficiency, the County and the CFRS Board of Directors may jointly name a trustee who will assume responsibility for management and financial decision-making for the Fire Department until such time as the County and the CFRS Board agree that appropriate financial control processes have been implemented such that CFRS' financial records are suitable for the establishment of a budget.
10. ***Composition of Board of Directors.*** CFRS agrees that as long as the Agreement of subsequent renewals of an existing Agreement are in effect, the following restrictions shall apply to the Board of Directors:
- a. The CFRS Fire Chief shall not serve as a member of the CFRS Board of Directors; the Fire Chief or the Assistant Fire Chief shall attend all CFRS Board of Directors meetings and provide such necessary input as the Board of Directors requires.
 - b. CFRS' Board of Directors shall not be comprised with a majority of directors who are a compensated current employee of CFRS or the County. "Compensated current employee" shall be defined as a current employee of CFRS or the County paid a salary or hourly wage for services provided to CFRS or the County. This

shall not include volunteers who receive stipends or reimbursements; or employees paid an hourly wage pursuant to any contract with a duration of less than thirty (20) days per calendar year.

- c. No family member of (1) the CFRS Fire Chief or, (2) the President of the CFRS Board of Directors shall serve as a member of the CFRS Board of Directors. “CFRS Fire Chief” shall mean the individual elected by the CFRS membership to serve as Fire Chief of the department. “Family member” shall be defined as a parent, spouse, child, or sibling of the member, including a parent, child, or sibling of the member’s spouse. CFRS certifies that no family member of either the CFRS Fire Chief or President of the CFRS Board is currently a member of the CFRS Board of Directors.

11. ***CFRS’s Use of Funds.*** CFRS agrees that it will not request County Finance to pay any expense on behalf of CFRS that is inconsistent with the budget provided by the County pursuant to this Agreement. The annual budget may be amended by the CFRS Board of Directors within the approved total appropriations made available by this Agreement, provided that all appropriations must be used for furnishing fire protection within the District, and amendments providing for any expenditure that establishes a new operating expense that will extend beyond the current fiscal year shall require the written consent of the County and any amendment to the budget regardless of whether it extends beyond that current fiscal year shall be subject to the following provisions:

- a. CFRS shall notify the County’s Chief, Fire & EMS, of the addition of any full- or part-time positions funded by appropriations hereunder.
- b. CFRS shall notify the County in writing within thirty (20) calendar days of;
 - i. Changes in the CFRS Board of Directors; or
 - ii. Changes in key personnel, including, but not limited to: chief executive officer, president, executive director, finance director, or equivalent;
- c. CFRS agrees to utilize a formal bidding process for the following purchase:
 - i. Equipment, apparatus, supplies and/or materials with a unit cost of \$30,000 or more; and/or
 - ii. Construction or repair to buildings (including design and other activities related thereto) at a cost of \$100,000 or more
- d. CFRS agrees to utilize an informal bidding process for the following purchases:
 - i. Equipment, apparatus, supplies and/or materials with a unit cost between \$5,000 and \$29,000; and/or
 - ii. Construction or repair of buildings (including design and other activities related thereto) at a cost of from \$5,000 to \$99,000.

- e. CFRS and the County agree that purchase via state contract or “add-on” purchase to a contract competitively bid by another department party to this Agreement, or by another North Carolina unit of government meets the requirements of this section.
 - f. CFRS and the County agree that, in the event of a bona fide emergency, CFRS may proceed with emergency purchases without seeking formal or informal bids as described herein.
 - g. CFRS agrees to give the County ten (10) business days advance notice in writing of any financial transaction which shall require CFRS to create a security interest in favor of a third party in real or personal property wholly or partially acquired with County funds. Security interest shall be defined as any agreement or act that gives the beneficiary of the security interest preferential rights in the disposition of the secured asset, including but not limited to a mortgage, charge, pledge, or lien.
 - h. CFRS agrees to promptly provide the County, at any time during the fiscal year, with satisfactory documentation with respect to CFRS requests for the payment of funds by the County on CFRS’ behalf. The parties acknowledge that there are no monies provided hereunder that reside in a bank account maintained by CFRS or an affiliate of CFRS.
 - i. CFRS agrees that it shall not request that the County pay any penalties or fines on CFRS’ behalf without the prior approval of the County Manager, or his/her designee.
- 12. CFRS’ Budget Preparations.** CFRS agrees that its budget preparation and presentation shall be based upon the County’s “chart of accounts” which provides accurate documentation of all of its receipts and disbursements of amounts allocated under the budget hereunder. CFRS shall make its proposed budget available to the public upon request. As part of every annual budget submission, CFRS shall identify the name and rank of each employee paid with County funds that leaves employment with CFRS and the name of each new hire employee paid with County funds. The modified budget form provided by the County shall incorporate a request for this information. As part of every annual budget submission, CFRS shall disclose any existing debt it may have and any arrangements for repayment. CFRS certifies that it has no “existing debt”, defined as any legally enforceable secured or unsecured obligation to pay money.
- 13. Insurance.** CFRS shall obtain and keep in force during the term of this Agreement and any subsequent renewals of this Agreement the following minimum insurance coverage, annually providing the County with a certificate of insurance; provided, however, that such insurance may be provided under a blanket policy procured by the County covering all of the Volunteer

Fire Departments in the County. All required insurance shall be procured from insurance companies licensed to do business in North Carolina with a Best's Insurance Guide Rating of A- and a financial size category of no less than VII or the Volunteer Safety Workers' Compensation Fund owned and operated by the State of North Carolina. Coverage shall be maintained continuously during the term of this Agreement.

- a. Worker's Compensation: Coverage A – Statutory – State of North Carolina. Coverage B – Employers Liability - \$100,000 each claim. CFRS shall participate in the North Carolina Volunteer Safety Worker's Compensation Fund.
- b. Comprehensive General Liability, Including Errors and Omissions: Coverage with minimum limits of \$1,000,000.00 per occurrence combined single limit for bodily injury liability and property damage liability.
- c. Business Auto Policy: Coverage with minimum limits of \$1,000,000.00 per occurrence combined single limit for bodily injury liability and property damage liability. That shall include owned vehicles, hired and non-owned vehicles and employee non-ownership.
- d. Management Liability/Directors and Officers Liability: Coverage with minimum limits of \$1,000,000.00 per claim and \$2,000,000.00 aggregate.
- e. Umbrella Liability: Coverage with limits of \$2,000,000.00. Coverage shall be excess of the underlying auto liability, employer's liability, general liability including Errors and Omissions liability. There shall not be any "drop down deductibles" in areas where underlying coverage is not required but the Umbrella Policy provides coverage.
- f. The County shall be named as an "additional insured" under the Comprehensive General Liability policy, Business Auto Policy, Management Liability/Directors and Officers Liability, and Umbrella Coverage. Any policy insuring a vehicle owned by the County shall name the County as an Additional Insured Lessor and as a Loss Payee.

14. **Insurance Services Office, Inc. Rating.** CFRS shall make a good faith effort to maintain its current rating, or better, with the North Carolina Department of Insurance, and Insurance Services Office, Inc., as well as its present nonprofit corporation status pursuant to Chapter 55A of the North Carolina General Statutes. The Fire Department shall continuously comply with all applicable laws, ordinances and regulations. CFRS shall continuously comply with all applicable laws, ordinances and regulations. CFRS shall continuously comply with all applicable laws, ordinances and regulations. The CFRS bylaws shall have reasonable provisions enabling citizens of the District to participate in its affairs, as determined necessary by the CFRS Board of Directors.

15. ***Standards of Performance.*** Under its Auto-Aid arrangement with the County, CFRS shall provide fire protection and rescue services in a manner so as to meet the requirements of and comply with rules and regulations of the North Carolina Department of Insurance, Insurance Services Office, Ind., Article 11, Chapter 153A of the North Carolina General Statutes, Article 14, Chapter 160A of the North Carolina General Statutes, and other pertinent federal, state and County laws, regulations and standards. Through participation with the County Fire and Emergency Medical Services Advisory Board, CFRS agrees to participate in the development and implementation of countywide fire services system performance standards and the development of a plan to develop standards and specifications for purchases of apparatus and equipment by the County.
16. ***Relationship of the Parties.*** CFRS, including any officer, employee, or agent of CFRS is an independent contractor of the County and none of these shall be considered employees of the County. The relationship between the parties shall be limited to the performance of this Agreement in accordance with its terms. The County shall not be responsible for any of the CFRS's acts or omissions. Neither CFRS, nor any officer, employee, or agent of CFRS shall be deemed an officer, employee, or agent of the County. No liability for benefits, such as workers compensation, pension rights, or other provisions shall arise out of or accrue to any party, its officers, agents, or employees as a result of this Agreement or its performance.
17. ***Control of Stations, Apparatus and Equipment.*** The CFRS Fire Chief shall have operational control of over the fire stations, apparatus and equipment owned (or jointly-owned) by CFRS or its affiliates. The County agrees that it will not remove any fire apparatus owned or jointly-owned by CFRS from the District and relocate to another fire protection district within the County; provided, however, that temporary use by another volunteer fire department or fire district may be permitted if approved by written agreement through the CFRS Fire Chief and a majority of the CFRS Board of Directors.
18. ***Access to and Use of Facilities.*** CFRS represents that it has the authorization and approval of the owner of the fire stations, CFRS Real Estate, LLC, so as to permit the County to house career firefighter/EMT's and County equipment and supplies at the stations within the District as necessary for the provision of fire protection and emergency medical services and that such access and use shall be provided at no additional cost to the County. During the Term, CFRS agrees make said stations, and apparatus and equipment owned or partially owned by CFRS, available to County firefighter/EMS personnel providing support to CFRS under its Auto-Aid Agreement with the County. To the extent that it does not interfere with contractual responsibilities hereunder, CFRS will make the stations available for use for public functions by bona-fide, non-profit civic associations and homeowner associations.
19. ***Group Purchasing.*** CFRS agrees to cooperate with County efforts to standardize apparatus, equipment, insurance and supplies and to participate in group purchasing efforts; provided, however, the parties recognize that CFRS, due to its location in a marine environment, may

have special needs that require it to acquire specific equipment not conducive to group purchasing.

20. **Dissolution.** If CFRS is dissolved pursuant to the provisions of the North Carolina General Statutes, the assets of CFRS (including all buildings and equipment) that were funded by tax revenue shall become the property of a similar entity organized for similar purposes as provided by Chapter 55A of the North Carolina General Statutes. This may include the County so long as said buildings and equipment remain dedicated to fire protection and rescue services within the Poplar Branch Township.
21. **Non-Assignability.** This Agreement may not be transferred, assigned, or subcontracted by the CFRS without the written consent of the County.
22. **Termination.** This Agreement may be terminated by either party with or without cause upon advance written notice to the other party, serviced upon the other party by certified mail at least ninety (90) days prior to termination.
23. **Reservation of Rights.** The County reserves the right to provide the highest level of fire protection and emergency services possible, subject to the availability of funding.
24. **No Waiver.** Failure of the County to enforce any of the provisions of this Agreement at any time, or to request performance by CFRS pursuant to any of the provisions of this Agreement at any time shall in no way be construed as a waiver of such provisions, nor in any way affect the validity of this Agreement, or any part thereof, or the right of the County to enforce each and every provision. In the event that there is disagreement between the County and CFRS as to the meaning and/or applicability of any section of the Agreement, the County and CFRS agree to select and share the cost (if any) of the services of a trained mediator to mediate the disagreement prior to resorting to legal process.
25. **Amendments.** Any amendment to this Agreement shall be made in writing and signed by both parties in order to be effective.
26. **No Third Party Beneficiaries.** This contract is not intended for the benefit of any third party. The rights and obligations contained herein belong exclusively to the parties hereto, and shall not confer any rights or remedies upon any person or entity other than the parties hereto.
27. **Entire Agreement.** The terms and provisions herein contained constitute the entire agreement by and between the County and CFRS and shall supersede all previous communications, representation or agreement, either oral or written between the parties hereto with respect to the subject matter hereof; except, that the paragraph shall not be construed to supersede and existing and applicable Mutual Aid Agreements.

28. **Notices.** All notices, reports, records, or other communications which are required or permitted to be given to the parties under the terms of this Agreement shall be sufficient in all respects if given in writing and delivered in person, by confirmed facsimile transmission, by overnight courier, or by registered or certified mail, postage prepaid, return receipt requested, to the receiving party at the following address:

If to Currituck County:

Currituck County Manager

If to CFRS:

President, Corolla Fire and Rescue Squad, Inc.,

29. ***Governing Law.*** The Parties acknowledge that North Carolina law shall govern this Agreement.
30. ***Severability.*** If any provision of this Agreement shall be determined to be unenforceable by a court of competent jurisdiction, such determination will not affect any other provision of this Agreement.
31. ***Counterparts.*** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original.
32. ***No Waiver of Sovereign Immunity.*** The County and CFRS agree that nothing herein shall be construed to mandate purchase of insurance by the County pursuant to N.C.G.S. 153A-435 or to in any other way waive the County's defense of sovereign or governmental immunity from any cause of action alleged or brought against the County for any reason If otherwise available as a matter of law.
33. ***Effective Date.*** This Agreement shall be effective as of July 1, 2021.

IN TESTIMONY WHEREOF, the County of Currituck has caused this instrument to be signed in its name by the County Manager and Corolla Fire and Rescue Squad, Inc. has caused this instrument to be signed in its name by its President and attested by its Secretary, and its corporate seal hereto affixed, all by authorization of its Board of Directors duly given.

ATTEST
CURRITUCK

COUNTY OF

ATTEST
RESCUE SQUAD, INC.

COROLLA FIRE AND

President

Attachment: 2021-22 CFRS Fire Contract (Corolla Volunteer Fire Contract)

- Coates' Canons: NC Local Government Law Blog - <http://canons.sog.unc.edu> -

Accountability Requirements for Certain Entities that Receive Appropriations from Local Governments

Posted By [Kara Millonzi](#) On September 7, 2012 @ 12:38 PM In [Finance & Tax](#) | [No Comments](#)

As discussed in a previous [post](#) ^[1], local governments have broad authority to appropriate monies to private entities (including nonprofits, corporations, associations, and individuals). The monies, however, must be expended by the private entities only on projects, services, or activities that the local government could have supported directly. In other words, if a municipality or county has statutory authority to finance a particular program, service, or activity, then it may give public monies to a private entity to fund that program, service, or activity. But a municipality or county may not grant public monies to any private entity, including a nonprofit agency or other community or civic organization, if the monies ultimately will be spent on a program, service, or activity that the government does not have statutory authority to fund directly.

According to the North Carolina Supreme Court, a unit's governing board is responsible for ensuring that any funds appropriated to a private entity are spent for a statutorily authorized public purpose. See *Dennis v. Raleigh*, 253 N.C. 400 (1960). How does a local government satisfy this oversight requirement? Generally, a local governing board has much discretion in establishing accountability criteria for grantees. Effective October 1, 2012, however, the General Assembly will require certain entities that receive public funds—namely nonprofit corporations—to comply with specified transparency requirements.

Specifically, **S.L. 2012-169** ^[2] requires a nonprofit corporation that receives over \$5,000 of public funds (from a local government, the State, or the federal government) within a fiscal year in grants, loans, or in-kind contributions, to provide the following information upon written request from any member of the public:

- (1) The nonprofit's latest financial statements. The financial statements must include a balance sheet as of the end of the fiscal year and statement of operations for that year. They also must contain "details about the amount of public funds received and how those funds were used."
- (2) The nonprofit's most recently filed Internal Revenue Service (IRS) Form 990, Form 990-EZ or a copy of its Form 990-N submittal confirmation. A nonprofit may redact information not required for public disclosure pursuant to 26 U.S.C. § 6104(d)(3). Alternatively, a nonprofit may satisfy this requirement if it posts this information on its website or if another entity posts the information as part of a database of similar documents. The information must be accessible by the general public without charge. Also, if another entity maintains the information, the nonprofits must include a link to the other entity's website on its own website.

The act exempts a few entities from disclosing this information because they already are required to report it to a state agency—(1) nonprofits required to report to the NC Medical Care Commission; (2) nonprofits required to report to the Local Government Commission; and (3) certain private colleges required to report to the State. These entities must provide information on their public websites about how to access the information, though.

In addition to these new requirements, **G.S. 159-40** ^[3] allows a city or county that appropriates at least \$1,000 in any fiscal year to a nonprofit entity to require that the nonprofit "have an audit performed for the fiscal year in which the funds are received. . . ." and file a copy of that audit with the local government. There are certain entities that are exempt from this requirement, including volunteer fire departments, rescue squads, and ambulance squads. A local government still may require these entities (and all other private entities and individuals that receive public funds) to provide an accounting of how the monies are spent and to comply with other requirements as a condition of receiving the funds. These

Attachment: General Assembly doc (Corolla Volunteer Fire Contract)

requirements should be spelled out clearly in a contractual agreement between the local government and the grantee.

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URL to article: **<http://canons.sog.unc.edu/?p=6837>**

URLs in this post:

[1] post: **<http://canons.sog.unc.edu/?p=2632>**

[2] S.L. 2012-169:

<http://www.ncga.state.nc.us/Sessions/2011/Bills/House/PDF/H572v6.pdf>

[3] G.S. 159-40:

http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_159/G-40.html

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Attachment: General Assembly doc (Corolla Volunteer Fire Contract)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SESSION LAW 2012-169
HOUSE BILL 572

AN ACT TO PROVIDE GREATER ACCOUNTABILITY FOR NONPROFIT ENTITIES
THAT RECEIVE PUBLIC FUNDING.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2 of Article 16 of Chapter 55A of the General Statutes is amended by adding a new section to read:

"§ 55A-16-24. Financial statements for the public.

(a) Notwithstanding any provisions in the articles of incorporation or bylaws, a corporation that receives over five thousand dollars (\$5,000) of public funding within a fiscal year, including the amount of grants or loans and the value of any in-kind donations, from a local government, the State, or the federal government shall provide its latest annual financial statements upon written demand from any member of the public. The statements shall be substantively similar to those required under G.S. 55A-16-20 but shall contain additional details about the amount of public funds received and how those funds were used. Additionally, a corporation that receives public funding shall provide, upon written demand from any member of the public, a copy of its most recently completed and filed Internal Revenue Service Form 990 or Form 990-EZ, except of any information not required for public disclosure pursuant to 26 U.S.C. § 6104(d)(3), or a copy of the message confirming the corporation's submission of Internal Revenue Service Form 990-N. A corporation may comply with the provisions of this section by maintaining on its public Web site a financial report as described in this section and a copy of its most recent Internal Revenue Service Form 990, Form 990-EZ, or Form 990-N submission confirmation or by having such materials posted, as part of a database of similar documents of other tax-exempt organization, on a Web site established and maintained by another entity, provided that the entity does not charge a fee to access the information and provided that the corporation provides a link on its public Web site to the Web site maintained by the other entity.

(b) Exceptions. – The following corporations already required to report information shall not be subject to subsection (a) of this section, but shall provide information on their public Web site to whom the corporation reports its information and how to access that information:

- (1) A corporation required to report to the North Carolina Medical Care Commission of the Department of Health and Human Services.
- (2) A corporation required to report to the Local Government Commission of the Department of State Treasurer.
- (3) A private college that meets the definition of "institution" under G.S. 116-22 and is required to report to the State under G.S. 143C-6-23."



SECTION 2. This act becomes effective October 1, 2012, and applies to nonprofit corporations receiving public funding in the form of grants or loans on or after that date.
In the General Assembly read three times and ratified this the 2nd day of July, 2012.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 4:38 p.m. this 12th day of July, 2012

Attachment: General Assembly doc (Corolla Volunteer Fire Contract)

Bob,

In an effort to get a fire contract in place that I think both meets our mutual needs and which fits CFRS's unique situation (i.e., Auto-Aid Agreement with County firefighters & the county directly pays all bills instead of providing a pot of money), attached is a proposed contract which incorporates virtually all of the provisions of the County's standard fire contract.

I spoke with Paul this morning and he recommended that I forward it to you.

As you may be aware, CFRS has been working for the last 4 months on obtaining a FEMA grant that would enable us to obtain 90% of the cost of a new "elevated waterway" truck to replace our 1991 platform/ladder truck (the other 10% would come from CFR Foundation). The grant-writing company we are working with has indicated that we are a shoe-in for this grant; however, we will be knocked out of the box without a contract in place by the end of this month. (We just lost a \$25,000 grant for that reason). A replacement for our current ladder truck (necessary because nearly every structure in Corolla is 3 stories) would be in the range of \$1.5 million. So, this would take a huge burden off of the County, particularly given the aging fleet of fire apparatus within the County and the dearth of funds currently set aside for replacement.

Where the contract deviates from the standard county contract is where the application of that contract to CFRS is a matter of "square peg, round hole." First, as County Finance has, for the last 12 years, paid all of CFRS' bills directly, the "financial control" provisions make no sense. CFRS stopped producing standard financial statements and obtaining an outside audit once the County took over as "paying agent." As such, County Finance essentially audits each expenditure before a check is cut and CFRS holds no "public money" that anyone could abscond with. Secondly, all of the provisions relating to Performance Standards are irrelevant given the paid crews at both stations.

The other real issues are station access and what happens on dissolution of CFRS.

With respect to station access, I believe that we had proposed 4 years ago that the CFR organization was willing to provide the necessary station access. The stations are owned by CFR Real Estate, LLC which is, in turn, owned by CFR Foundation. We would be happy to make both of these entities party to a station access agreement, even though I think Real Estate LLC would be sufficient. I would note that CFR has done nothing over the last 4 years but implement initiatives to make Whalehead and Pine Island stations more accommodating for the paid crews. What we are unwilling to do is make Foundation and Real Estate LLC parties to the fire contract.

With respect to dissolution, we aren't willing to agree that the County gets all of those funds on dissolution as this is the Community's money. I think what's more relevant presently, is that CFRS is not going defunct during the current fiscal year. CFRS has a superior ISO rating for a rural fire department, a dedicated fire chief under contract, and 30 certified volunteers on the NCFCS active roster with a now average age of 58. Additionally, there is no risk this year that the CFR organization is going to try to shelter assets in an affiliate; nonetheless, I have inserted some "access" and "anti-sheltering" provisions in the proposed contract to hopefully serve as a "stop gap".

In any event, as time is of the essence, our proposal is that we enter into a contract for now that *only applies to the 2021-22 fiscal year* (instead of the 4 year terms utilized in the County's standard fire contract), given that it will likely take some time for the parties to agree to specific contractual provisions dealing with access and what happens upon dissolution,.

At the end of the day -- and aside from leaving almost \$1 million of grant money on the table which would help protect \$3.5 Billion of real estate - does Currituck County feel better protected this fiscal year having no contract with CFRS at all?

We greatly appreciate anything you can do to move this forward as I believe it would be greatly beneficial to Currituck County. Sorry for the long e-mail.

All the best,

AI



Currituck County Agenda Item Summary Sheet

Agenda ID Number – (ID # 3265)

Agenda Item Title: Budget Amendments

Submitted By: Samantha Evans – County Manager

Presenter of Item:

Board Action: Action

Brief Description of Agenda Item:

Is this item regulated by plan, regulation or statute? No

Manager Recommendation:

Number

20220032

BUDGET AMENDMENT

The Currituck County Board of Commissioners, at a meeting on the 1st of November 2021, passed the following amendment to the budget resolution for the fiscal year ending June 30, 2022.

<u>Account Number</u>	<u>Account Description</u>	Debit	Credit
		<u>Decrease Revenue or Increase Expense</u>	<u>Increase Revenue or Decrease Expense</u>
12541-554003	Insurance - Moyock VFD	\$ 3,035	
12390-499900	Appropriated Fund Balance		\$ 3,035
		<u>\$ 3,035</u>	<u>\$ 3,035</u>

Explanation: Fire Services (12541) - Increase appropriations due to increase in insurance premuim for Moyock Volunteer Fire Department.

Net Budget Effect: Fire Services Fund (12) - Increased by \$3,035.

Minute Book # _____, Page # _____

Journal # _____

Clerk to the Board

Attachment: Budget Amendments 11-1-21 (Budget Amendments 11-1-21)

Number

20220033

BUDGET AMENDMENT

The Currituck County Board of Commissioners, at a meeting on the 1st of November 2021, passed the following amendment to the budget resolution for the fiscal year ending June 30, 2022.

<u>Account Number</u>	<u>Account Description</u>	Debit	Credit
		<u>Decrease Revenue or Increase Expense</u>	<u>Increase Revenue or Decrease Expense</u>
10752-558200	LINKS - Special	\$ 35,000	
10330-430004	DSS COVID Funding		\$ 35,000
		<u>\$ 35,000</u>	<u>\$ 35,000</u>

Explanation: Public Assistance (10752) - Increase appropriations to approve additional grant funding for a one-time allocation of utility assistance.

Net Budget Effect: Operating Fund (10) - Increased by \$35,000.

Minute Book # _____, Page # _____

Journal # _____

Clerk to the Board

Attachment: Budget Amendments 11-1-21 (Budget Amendments 11-1-21)

Number

20220034

BUDGET AMENDMENT

The Currituck County Board of Commissioners, at a meeting on the 1st of November 2021, passed the following amendment to the budget resolution for the fiscal year ending June 30, 2022.

<u>Account Number</u>	<u>Account Description</u>	Debit	Credit
		<u>Decrease Revenue or Increase Expense</u>	<u>Increase Revenue or Decrease Expense</u>
61818-511010	Data Transmission	\$ 8,000	
61818-536000	Uniforms	\$ 1,250	
61818-590000	Capital Outlay		\$ 9,250
		<u>\$ 9,250</u>	<u>\$ 9,250</u>

Explanation: Mainland Water (61) - Transfer budgeted funds due to increased data for the Mainland Water SCADA system and for uniforms for new employees.

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

Minute Book # _____, Page # _____

Journal # _____

Clerk to the Board

Attachment: Budget Amendments 11-1-21 (Budget Amendments 11-1-21)

Number

20220035

BUDGET AMENDMENT

The Currituck County Board of Commissioners, at a meeting on the 1st of November 2021, passed the following amendment to the budget resolution for the fiscal year ending June 30, 2022.

<u>Account Number</u>	<u>Account Description</u>	Debit	Credit
		<u>Decrease Revenue or Increase Expense</u>	<u>Increase Revenue or Decrease Expense</u>
10512-532000	Supplies	\$ 700	
10512-532441	Technology under \$1,000		\$ 700
		<u>\$ 700</u>	<u>\$ 700</u>

Explanation: Animal Services and Control (10512) - Transfer budgeted line items for supplies.

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

Minute Book # _____, Page # _____

Journal # _____

Clerk to the Board

Attachment: Budget Amendments 11-1-21 (Budget Amendments 11-1-21)



Currituck County Agenda Item Summary Sheet

Agenda ID Number – (ID # 3268)

Agenda Item Title: Surplus Resolution and Authorization for Sergeant Joseph Davidson to Purchase His Service Weapon in the Amount of \$1.00 Upon Retirement

Submitted By: Samantha Evans – County Manager

Presenter of Item:

Board Action: Action

Brief Description of Agenda Item:

Sheriff Beickert is requesting the opportunity for Sergeant Joseph Davidson to purchase his duty weapon, after being declared surplus by Resolution of the Board of Commissioners.

Is this item regulated by plan, regulation or statute? No

Manager Recommendation:



From the desk of
Sheriff Matthew W. Beickert

Currituck County, North Carolina

407 Maple Road, Maple, North Carolina 27956

Office: (252) 453-8204 • Fax: (252) 453-2238

matt.beickert@currituckcountync.gov

DATE: October 19, 2021

TO: Currituck County Commissioners

RE: Sergeant Joseph Davidson's Retirement

Sergeant Joseph Davidson is retiring from the Currituck County Sheriff's Office effective 10/31/2021. Sergeant Davidson has been with our agency and in good standing since 12/18/1993. Sergeant Davidson's issued service weapon is a Glock 45 9M handgun, serial #BSBD912, and he has made the request to purchase his weapon upon retirement.

It has been our policy to allow deputies, upon retirement, the option of purchasing their issued service weapon for the total sum of one dollar (\$1.00).

A handwritten signature in black ink that reads "Matthew Beickert". The signature is stylized with a large, sweeping "M" and a long, horizontal stroke at the end.

Sheriff Matthew Beickert
Currituck County Sheriff's Office

Attachment: Resolution-Sheriff Retirement-J.Davidson (Surplus Resolution)



COUNTY OF CURRITUCK

WHEREAS, The Currituck County Board of Commissioners, during its regular meeting held on Monday, November 1, 2021, authorized the following property listed below be declared surplus and disposed of; and

WHEREAS, Sheriff Matt Beickert has requested that upon the retirement of Sergeant Joseph Davidson, that his service weapon, a Glock 45 9M handgun, Serial No. BSBD912, be given to him. Mr. Davidson has made the request to purchase upon his retirement.

ADOPTED this 1st day of November 2021.

Michael Payment, Chairman
Board of Commissioners

Samantha M. Evans
Deputy Clerk to the Board



CURRITUCK COUNTY NORTH CAROLINA

October 18, 2021

Minutes – Regular Meeting of the Board of Commissioners

WORK SESSION

1. 4:30 PM Capital Projects and Finance Review

The Board of Commissioners met in a Work Session at 4:30 PM in the Historic Courthouse Conference Room, 153 Courthouse Road, Currituck, North Carolina, for a review of the County budget and Capital Projects from Finance Director, Sandra Hill. Chairman Payment and Commissioners Mary Etheridge, Selina Jarvis, Kevin McCord and Bob White were present at the start of the Work Session. Commissioner Paul Beaumont arrived at 4:50 PM and Commissioner J. Owen Etheridge arrived at 5:10 PM.

Interim County Manager/County Attorney, Ike McRee, opened the Work Session and introduced the budgetary review as a way for the Board to consider, re-organize and re-prioritize the County's capital projects to meet the needs of a growing population while maintaining consistent levels of service to citizens.

Finance Director, Sandra Hill, used a powerpoint and began with a review of the make-up of the General Fund. Several budgetary terms were defined for Commissioners and differences between the County's Cash Balance and Fund Balance were explained. Multi-year capital funds and projects funded through General Fund and Occupancy Tax were presented. Mr. McRee reviewed budgetary numbers for Moyock Elementary and Moyock Middle school expansion projects. After discussion of the Design Bid process for school projects, Commissioner Beaumont asked that staff determine the fixed price premium percentage that was included in the bid.

Ms. Hill reviewed capital projects that are currently funded in the budget and those that are not yet funded. Use of American Recovery Plan Act (ARPA) funds and restrictions were relayed. Commissioners specifically discussed plans to renovate and upgrade solid waste sites and the Moyock Sewer Plant Expansion. Mr. McRee said there would be a work session to discuss Moyock Wastewater. Commissioners discussed costs for Communications upgrades and suggested the County look into other service providers. In addition, Commissioners directed staff to look into soliciting bids for health insurance providers and to continue to provide information to employees to encourage use of the Wellness Clinic at the Health Department. Commissioners asked that quarterly budget reports and Monthly Economic Financial Indicator reports be provided to Commissioners going forward.

Communication: Minutes for October 18, 2021 (Approval Of Minutes-10/18/2021 & SM 8/25/2021)

Discussion concluded and Commissioner Jarvis moved to adjourn. Commissioner White seconded the motion. The motion carried, 7-0, and the Work Session was adjourned.

6:00 PM CALL TO ORDER

The Board of Commissioners met at 6:00 PM in the Historic Courthouse Board Meeting Room, 153 Courthouse Road, Currituck, North Carolina, for a Regular Meeting.

Attendee Name	Title	Status	Arrived
Michael H. Payment	Chairman	Present	
Paul M. Beaumont	Vice Chairman	Present	
J. Owen Etheridge	Commissioner	Present	
Mary "Kitty" Etheridge	Commissioner	Present	
Selina S. Jarvis	Commissioner	Present	
Kevin E. McCord	Commissioner	Present	
Bob White	Commissioner	Present	

Chairman Payment called the meeting to order and announced the earlier Work Session on Finance and Capital Projects.

A) Invocation & Pledge of Allegiance

Commissioner Jarvis offered the Invocation and led the Pledge of Allegiance.

B) Approval of Agenda

Commissioner White moved for approval of the agenda. Commissioner Beaumont seconded the motion. The motion carried, 7-0, and the agenda was approved.

Approved agenda:

Work Session

4:30 PM Capital Projects and Finance Review

6:00 PM Call to Order

A) Invocation & Pledge of Allegiance

B) Approval of Agenda

Public Comment

Please limit comments to matters other than those appearing on this agenda as a PublicHearing. Public comments are limited to 3 minutes.

Commissioner's Report

County Manager/County Attorney

Communication: Minutes for October 18, 2021 (Approval Of Minutes-10/18/2021 & SM 8/25/2021)

Reports**Public Hearings**

- A) **PB 90-07 Pine Island PUD Phase 5B:** Request for Amended Sketch Plan/Special Use Permit to allow an additional unit of density within Phase 5B by designating a small commercial area within the vicinity of the approved cabana.
- B) **PB 87-56 Monteray Shores PUD Parcel 10:** Request for Amended Sketch Plan/Special Use Permit to add 36 residential dwelling units, reduce open space by 4.01 acres and reallocate existing commercial designation on Parcel 10.

New Business

- A) **Board Appointments**
1. Fire and EMS Advisory Board
 2. Whalehead Stormwater Drainage Service District Advisory
- B) **Consent Agenda**
1. Budget Amendments
 2. Job Description Revisions-Variou
 3. Salary Classification Chart-Revised
 4. Approval Of Minutes-October 4, 2021

Adjourn**Special Meeting-Tourism Development Authority**

TDA Budget Amendments

Adjourn Special Meeting

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Bob White, Commissioner
SECONDER:	Paul M. Beaumont, Vice Chairman
AYES:	Michael H. Payment, Chairman, Paul M. Beaumont, Vice Chairman, J. Owen Etheridge, Commissioner, Mary "Kitty" Etheridge, Commissioner, Selina S. Jarvis, Commissioner, Kevin E. McCord, Commissioner, Bob White, Commissioner

PUBLIC COMMENT

Please limit comments to matters other than those appearing on this agenda as a Public Hearing. Public comments are limited to 3 minutes.

Chairman Payment opened the Public Comment period.

Communication: Minutes for October 18, 2021 (Approval Of Minutes-10/18/2021 & SM 8/25/2021)

Cameron Lowe, Currituck Cooperative Extension Director, provided a brief report on Currituck County Cooperative Extension and highlighted staff's development and delivery of on-line programming during the Covid-19 shutdown. Ms. Lowe discussed Cooperative Extension's recent Currituck Farm Festival event, which provided an opportunity to thank farmers and educate the public on the importance of agriculture in the County. She introduced Small Farms Specialist, Cyndi Knudson, who will be housed in Currituck County and will work with small and new farmers in Northeastern North Carolina. Ms. Knudson provided her background in agriculture and said she will use her experience and skills to help others in the area.

No others were signed up nor wished to speak and the Public Comment period was closed.

COMMISSIONER'S REPORT

Commissioner McCord provided information on the County's upcoming Christmas Parade, December 3, 2021, at 7:00 PM at the Currituck Cooperative Extension Center in Barco. He played in a golf tournament at Eagle Creek over the weekend to raise money for the Currituck County High School baseball team. He said speed limit signage will be installed at school zones later in the week. He said there will be a benefit for the family whose daughter was recently killed crossing the highway. Halloween Trunk or Treat events in the County were announced.

Commissioner Beaumont encouraged citizens to participate in their government by serving on a County Advisory Board. He announced openings on the Veterans Advisory Board and others and provided information on how to apply.

Chairman Payment also encouraged citizens to apply for Advisory Boards, and announced he is looking for a new member to serve on the Planning Board. He asked for continued support of the County's local fire departments.

Commissioner White reported information he received at a symposium recently attended at Elizabeth City State University. He reported on the Kitty Hawk Wind project, which will be based 27 miles off of the Corolla coastline, and the possible impacts as the project progresses. He reported on programs and assistance available through North Carolina Works for both job seekers and employers. He discussed the North Carolina Department of Transportation's need to secure additional funding so they can continue with state road maintenance projects. He said the Mid-Currituck Bridge project, however, will continue to move forward due to the way it is funded. He discussed using a regional message for Tourism promotion, and said the future looks bright for Northeastern North Carolina.

Commissioner Mary Etheridge reported attending the recent Health and Wellness event at the Senior Center and thanked Senior Center staff and all who participated. She announced the start of Operation Santa, a program administered by the Department of Social Services to assist children, the elderly and the disabled over the holidays. She encouraged citizens to participate and to contact the Department of Social Services for more information.

Commissioner Jarvis attended the recent meeting of the Juvenile Crime Prevention Council where Stephanie Benton, Resource Coordinator for Beloved Haven, discussed the alarming rise in human sex trafficking in our region. Commissioner Jarvis said North Carolina ranks

eleventh in the nation and encouraged people to go to BelovedHaven.org for information or assistance. She announced the College of the Albemarle's 60th year of enrollment for students.

COUNTY MANAGER/COUNTY ATTORNEY REPORTS

Interim County Manager/County Attorney, Ike McRee, reported his attendance at the Senior Center's Health and Fitness Day. He noted the good programming and resources put together by Director, Stacy Joseph, and Senior Center staff. He said design plans for the new dune walkovers in Whalehead included additional items such as showers, fountains, and portable toilets that were not in the original plans. When asked if they wish to include any of the additional items, Commissioners suggested they receive alternate bids to include showers only. Mr. McRee did relay maintenance concerns expressed by Public Works.

The discussion prompted Commissioner J. Owen Etheridge to report issues with paper towels being wet and thrown on the walls and ceiling of the new Shingle Landing Park restroom facility. Commissioners suggested replacing the paper towels with hand dryers.

PUBLIC HEARINGS

A. PB 90-07 Pine Island PUD Phase 5B:

APPLICATION SUMMARY	
Property Owner: Turnpike Properties, LLC 1100C S. Stratford Road, Suite 300 Winston Salem, NC 27103	Applicant: Same
Case Number: PB 90-07	Application Type: Amended Sketch Plan/Special Use Permit
Parcel Identification Number: 0128-000-002H-0000 (Phase 5B)	Existing Use: Planned Unit Development
2006 Land Use Plan Classification: Full Service	Parcel Size (Acres): 366.22 acres (Overall PUD) 18.2 acres (Subject Parcel)
Number of Units: 304 units (Overall PUD) 24 units (Subject Parcel)	Project Density (Approx.): .87 units per acre (Overall PUD) 1.32 units per acre (Subject Parcel)
Required Open Space: 128.18 acres (35%) (Overall PUD) 3.64 acres (20%) (Subject Parcel)	Provided Open Space: 137.72 acres (37.6%) (Overall PUD) 6.77 acres (26.9%) (Subject Parcel)

SURROUNDING PARCELS		
	Land Use	Zoning
North	Hotel	SFO with PUD Overlay
South	Single Family Dwellings	SFO with PUD Overlay
East	Atlantic Ocean	N/A
West	National Audubon Society Property	SFO with PUD Overlay

Communication: Minutes for October 18, 2021 (Approval Of Minutes-10/18/2021 & SM 8/25/2021)

Application Summary

In September 2019, the Board approved an amended sketch plan/special use permit for Phase 5B (Lot 4R) of Pine Island PUD to be developed as 23 single-family dwelling lots. The applicant subsequently submitted for and received preliminary plat/special use permit approval and construction drawing approval for a 23 lot subdivision. The applicant requests a change to the amended sketch plan/special use permit for Phase 5B to allow construction of an upper story dwelling unit over the proposed cabana/storage area located in open space.

An upper story dwelling unit is an additional unit of density and is not permitted in open space nor in areas designated as residential in a PUD. Therefore, the applicant is requesting this amendment to remove the a portion of the cabana, proposed dwelling unit and associated site improvements from open space and to designate the area as commercial to allow for construction of one upper story dwelling unit.

If approved, the applicant will be required to amend the preliminary plat/special use permit prior to construction of the upper story dwelling unit.

Community Meeting

A community meeting was held on July 15, 2021, a summary is provided in the agenda packet.

INFRASTRUCTURE

Water	Southern Outer Banks Water System (SOBWS)
Sewer	Pine Island Currituck, LLC (PICLLC) Wastewater

STAFF REVIEW

Technical Review Committee

The Technical Review Committee (TRC) reviewed the application and provided the following comments:

1. The application complies with all applicable review standards of the UDO.
2. The 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 include:
 - a. The subdivision plan will be reviewed when preliminary plat application is submitted.
3. Side setbacks shall be a minimum of 15' on the proposed lots.
4. The ownership of the open space parcel(s) shall be in accordance with Section 7.1.3.E. of the UDO. The proposed upper story dwelling unit is proposed on an open space parcel.
5. The preliminary plat/special use permit shall be amended prior to construction of the upper story dwelling unit.

2006 Land Use Plan

The 2006 Land Use Plan classifies this site as Full Service within the Corolla subarea. The Full Service designation allows for a greater diversity of housing types. The policy emphasis for the

Corolla subarea is to allow for predominantly medium density residential development (2 to 3 units per acre) with minimal commercial development arranged in clusters. An overall density of no more than 3 units per acre should apply to PUDs, the prevailing development form in the Corolla area.

The following policies of the plan may apply to the proposed request:

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 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.

SPECIAL USE PERMIT REVIEW STANDARDS

Following an evidentiary hearing, the board shall decide if the application is in accordance with Section 2.3.10, Decision-Making Body Review and Decision, and Section 2.4.6.D, Special Use Permit Review Standards.

Special Use Permit Review Standards

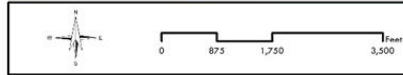
A special use permit shall be approved on a finding that the applicant demonstrates the proposed use will:

1. Not endanger the public health or safety.
2. Not injure the value of adjoining or abutting lands and will be in harmony with the area in which it is located.
3. Be in conformity with the Land Use Plan or other officially adopted plan.
4. 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.

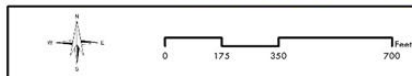
Applicable state standards and guidelines shall be followed for determining when public facilities are adequate.



PB 90-07 Pine Island PUD, Phase 5B
Amended Sketch Plan/Special Use Permit
Context Map



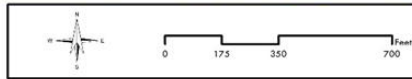
PB 90-07 Pine Island PUD, Phase 5B
Amended Sketch Plan/Special Use Permit
2020 Aerial Photography



Communication: Minutes for October 18, 2021 (Approval Of Minutes-10/18/2021 & SM 8/25/2021)



PB 90-07 Pine Island PUD, Phase 5B
Amended Sketch Plan/Special Use Permit
Official Zoning Map



PB 90-07 Pine Island PUD, Phase 5B
Amended Sketch Plan/Special Use Permit
2006 Land Use Plan Classification



Parties to speak were sworn in and Senior Planner, Jennie Turner, reviewed the request for the Board. She presented information on the new staff report which includes staff comments rather than a recommendation. Ms. Turner used a powerpoint to display maps and plats of the area to review the location, zoning and current uses of the site and surrounding parcels. Ms. Turner explained the required Board approval due to the addition of an upper story dwelling unit on an open space parcel. Relevant county policies,

Technical Review Committee comments, and review standards were presented. Ms. Turner responded to questions from the Board.

Attorney for the applicant, John Morrison, reviewed the proposed change and its purpose. He explained the cabana will remain as is, with only the second floor interior being converted to a two bedroom dwelling unit.

Mr. Morrison questioned Rolf Blizzard, Managing Director of Turnpike Properties. Mr. Blizzard said the conversion will house a maintenance and construction manager for the community. He confirmed the appearance and footprint of the building will not change. He said adequate facilities are present and that no objections were voiced at community meetings. He responded to questions posed by Commissioners. When asked, Mr. Blizzard clarified all staff requests as stated were agreed to.

Mr. Morrison questioned Licensed Real Estate Appraiser, Greg Bourne, who provided his background and experience in real estate appraisals. Mr. Bourne was tendered as an expert witness and expressed his opinion that there would be no adverse impacts to the subject property or adjacent properties. He discussed the process used for his analysis and presented his findings. There were no questions from the Board.

Mr. Morrison questioned Michael Strader, Jr., Professional Engineer with Quible and Associates, who was tendered as an expert witness following presentation of his background and experience. Mr. Strader said he is the Engineer of Record for the project. He testified the project will be compliant with the County's Land Use Plan and meets the other findings of fact. The Board had no questions.

Chairman Payment opened the Public Hearing. No one was signed up nor wished to speak and the Public Hearing was closed.

Commissioner White moved to approve PB 90-07, Pine Island PUD-Phase 5B amended sketch plan/special use permit because the applicant has demonstrated the proposed use meets the review standards of the UDO. The TRC Review Comments provided in the staff report on page 6 shall become conditions of approval. The use will not endanger the 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; the use will be in conformity with the Land Use Plan, specifically 2006 Land Use Plan policy HN1, HN3, CD8 and ES1; and, the use will not exceed the county's ability to provide adequate public facilities.

Commissioner J. Owen Etheridge seconded the motion. The motion carried, 7-0.

Chairman Payment called for a brief recess at 7:01 PM. The meeting reconvened at 7:08 PM.

RESULT: MOTION PASSED-ITEM APPROVED [UNANIMOUS]
MOVER: Bob White, Commissioner
SECONDER: J. Owen Etheridge, Commissioner
AYES: Michael H. Payment, Chairman, Paul M. Beaumont, Vice Chairman, J. Owen Etheridge, Commissioner, Mary "Kitty" Etheridge, Commissioner, Selina S. Jarvis, Commissioner, Kevin E. McCord, Commissioner, Bob White, Commissioner

B. PB 87-56 Monterey Shores PUD Parcel 10:**APPLICATION SUMMARY**

Property Owner: Richard C. Willis Outer Banks Ventures, LLC PO Box 549 Corolla, NC 27927	Applicant: Richard C. Willis Outer Banks Ventures, LLC PO Box 549 Corolla, NC 27927
Case Number: PB 87-56	Application Type: Amended Sketch Plan/Special Use Permit
Parcel Identification Number: 0116-000-0010-0000	Existing Use: Planned Unit Development (PUD)
2006 Land Use Plan Classification: Full Service & Conservation	Parcel Size (Acres): 36.19 (Subject Parcel) 355.309 (Overall PUD)
Request: Amend Sketch Plan/Special Use Permit	Zoning: SFO with PUD Overlay
Number of Units: 36 units (Subject Parcel) 747 units (Overall PUD)	Project Density: 1.324 dwelling units per acre excluding CAMA wetlands (Subject Parcel) 2.395 dwelling units per acre (Overall PUD)
Required Open Space: 123.358 acres (35%) (Overall PUD)	Provided Open Space: 130.343 acres (36.67%) (Overall PUD)
Maximum Commercial Area: 36.222 ac. 10.19% Previously approved	Proposed Commercial Area: 36.222 ac. 10.19% No change requested

SURROUNDING PARCELS

	Land Use	Zoning
North	Monterey Shores Open Space	Monterey Shores PUD SFO with PUD Overlay
South	Timbuck II Shops	Buck Island PUD SFO with PUD Overlay
East	Monterey Shores WWTP/ Corolla Adventure Golf & Bumper Cars/Seaside Farm Market/Coffee Shop	SFO with PUD Overlay

Communication: Minutes for October 18, 2021 (Approval Of Minutes-10/18/2021 & SM 8/25/2021)

APPLICATION SUMMARY

West	Currituck Sound	N/A
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Application Summary

The applicant, Outer Banks Ventures, Inc. is requesting an amended sketch plan/special use permit related to a 36.194-acre subject property located in the Monterey Shores Planned Unit Development (PUD). The Monterey Shores Sketch Plan designates 34.986-acres as open space, 1.208-acres as commercial and zero (0) units of residential density. The property consists of 8.24-acres of upland area (excluding the pond).

The amended sketch plan request proposes:

- an additional 36 units of residential density.
- a reduction of open space area by 4.01 acres.
- relocation of existing 1.208 acres of commercial area.

The Monterey Shores Amended Sketch Plan identifies the open space area on the subject parcel as “utility open space”. The NC General Assembly repealed the requirement for reserved “green area” related to coastal waste treatment disposal on May 1, 2020. Carolina Water Service, Inc. of North Carolina operates the Monterey Shores Wastewater Treatment Plant and has provided a letter dated June 24, 2021, stating that the property proposed for development is not needed for utility use. The need for designated “utility open space” appears to be resolved; however, this request does include a reduction in open space for the Monterey Shores PUD. The proposed resultant open space meets the minimum 35% required per the Bulk and Dimensional Standards of Section 1.8. Transitional Provisions of the UDO which addresses Approved Planned Unit Development District Overlay and Sketch Plans.

The proposed development includes a total of thirty-six (36) residential dwelling units: five (5) single-family dwelling lots, twenty-five (25) townhome lots and six (6) upper story dwelling units. A ten (10) slip boat basin is proposed for use by residents and visitors to the site. Subdivision of the property will require preliminary plat/special use permit applications for review by the Board of Commissioners. A conceptual development plan and preliminary architectural renderings have been provided by the applicant to illustrate the proposed uses and project layout. A site-specific development plan is not approved for this property or part of this submittal. Approvals for any proposed development on the tract must be submitted to the county, follow the appropriate review process for the type of use proposed, and be approved by the appropriate authority.

The applicant proposes construction of three retail buildings over the existing pond with two (2) upper story dwelling units in each building. A boardwalk connection is proposed from the retail buildings to a proposed restaurant and outdoor entertainment deck. Parking is provided adjacent to the retail buildings and the restaurant area.

A recreation/paddle boat rental storefront/storage building is proposed adjacent to the pond with docks over the pond. Parking is provided adjacent to the building.

An elevated boardwalk over the wetlands with a ten (10) slip boat basin in Currituck Sound is proposed to be connected to the outdoor entertainment deck. Prior to construction of this feature, CAMA review and permitting are required.

Outdoor entertainment and outdoor recreation require special use permits in PUDs. Prior to establishing outdoor recreation and outdoor entertainment uses including the proposed boat

basin, paddle boat rentals, and the outdoor entertainment venue, the owner must submit applications for special use permits for review by the BOC.

The existing pond is proposed to be expanded for stormwater management. The county holds a perpetual right and easement to convey and discharge groundwater associated with the Whalehead Watershed Improvement District into the pond, and for a subsurface conveyance pipe. It is of great interest and concern of the county to ensure that the easements are not negatively impacted by any development over or augmentation of the existing pond.

The applicant is proposing access on Malia Drive as well as an entrance through the NCDOT owned property where Seaside Farm Market is located. Approval for access through the NCDOT property has not been provided by the applicant. Adequate traffic flow and management as well as impacts to adjacent properties should be considered.

The request provides corrections to previously approved sketch plans for Monterey Shores to show existing approvals more accurately with respect to residential density, open space, and commercial allocation. The applicant has provided deed and plat research and has referenced prior approved sketch plans in an effort to provide an update to the Monterey Shores Amended Sketch Plan that reflects past approvals and current conditions. In reviewing the Amended Sketch Plan, staff has acknowledged that lots and areas previously recorded are acceptable for use in revised calculations.

Updates to the Amended Sketch Plan were provided upon the request of staff in consultation with the county attorney due to inconsistencies found in prior approved Amended Sketch Plans, including the omission of 57 dwelling units at Villas at Corolla Bay.

A community meeting was held on May 24, 2021. The applicant and engineer were present along with county staff. A community meeting summary provided by the applicant is included in the agenda packet. Following the community meeting and review of this application, staff determined that a Land Use Plan Amendment was necessary. The applicant submitted a request for a Land Use Plan Amendment that was approved by the BOC at the October 4, 2021, meeting.

INFRASTRUCTURE

Water	Southern Outer Banks Water System (SOBWS)
Sewer	Carolina Water Service (Private)

REVIEW AND COMMENT

TECHNICAL REVIEW COMMITTEE

The Technical Review Committee provides the following review comments regarding the proposed Amended Sketch Plan/Special Use Permit:

1. The Land Use Plan amendment approved by the BOC on October 4, 2021, shall be certified by the State per G.S. 113A-110 prior to this special use permit becoming valid.
2. A site-specific development plan is not approved for this property. Approvals for any proposed development on the tract must be submitted to the county, follow the

- appropriate review process for the type of use proposed, and be approved by the appropriate authority.
3. Per Section 1.8.6.B.2 of the UDO, special use permits for outdoor recreation/entertainment uses (ten (10) slip boat basin by UDO definition is an outdoor recreation use, paddle boat rentals, outdoor entertainment venue) are required in PUDs. This amended sketch plan/special use permit request may result in relocation of permissible commercial development area; however, to establish outdoor recreation/entertainment uses, additional special use permit applications will be required.
 4. Major site plan and/or preliminary plat/special use permit approval (as applicable) is required prior to commencement of development.
 5. Multi-family design standards, Non-residential design standards, or Shopping Center design standards apply to development per the UDO.
 6. Proposed access and configuration through the NCDOT owned parcel(s) shall be approved by NCDOT or Turnpike Authority as appropriate and by County Staff through the Preliminary Plat/Special Use Permit or Major Site Plan review process.
 7. Proposed changes to pond configuration shall not negatively impact the county's easement or purpose for the easement recorded in the Currituck County Register of Deeds Office on Deed Book 1135, Page 302. A note shall be added to the plans to reflect the county's perpetual right and easement to convey and discharge groundwater associated with the Whalehead Watershed Improvement District into the pond shown and more particularly described on that plat recorded at Plat Cabinet K, Slide 50 of the Currituck County Registry.
 8. Walkways and piers for private property owner use may not be constructed in open space set-asides.
 9. Required open space areas including active open space will be evaluated during review of subsequent application submittals.

2006 Land Use Plan

A Future Land Use Map amendment was approved by the BOC on October 4, 2021, designating 12.22 acres of the site as Full-Service Area. The proposed development is in area designated as Full-Service as amended on October 4, 2021. Prior to the Future Land Use Map amendment becoming effective, the amended plan must be submitted to the Division of Coastal Management for certification. The elevated boardwalk over the wetlands is proposed in area designated as Conservation.

The 2006 Land Use Plan classifies this site as Full Service and Conservation within the Corolla subarea. The Full-Service designation allows for a greater diversity of housing types. The policy emphasis for the Corolla subarea is to allow for predominantly medium density residential development (2 to 3 units per acre) with minimal commercial development arranged in clusters. An overall density of no more than 3 units per acre should apply to PUDs, the prevailing development form in the Corolla area. Strip commercial development is to be avoided for both aesthetic reasons and traffic movement considerations. Development and redevelopment should be capable of being supported by the area's infrastructure and services – particularly drinking water, sewage treatment, road capacity, parking areas, and required fire suppression capabilities.

The following policies of the plan may apply to the proposed request:

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 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 CD8: MIXED-USE DEVELOPMENTS, properly planned from the outset, which allow for a compatible mixture of residential and non-residential uses with a pedestrian scale and design, are encouraged. Similarly, businesses may be located adjoining (and therefore convenient to) an existing residential area, when such businesses can be shown to satisfy design considerations similar to a newly planned, pedestrian-scaled, mixed use development.

POLICY CD9: Businesses shall be encouraged to coordinate their **SITE DESIGNS** with other nearby businesses. Design factors should include, at a minimum, shared or connected parking and access, convenient pedestrian and vehicular movement, and consistent sign standards.

POLICY OB1: Currituck County supports the provision of **INFRASTRUCTURE** (e.g., potable water) **AND SERVICES** (e.g., law enforcement officers) adequate to meet basic quality of life and public health and safety requirements of residents on the Outer Banks, while at the same not stimulating inappropriate intensive development in environmentally fragile, hazardous barrier island areas.

POLICY OB2: So as to minimize **COMMERCIAL STRIP DEVELOPMENT** and maximize the traffic moving capability of NC 12, Currituck County shall encourage commercial development to cluster at appropriate locations rather than dispersing along NC 12.

POLICY ES1: New development shall be permitted to locate only in areas with **SUITABLE SOIL** and where **ADEQUATE INFRASTRUCTURE** is available. For existing development located on poor soils, and where sewage treatment upgrades are necessary, engineering solutions may be supported, provided that environmental concerns are fully addressed.

POLICY ES2: NON-COASTAL WETLANDS, including **FRESHWATER SWAMPS, AND INLAND, NON-TIDAL WETLANDS**, shall be conserved for the important role they play in absorbing floodwaters, filtering pollutants from stormwater runoff, recharging the ground water table, and

providing critical habitat for many plant and animal species. Currituck County supports the efforts of the U.S. Army Corps of Engineers in protecting such wetlands through the Section 404 permit program of the Clean Water Act, as well as Section 401 water quality certifications by the State of North Carolina.

POLICY ES3: COASTAL WETLANDS shall be conserved for the valuable functions they perform in protecting water quality and in providing critical habitat for the propagation and survival of important plant and animal species. CAMA use standards and policies for coastal wetlands shall be supported. Uses approved for location in a coastal wetland must be water dependent (i.e., utility easements, bridges, docks and piers) and be developed so as to minimize adverse impacts.

POLICY PA1: Public access to the sound and ocean waters of Currituck County is essential to the quality of life of residents and visitors, as well as the economy of the area. The County supports the establishment of ADDITIONAL PUBLIC AND PRIVATE ACCESS opportunities to the waters of Currituck County.

POLICY PA2: The County supports MANY FORMS OF "ACCESS" to the water, including scenic outlooks and boardwalks, boat ramps, marinas and docks, fishing piers, canoe and kayak launches, and other means of access. Whenever possible, such facilities shall be designed to accommodate the needs of handicapped individuals.

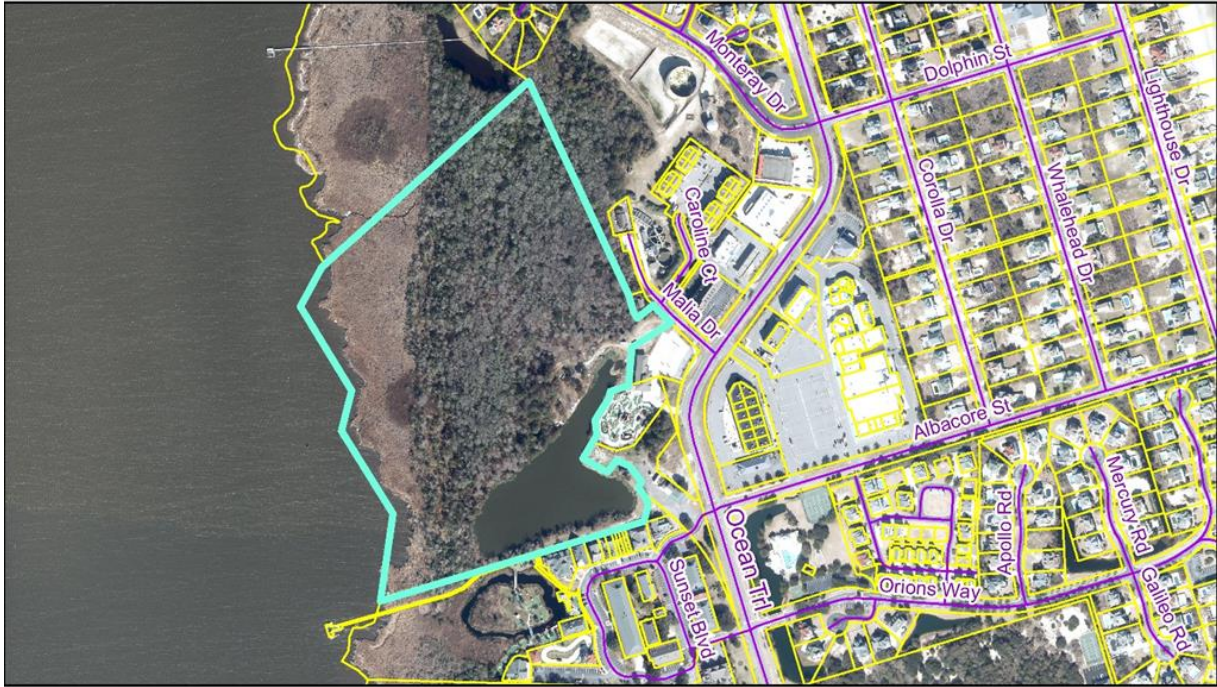
SPECIAL USE PERMIT REVIEW STANDARDS

Following an evidentiary hearing, the board shall decide if the application is in accordance with Section 2.3.10, Decision-Making Body Review and Decision, and Section 2.4.6.D, Special Use Permit Review Standards.

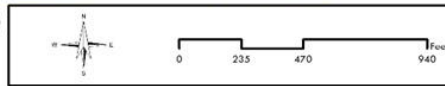
Special Use Permit Review Standards

A special use permit shall be approved on a finding that the applicant demonstrates the proposed use will:

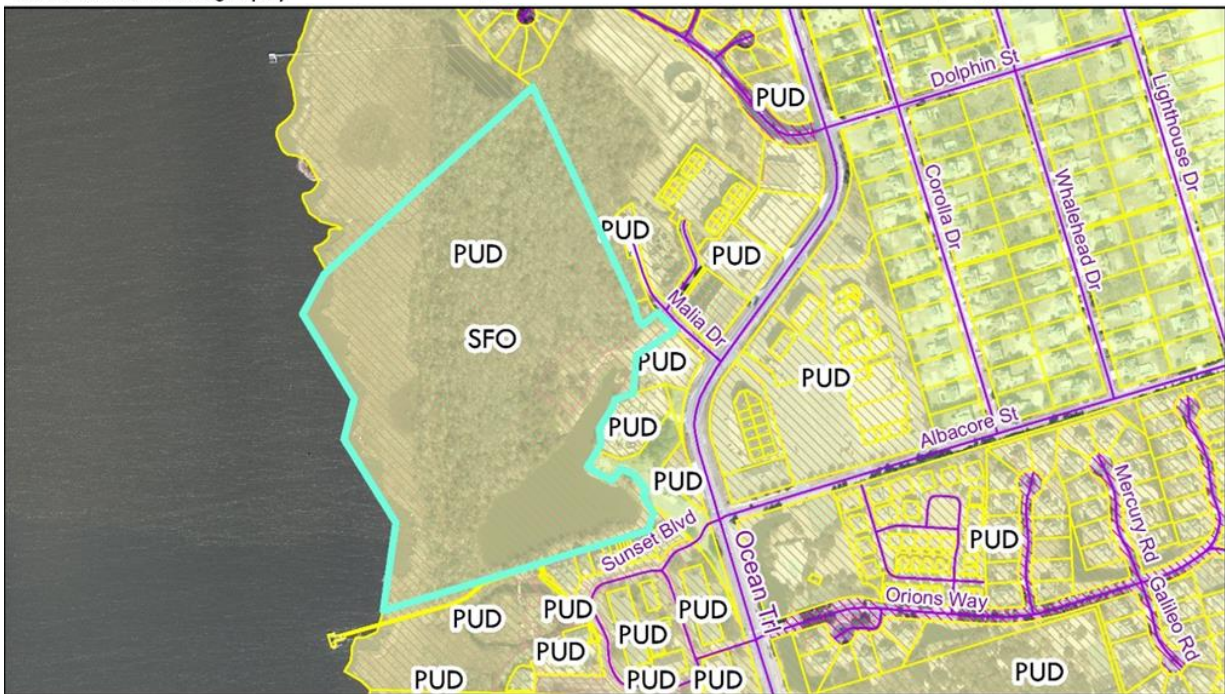
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3. Be in conformity with the Land Use Plan or other officially adopted plan.
4. Not exceed the county's ability to provide adequate public facilities, including but not limited to, schools, fire and rescue, law enforcement, and other county facilities. Applicable state standards and guidelines shall be followed for determining when public facilities are adequate.



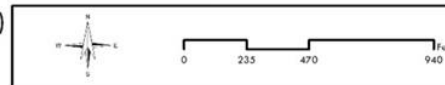
PB 87-56 Monterey Shores PUD (Parcel 10)
Amended Sketch Plan/Special Use Permit
2020 Aerial Photography



Currituck County
Development Services
Department



PB 87-56 Monterey Shores PUD (Parcel 10)
Amended Sketch Plan/Special Use Permit
Official Zoning Map

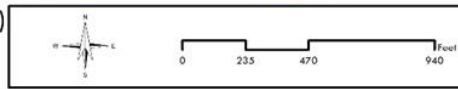


Currituck County
Development Services
Department

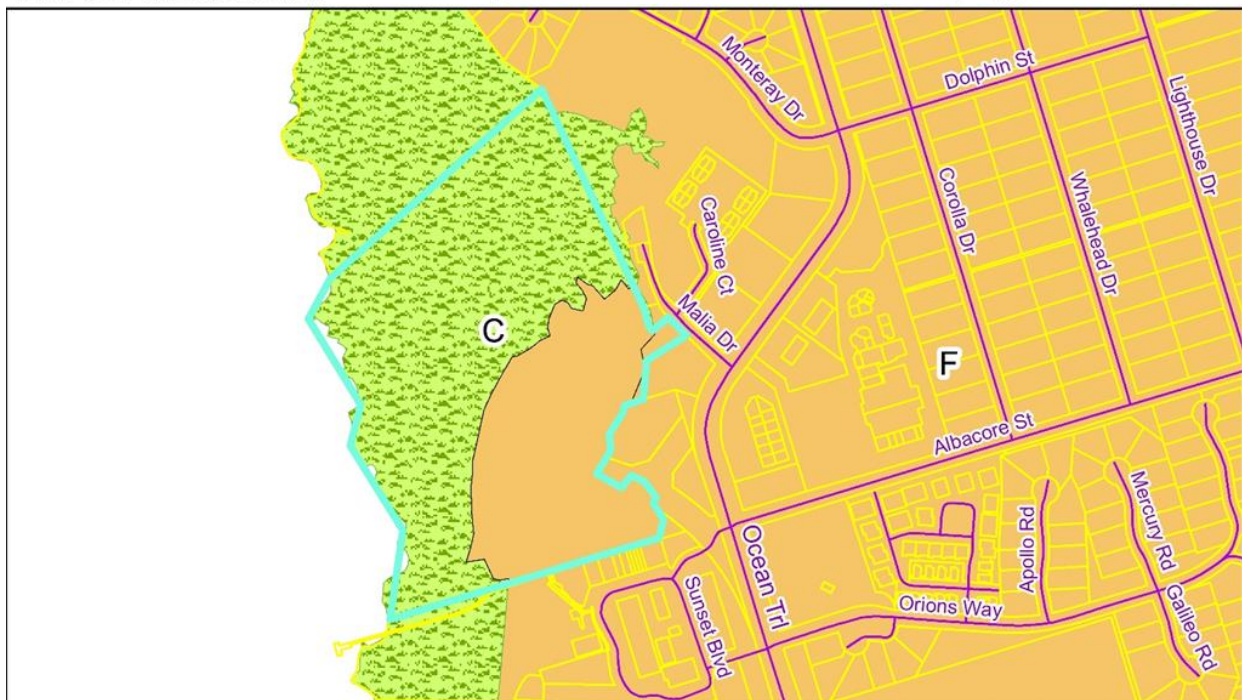
Communication: Minutes for October 18, 2021 (Approval Of Minutes-10/18/2021 & SM 8/25/2021)



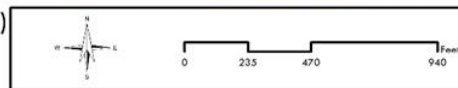
PB 87-56 Monterey Shores PUD (Parcel 10)
Amended Sketch Plan/Special Use Permit
Land Use Plan Classification



Currituck County
Development Services
Department



PB 87-56 Monterey Shores PUD (Parcel 10)
Amended Sketch Plan/Special Use Permit
2006 Land Use Plan (AMD 10/4/2021)



Currituck County
Development Services
Department

Parties were sworn and Senior Planner, Jennie Turner, presented the request to Commissioners. A powerpoint was used to display the site location on the overhead.

Communication: Minutes for October 18, 2021 (Approval Of Minutes-10/18/2021 & SM 8/25/2021)

Zoning and uses of the site and surrounding parcels were reviewed. She reviewed the requirements for utility open space and recalled the Land Use Plan amendment adopted for the parcel at the October 4th Board of Commissioners meeting. A summary of the request with changes and the revised sketch plan were reviewed.

Ms. Turner responded to questions relative to access, and Commissioners considered whether the request is premature. She said they have not received any notification that access to the parcel has been granted. Commissioner White commented that no cluster mailboxes were shown on the plat and Ms. Turner said mailboxes would likely be referenced by inspections for inclusion in the final plat.

Applicable Residential and Commercial policies in the Land Use Plan, Technical Review Committee comments, and review standards were presented.

Attorney, John Morrison, clarified with Ms. Turner that if approved tonight it does not allow construction to commence.

Mr. Morrison questioned Mark Bissell, Professional Engineer, who provided his background and experience and was tendered as an expert witness. Mr. Bissell used a powerpoint and detailed the plan for the proposed development. He clarified there will be boat slips for use by renters, owners, and restaurant patrons. He discussed the outdoor entertainment venue, and parking availability. He provided comments and Land Use Plan Policies to support approval relative to the required findings of fact and said the plan is consistent with the future Land Use Plan.

Mr. Bissell confirmed stormwater modeling will be performed at final plat. He reported on Seaside Market and the lack of definition at the site for parking and delivery and believes the situation can be improved by delineating parking spaces, turnaround, drive aisle, and loading areas. He reported discussion with DOT regarding the right of way.

Mr. Bissell confirmed that without DOT and CAMA approvals the project will not be able to move forward. He said he is comfortable with the conditions as presented.

Mr. Morrison questioned Steven Craddock, Licensed Real Estate Appraiser, who provided his background and experience and was tendered as an expert witness. Mr. Morrison distributed Mr. Craddock's report of his assessment of the project and Mr. Craddock surmised that the project would not injure the value of adjoining or abutting properties and would be in harmony in the area in which it is located. Mr. Craddock provided a summary of his assessment of the subject property and the Corolla area for the Board.

Andrew Topp, of VHP Engineering, provided his education, background and experience in traffic engineering and was tendered as an expert witness. He discussed the process for performing a traffic impact analysis over the course of several days. Mr. Topp said he has assessed the project and provided an opinion that the development would not have any adverse impact on traffic in the area.

Mr. Morrison questioned Abel Harmon, Wetland delineation and sediment control for Army Corps of Engineers provided his experience in the field and he was tendered as

an expert witness. Mr. Harmon confirmed he assessed the development site, and he provided a summary of the process used to make findings related to erosion and sediment runoff. He provided information on erosion and noted that the project would not destabilize the shoreline due to distance.

Chairman Payment opened the Public Hearing.

Thomas Wright is the adjacent property owner next to the DOT right-of-way and voiced concerns about the existing traffic issues at the location. He said he doesn't understand the findings of the traffic impact study knowing that there have been problems in the area for years.

Marsha Hornstein owns a shop in the same complex as Mr. Wright. She said they pay \$750 a month to have extra parking at TimBuck II. She expressed her concern with parking at the location and discussed issues with flooding of the underground parking during rain events. She has no problem with the project and suggested that there will not be enough parking for all who want to use it.

No others were signed up nor wished to speak and the Public Hearing was closed.

Mr. Morrison said the Board is not waiving the necessary approvals from DOT and CAMA and suggested the Board will revisit the item during the rest of the process.

Commissioner White moved to approve PB 87-56, Monteray Shores (Parcel 10) amended sketch plan/special use permit because the applicant has demonstrated the proposed use meets the review standards of the UDO. The TRC Review Comments provided in the staff report shall become conditions of approval. The PUD Overview and Summary of Uses shall be updated to clearly illustrate open space areas and commercial areas consistent with the area summary provided. The use will not endanger the 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; the use will be in conformity with the Land Use Plan policies HN1, HN3, CD8, ES1, OB1, OB2, and PA1. The use will not exceed the county's ability to provide adequate public facilities.

White/Selina
7-0

Recess 8:34 PM Reconvene 8:43 PM

RESULT:	MOTION PASSED-ITEM APPROVED [UNANIMOUS]
MOVER:	Bob White, Commissioner
SECONDER:	Selina S. Jarvis, Commissioner
AYES:	Michael H. Payment, Chairman, Paul M. Beaumont, Vice Chairman, J. Owen Etheridge, Commissioner, Mary "Kitty" Etheridge, Commissioner, Selina S. Jarvis, Commissioner, Kevin E. McCord, Commissioner, Bob White, Commissioner

NEW BUSINESS

A) Board Appointments**1. Fire and EMS Advisory Board**

Commissioner J. Owen Etheridge moved to nominate George Thiess to the Fire and EMS Advisory, as recommended by the Moyock Volunteer Fire Department. Commissioner McCord seconded the motion. The motion carried, 7-0.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	J. Owen Etheridge, Commissioner
SECONDER:	Kevin E. McCord, Commissioner
AYES:	Michael H. Payment, Chairman, Paul M. Beaumont, Vice Chairman, J. Owen Etheridge, Commissioner, Mary "Kitty" Etheridge, Commissioner, Selina S. Jarvis, Commissioner, Kevin E. McCord, Commissioner, Bob White, Commissioner

2. Whalehead Stormwater Drainage Service District Advisory

Commissioner White nominated George Mears to serve on the Whalehead Stormwater Drainage Service District Advisory. Chairman Payment seconded the motion. The motion carried, 7-0.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Bob White, Commissioner
SECONDER:	Michael H. Payment, Chairman
AYES:	Michael H. Payment, Chairman, Paul M. Beaumont, Vice Chairman, J. Owen Etheridge, Commissioner, Mary "Kitty" Etheridge, Commissioner, Selina S. Jarvis, Commissioner, Kevin E. McCord, Commissioner, Bob White, Commissioner

B) Consent Agenda

Commissioner Jarvis moved for approval of the Consent Agenda. Commissioner J. Owen Etheridge seconded the motion. The motion carried, 7-0.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Selina S. Jarvis, Commissioner
SECONDER:	J. Owen Etheridge, Commissioner
AYES:	Michael H. Payment, Chairman, Paul M. Beaumont, Vice Chairman, J. Owen Etheridge, Commissioner, Mary "Kitty" Etheridge, Commissioner, Selina S. Jarvis, Commissioner, Kevin E. McCord, Commissioner, Bob White, Commissioner

1. Budget Amendments

		Debit	Credit
		Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
<u>Account Number</u>	<u>Account Description</u>		
10441-532000	Supplies	\$ 8,000	
10441-506000	Insurance Expense		\$ 3,000
10441-590000	Capital Outlay		\$ 5,000
		\$ 8,000	\$ 8,000
Explanation:	Information Technology (10441) - Transfer budgeted funds and reclassify equipment purchases that did not fall above the capital threshold to equip the IT department for additional staff.		
Net Budget Effect:	Operating Fund (10) - No change.		
		Debit	Credit
		Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
<u>Account Number</u>	<u>Account Description</u>		
10510-532000	Supplies	\$ 6,400	
10380-483510	Sheriff Donations		\$ 6,400
		\$ 6,400	\$ 6,400
Explanation:	Sheriff (10510) - Increase appropriations to record donation from Albemarle Regional Health Services for Overdose Prevention.		
Net Budget Effect:	Operating Fund (10) - Increased by \$6,400.		

		Debit	Credit
		Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
Account Number	Account Description		
10460-557100	Software License Fee	\$ 400	
10530-561000	Professional Services	\$ 1,000	
10960-531000	Fuel	\$ 25,000	
10320-411000	Article 39 Sales Tax		\$ 26,400
12541-554007	Insurance - Carova Beach VFD	\$ 3,535	
12390-499900	Appropriated Fund Balance		\$ 3,535
210541-554006	Insurance - Corolla	\$ 4,000	
210541-506000	Health Insurance		\$ 4,000
26535-557100	Software License Fee	\$ 314	
26535-588000	Contingency		\$ 314
61818-511010	Data Transmission	\$ 1,055	
61818-516000	Repairs & Maintenance	\$ 5,000	
61818-506000	Insurance Expense		\$ 2,500
61818-533600	System Supplies		\$ 3,555
67878-557100	Software License Fee	\$ 300	
67878-506000	Health Insurance Expense		\$ 300
		<u>\$ 40,604</u>	<u>\$ 40,604</u>
Explanation:	Various Departments - Increase appropriations due to rising costs of vehicle fuel, software license fees and volunteer fire department building insurances; increase in professional services for new hire background checks; and departmental transfers in Mainland Water for operations.		
Net Budget Effect:	Operating Fund (10) - Increased by \$26,400.		
	Fire Services Fund (12) - Increased by \$3,535.		
	Corolla Fire Services (210) - No change.		
	Emergency Telephone System Fund (26) - No change.		
	Mainland Water Fund (61) - No change.		
	Mainland Sewer Fund (67) - No change.		

		Debit	Credit
		Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
<u>Account Number</u>	<u>Account Description</u>		
10510-516200	Vehicle Maintenance	\$ 15,000	
10510-506000	Insurance Expense		\$ 15,000
		<u>\$ 15,000</u>	<u>\$ 15,000</u>
Explanation:	Sheriff (10510) - Transfer budgeted funds for increased costs of vehicle maintenance and for tire replacements.		
Net Budget Effect:	Operating Fund (10) - No change.		

2. Job Description Revisions-Variou

3. Salary Classification Chart-Revised

4) Approval Of Minutes-October 4, 2021

1. Minutes from 10-04-2021

ADJOURN

Motion to Adjourn Meeting

The Board had no further business and Commissioner Beaumont moved to adjourn. Commissioner McCord seconded the motion and the motion carried, 7-0. The regular meeting of the Board of Commissioners adjourned at 8:45 PM.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Paul M. Beaumont, Vice Chairman
SECONDER:	Kevin E. McCord, Commissioner
AYES:	Michael H. Payment, Chairman, Paul M. Beaumont, Vice Chairman, J. Owen Etheridge, Commissioner, Mary "Kitty" Etheridge, Commissioner, Selina S. Jarvis, Commissioner, Kevin E. McCord, Commissioner, Bob White, Commissioner

SPECIAL MEETING-TOURISM DEVELOPMENT AUTHORITY

The Board of Commissioners held a Special Meeting following adjournment of the 6:00 PM Regular Meeting to sit as the Tourism Development Authority. The Special Meeting was held in the Historic Courthouse Board Meeting Room, 153 Courthouse Road, Currituck, North Carolina, for the purpose of considering Budget Amendments.

TDA Budget Amendments

Following a brief review, Commissioner White moved for approval. Commissioner Beaumont seconded the motion. The motion carried, 7-0, and the Budget Amendments were approved.

		Debit	Credit
		Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
<u>Account Number</u>	<u>Account Description</u>		
15447-545002	Historic Preservation	\$ 300	
15447-516000	Repairs & Maintenance		\$ 300
		\$ 300	\$ 300
Explanation: Tourism Related Expenditures (15447) - Transfer budgeted funds for APG Stabilization Notice for the Historic Jail.			
Net Budget Effect: Occupancy Tax Fund (15) - No change.			
		Debit	Credit
		Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
<u>Account Number</u>	<u>Account Description</u>		
15448-554000	Insurance	\$ 9,080	
15448-503500	Temporary Services		\$ 9,080
		\$ 9,080	\$ 9,080
Explanation: Tourism - Historic Corolla Park (15448) - Transfer budgeted funds for flood insurance for the Maritime Museum.			
Net Budget Effect: Occupancy Tax Fund (15) - No change.			
		Debit	Credit
		Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
<u>Account Number</u>	<u>Account Description</u>		
15442-557100	Software License Fee	\$ 2,000	
15442-506000	Insurance Expense		\$ 2,000
		\$ 2,000	\$ 2,000
Explanation: Tourism Promotions (15442) - Transfer budgeted funds for increased software license fees.			
Net Budget Effect: Occupancy Tax Fund (15) - No change.			

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Bob White, Commissioner
SECONDER:	Paul M. Beaumont, Vice Chairman
AYES:	Michael H. Payment, Chairman, Paul M. Beaumont, Vice Chairman, J. Owen Etheridge, Commissioner, Mary "Kitty" Etheridge, Commissioner, Selina S. Jarvis, Commissioner, Kevin E. McCord, Commissioner, Bob White, Commissioner

ADJOURN SPECIAL MEETING

With no further business, Commissioner Beaumont moved to adjourn. Commissioner White seconded the motion. The motion passed, 7-0, and the meeting of the Tourism Development Authority adjourned at 8:47 PM.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Paul M. Beaumont, Vice Chairman
SECONDER:	Bob White, Commissioner
AYES:	Michael H. Payment, Chairman, Paul M. Beaumont, Vice Chairman, J. Owen Etheridge, Commissioner, Mary "Kitty" Etheridge, Commissioner, Selina S. Jarvis, Commissioner, Kevin E. McCord, Commissioner, Bob White, Commissioner



**CURRITUCK COUNTY
NORTH CAROLINA**

August 25, 2021

Minutes – Special Meeting of the Board of Commissioners

4:30 PM CALL TO ORDER

The Currituck County Board of Commissioners met at 4:30 PM in a Special Meeting. The meeting was held in the Historic Courthouse Board Meeting Room, 153 Courthouse Road, Currituck, North Carolina, for the purpose of discussion and consideration of the following:

- **Discussion of County Manager Search and Recruitment Process-Neil Emory, North Carolina Association of County Commissioners**
- **Discussion of County's Position on Mallinckrodt Bankruptcy Relative to Opioid Litigation**
- **Discussion of Expanded Easement Across County Property at Corolla Bay Subdivision**
- **Discussion of County Position on State Senate Proposal Limiting County Authority to Regulate Stormwater**
- **Discussion of Pro-Active County Plan Development to Address Covid-19 Closed Session**
- **Closed Session Pursuant to G.S. 143-318.11(a)(6) to Discuss Personnel Matters**

Attendee Name	Title	Status	Arrived
Michael H. Payment	Chairman	Present	
Paul M. Beaumont	Vice Chairman	Present	
J. Owen Etheridge	Commissioner	Present	
Mary "Kitty" Etheridge	Commissioner	Present	
Selina S. Jarvis	Commissioner	Present	
Kevin E. McCord	Commissioner	Present	4:47 PM
Bob White	Commissioner	Present	

Chairman Payment called the meeting to order at 4:30 PM.

A) Approval of Agenda

Commissioner White moved for approval of the agenda. Commissioner Jarvis seconded the motion. The motion carried, 6-0.

Communication: SM-8/25/2021 (Approval Of Minutes-10/18/2021 & SM 8/25/2021)

RESULT:	APPROVED [UNANIMOUS]
AYES:	Michael H. Payment, Chairman, Paul M. Beaumont, Vice Chairman, J. Owen Etheridge, Commissioner, Mary "Kitty" Etheridge, Commissioner, Selina S. Jarvis, Commissioner, Bob White, Commissioner
ABSENT:	Kevin E. McCord, Commissioner

NEW BUSINESS

A. Discussion of County Manager Search and Recruitment Process-Neil Emory, North Carolina Association of County Commissioners

The Board of Commissioners received a presentation from Neil Emory, Outreach Associate for the North Carolina Association of County Commissioners (NCACC), on the process for recruitment of a County Manager. Mr. Emory provided his management experience over thirty years in government and shared ideas and considerations pertaining to search and recruitment. Services available from the NCACC were presented and Mr. Emory discussed things the Board will want to determine before beginning the recruitment process, such as selecting an Interim Manager, considering outside firms search firms, setting the compensation range, and defining and prioritizing the skills the Board wants in a manager.

Mr. Emory suggested the interim position should not exceed six months, but recognized the challenges with finding applicants due to the number of positions currently available. He detailed the process from development and submittal of applications, applicant review and selection, and the interview process. Mr. Emory encouraged Commissioners not to rush through the process, and to take time to develop a plan. He offered his services and the assistance of the NCACC and responded to questions from Commissioners related to recruitment.

Discussion concluded and a Work Session was set for the September 7, 2021, Board of Commissioners meeting to discuss and develop a recruitment plan. The Work Session concluded at 5:32 PM. Chairman Payment recessed the Board of Commissioners meeting.

B. Discussion of County's Position on Mallinckrodt Bankruptcy Relative to Opioid Litigation

Chairman Payment reconvened the meeting at 6:05 PM.

Ike McRee, County Attorney, reported one of the defendants in ongoing Opioid litigation, in which the County is a Plaintiff, is reorganizing due to financial issues. The County received a ballot because Currituck County is listed as a creditor, and Mr. McRee asked for direction as to how the Board wished to vote on the reorganization. Mr. McRee said the national attorneys representing litigants in the suit recommend voting in favor of the reorganization.

Communication: SM-8/25/2021 (Approval Of Minutes-10/18/2021 & SM 8/25/2021)

Commissioner Beaumont moved to authorize Mr. McRee to submit a vote in favor of reorganization as advised. Commissioner McCord seconded the motion. The motion carried, 7-0.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Paul M. Beaumont, Vice Chairman
SECONDER:	Kevin E. McCord, Commissioner
AYES:	Michael H. Payment, Chairman, Paul M. Beaumont, Vice Chairman, J. Owen Etheridge, Commissioner, Mary "Kitty" Etheridge, Commissioner, Selina S. Jarvis, Commissioner, Kevin E. McCord, Commissioner, Bob White, Commissioner

C. Discussion of Expanded Easement Across County Property at Corolla Bay Subdivision

Ike McRee, County Attorney, explained a request by a property owner in Corolla Bay who wants to expand an easement from four feet to six foot in width to allow construction of a six foot wide pier and dock on the sound. Mr. McRee reviewed documents in the agenda packet, which included an overhead plat, and displayed the location of the existing easement. Due to the County having riparian rights at the waters edge as well, the Division of Coastal Management requires written authority from the County to allow the walkway extension and the six-foot wide dock. Following discussion, Commissioners agreed to the request. Staff will notify the property owners and proper documentation, including a Deed of Easement, will be brought back to the Board for final action.

D. Discussion of County Position on State Senate Proposal Limiting County Authority to Regulate Stormwater

Ike McRee, County Attorney, reviewed budget items being proposed in the North Carolina State Senate that would limit a County's authority to regulate land use. Mr. McRee said the legislation would impact Currituck County in several ways: eliminate heritage tree preservation efforts, remove the ability to require traffic impact studies for development, and most importantly, County authority to require stormwater improvements above what is required by state regulation would be lost. North Carolina House Representative, Bobby Hanig, has expressed his opposition to the legislation, and after discussion, Commissioners directed staff to compose a formal Resolution expressing opposition to the legislation and to encourage elected officials at the state level to vote against the measure. Mr. McRee said he would prepare the Resolution for consideration at the September 7, 2021, Commissioners meeting.

E. Discussion on the Development of a Pro-Active Plan for the County to Address Covid-19

Commissioners considered putting out an early statement to address issues that may arise from the recent uptick in Covid-19 cases. Commissioner Beaumont suggested the County issue a statement to ensure the public that the County will have no masking or vaccine mandates and that businesses are free to incorporate requirements as they see fit. Commissioners discussed whether a statement at this time is premature and chose to

wait to see if mandates are handed down by the State of North Carolina before any statement is issued by the County.

CLOSED SESSION

Closed Session Pursuant to G.S. 143-318.11(a)(6) to Discuss Personnel Matters

Commissioner White moved to enter into Closed Session pursuant to G.S. 143-318.11(a)(6) to discuss Personnel matters. Commissioner McCord seconded the motion. The motion carried, 7-0, and the Board entered Closed Session at 6:30 PM.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Bob White, Commissioner
SECONDER:	Kevin E. McCord, Commissioner
AYES:	Michael H. Payment, Chairman, Paul M. Beaumont, Vice Chairman, J. Owen Etheridge, Commissioner, Mary "Kitty" Etheridge, Commissioner, Selina S. Jarvis, Commissioner, Kevin E. McCord, Commissioner, Bob White, Commissioner

ADJOURN

Motion to Adjourn Meeting

Commissioners returned from Closed Session at 6:50 PM and County Attorney, Ike McRee, was asked to update Commissioners on the status of the Ocean Sands condemnation for stormwater easements. He said the county will be moving forward within the next week by filing a complaint with the court to take possession of all easements. Mr. McRee provided updates on the status of some outstanding Code Enforcement issues and said he would review the status of the contract for Corolla Fire.

Business concluded and Commissioner McCord moved to adjourn. Commissioner White seconded the motion. The motion carried and the Special Meeting of the Board of Commissioners adjourned at 6:52 PM.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Kevin E. McCord, Commissioner
SECONDER:	Bob White, Commissioner
AYES:	Michael H. Payment, Chairman, Paul M. Beaumont, Vice Chairman, J. Owen Etheridge, Commissioner, Mary "Kitty" Etheridge, Commissioner, Selina S. Jarvis, Commissioner, Kevin E. McCord, Commissioner, Bob White, Commissioner