

AUGUST 15, 2005

The Pender County Board of Commissioners met in a regular session on Monday, August 15, 2005, at the Pender County Public Assembly Room, 805 South Walker Street, Burgaw, North Carolina

MEMBERS PRESENT: Chairman Eugene Meadows, Vice Chairman Stephen Holland, and Commissioners Bill Moore, F.D. Rivenbark and David Williams

OTHERS PRESENT: John Bauer, County Manager, Paul Parker, Assistant County Manager, Trey Thurman, County Attorney, Melinda Knoerzer, Deputy Clerk to the Board, members of the Press and public.

CALL TO ORDER

Chairman Meadows called the meeting to order at 4:00 p.m.

INVOCATION

Mr. Meadows offered the invocation.

PLEDGE OF ALLEGIANCE

Mr. Williams led the Pledge of Allegiance.

CONSENT AGENDA

Mr. Meadows presented items 1 through 8 on the Consent Agenda. Mr. Rivenbark made a motion to remove item #8 from the Consent Agenda for further discussion, which was seconded by Mr. Williams and carried by unanimous vote. Mr. Bauer asked that the Board also add to the Consent Agenda items 6a and 8b. Mr. Holland made a motion to approve the Consent Agenda as modified, which was seconded by Mr. Rivenbark and carried by unanimous vote. The Consent Agenda was approved as follows:

1. Resolution Approving Minutes of Meeting: August 1, 2005, Closed Session of August 1, 2005
2. Resolution Approving Tax Refunds and Releases as Presented
3. Resolution Authorizing Purchase Order for Pest Control Service to Carolina Exterminators: \$8,940
4. Resolution Approving Execution of a Contract with the Topsail Voice for FY2005-2006 Authorizing Purchase Order: \$6,500 and Authorizing a Purchase Order to the Pender Post: \$8,060.00
5. BUDGET ORDINANCE AMENDMENTS:
 - a. Emergency Management: 2004 State Homeland Security Grant: 911 Console \$13,016.46 increase
 - b. General: Emergency Management: 2004 State Homeland Security Grant Program: \$34,669.22 increase
6. Resolution Approving and Authorizing Contract Execution and Designating Finance Officer as Authority for Reimbursement Requests: Criminal Justice Partnership Program: \$62,660.00

- 6a. Resolution Authorizing Purchase Orders for Contract Service to Chemical Dependence Training Evaluation & Guidance, Inc. (CDTEG): \$38,565 & Richard Banton (Center for Research and Prevention of Recidivism): \$22,495.00
- 7. Resolution Designating Chad McEwen as a Map Review Officer for the Town of Burgaw
- 8b. Resolution Authorizing Purchase Order for the Annual Cost of the Lease for Copier, Scanner and Indexing Software for the County Manager's Office for the period of 07/01/05 – 06/30/06: \$16,128

8. Resolution Approving Changes to the Pender County Housing Department (PCHD) Administrative Plan

Mr. Rivenbark inquired if this is a revision to an existing plan. Mr. Bauer explained that this clarifies corrective action PCHD has taken as required by over-sight agencies. Upon a motion made by Mr. Rivenbark, seconded by Mr. Williams, the Board unanimously approved item 8.

RESOLUTIONS

9. Resolution Authorizing Departments to Use Credit Cards

Mr. Bauer stated he prefers allowing the use of credit cards for tracking travel expenses versus the current "cash advance" system. He said there are two (2) transactions involved with cash advances and this is not an efficient method of doing business. He said that under this proposal, DSS, Health and the Sheriff would each have their own Departmental credit card, and other Department Managers would be entitled to use general County credit cards, with severe disciplinary sanctions in any case of abuse. He said his recommendation is that the spending limits on each card be capped at \$5,000. He noted that anyone not comfortable using a County credit card could use a personal credit card and get reimbursed. After a brief discussion of the history of credit card use in the County, Mr. Rivenbark made a motion to approve this resolution, which was seconded by Mr. Moore. The motion carried by a vote of 4 to 1, with Mr. Meadows voting in opposition.

10. Resolution Approving Purchase: New Fire Truck (Pumper) Rocky Point Volunteer Fire Department

Mr. Bauer said that he met with the RPVFD to discuss this acquisition. Mr. Thurman Casey, Chairman of the Board of Directors of the RPVFD said the debt service on this acquisition would be \$15,425 per year, which does not exceed 25% of their revenues. He said their building is completely paid for and the only other existing debt is \$18,000 for one other truck. He said this is loan money from U.S.D.A. Rural Development. Mr. Bauer inquired if the RPVFD intends to seek a tax increase in 2006, but Mr. Casey said they did not know yet. He indicated that with the rate of growth in Rocky Point, particularly if there are multi-level buildings, they may need additional equipment. Upon a motion made by Mr. Holland, seconded by Mr. Williams, the Board unanimously approved this acquisition.

DISCUSSION/MEMO/RESOLUTION

11. 2005 School Bonds/Strategy/Board Resolution

Mr. Bauer said the Board must act on the resolution entitled "Exhibit B", as contained in the agenda package today. He said this resolution was provided by Bond Counsel and has not been substantively modified. He said that he and the Finance Officer met with the Local Government Commission (LGC) and discussed bond sales on the order of \$25, \$30 and \$35 million. He said staff recommends a total sale of \$35 million, which is the maximum amount the LGC would

allow. He said that Pender High School, Burgaw Elementary School and Topsail High School are all in the process of building/renovations now, and could be completed within 18 to 24 months. He said the first three years of the repayment would be “interest only” under this scenario. He said staff would be meeting with Standard & Poor’s and Moody’s staff on the County’s bond rating to see if that could be increased to garner better interest rates. He said these numbers comport with the tax rate increase figures given to the citizens at the time of the bond referendum. He said this reduces the number of bond sales from three (3) consecutive to two (2) over the next five (5) years; one in September of 2005, and the other in 2007-2008. He said this **does not** commit the County to selling all \$56 million in bonds. Mr. Holland made a motion to authorize the sale of \$35 million in school bonds pursuant to the resolution as presented. Mr. Moore seconded this motion, and it carried by unanimous vote.

ITEMS FROM THE COUNTY MANAGER

12. Mr. Bauer presented the following items of interest.

1. Notice from Board of Education: Regular Meeting: 08/19/05-1:30 p.m. at C. Heide Trask High School
2. Letter from Safe Haven of Pender, Inc.
3. Announcement that Pender County has been awarded \$400,000 in 2005 federal Community Development Block Grant (CDBG) Scattered Site Funds
4. NC Spot Festival – September 24 and 25, 2005
5. Announcement that Pender County has been selected to receive a \$395,233 grant from the NC Parks & Recreation Trust Fund for Phase II of Hampstead Kiwanis Park
6. Cooperative Extension Report – June and July 2005
7. Memo re: Carl H. Royal Request for Public Hearing on “No Wake Zone” – Black River
8. Memo re: Freedom of Information Request
9. Announcement from NC D.O.T. that Old Whitfield Road has been approved for addition into the State Maintained System
10. Memo re: New Planning Director

With respect to item #8, Mr. Bauer provided a copy of a letter in response to the requestor. In addition, he provided a memorandum indicating that tax bills would be mailed out by Friday, August 26th.

Mr. Bauer read a letter to the Planning Director from Deuce Investments, dated August 15, 2005, wherein they confirmed their intention to withdraw the application associated with item number 17 on this agenda due to the “unrest their application has caused in the community”.

ITEMS FROM THE COUNTY ATTORNEY

Mr. Thurman said the mediation scheduled in the matter of Shingleton v. Pender County may have to be rescheduled due to Mr. Shingleton’s attorney having a scheduling conflict. He reminded the Board that the hearing in the “Redistricting” matter, before the three (3) judge panel is (2) two weeks from tomorrow in Raleigh, NC, in the morning.

ITEMS FROM THE COUNTY COMMISSIONERS

Mr. Rivenbark noted that at the NACo conference he learned the Community Development Block Grant Program (CDBG) is still under attack in Congress. He said asked his fellow Commissioners to contact the Legislators to let them know we need this program for Pender County.

Mr. Moore said he attended the Atkinson Town Board Meeting recently and they have officially requested water from the County. He said they realize the County is in the preliminary stages of a water study and want to be considered as part of the study area. He said there are people in Atkinson who have been put out of their homes due to ground water contamination.

Mr. Williams asked if the County is “obligated” to hold a public hearing on the “No Wake Zone” application. Mr. Bauer said we have been requested to do so and we are trying to be “neighbor-friendly”. Mr. Holland noted that several have come before this Board in the past, but none have been approved. He said the problem is enforcement.

Mr. Rivenbark requested that staff forward a letter of appreciation to NC DOT for installing the traffic light at the intersection of Highways 133 and 117. He said there are numerous other places throughout the County where traffic lights are necessary. He left a poster regarding the “ Fall Litter Sweep” with staff to post for public view.

Mr. Williams stated that he had spoken with Dr. Kaniuka who assured him the Schools are “trimming” as much as they can out of their budget.

Mr. Meadows asked Mr. Bauer to look into allegations of Animal Control not returning telephone calls to citizens.

PUBLIC COMMENT

Steve Walter, representative of the Topsail Island Shoreline Protection Commission and NC Shores and Beach Commission delivered an update of recent activities of these organizations. He said the “Merritt dredge” began its’ second and final dredging of Topsail Inlet which presently appears to be in good shape. He said the dredge is due to be on-site for the next 24 days. He credited Congressman Mike McIntyre for securing the funding to undertake this dredging activity.

Mr. Walter explained that the funding outlook for FY 2006 in the Federal budget is “not good” as there is no provision for any dredging funding in either the House or President’s version of the budget. He said the US Senate version, approved on June 30th provided collectively \$2.6 million for the dredging of four (4) area inlets. He said that when the legislators return in September, the decisions will be made, however, seven (7) North Carolina Representatives had voted against this funding. He said a recent “post card” campaign initiated by the Commission has generated some 5600 contacts with Congressmen and Senators across the United States. He said the NC Beaches and Inlet Waterway Association has also been formed from several organizations and is now chaired by former UNCW Chancellor Dr. James Leutze. He said they all lobby together and have been able to mount a strong campaign. He thanked the Commissioners for joining as a local government entity. Upon a motion made by Mr. Rivenbark and seconded by Mr. Williams, the Board voted unanimously to send a resolution to the North Carolina Legislative Delegation,

signed by all five (5) Commissioners, in support of continued funding for inlet dredging and beach re-nourishment.

There being no further business at this time, the meeting was recessed until 7:00 p.m.

PUBLIC HEARINGS/SPECIAL USE PERMITS/RESOLUTIONS

13. Ordinance Adopting Road Names and Number Ranges

Jan Dawson presented this item and said this would revise five (5) road names and number ranges to make all of Olde Point subdivision consistent with the Pender County Road Naming and Addressing Ordinance. She said this is necessary because these lots were originally addressed by the Hampstead Post Office, however, some lots had since been subdivided, cul de sacs have been eliminated, and the numbering does not commence at the beginning of these roads. She said two (2) other roads were previously re-addressed in Olde Point.

Chairman Meadows opened the public hearing at 7:00 p.m. Gerald Dross said he lives on what is proposed to be “North” Green Tee and he does not understand why this is happening. He said he had not been notified of this action. Mr. Williams explained that there have been notifications via newspaper ads and signs being posted. Ms. Dawson explained that Mr. Dross’s house address number would not change and that he merely needs to add the directional “North” to his street name. It was explained that this is being done to improve E911 response times and to accommodate the change to a system that could locate cellular telephone callers.

Mrs. Joanne Dross expressed concern for having to re-name the “stub” street that accesses her street from “Green Tee” to Brent Street. Ms. Dawson explained that duplication in road names causes confusion for first responders.

John Hockreiter, of 610 Green Tee Road presented a petition he said had been signed by every resident of Green Tee Road. He said all residents are opposed to this change as proposed and want to meet with County officials or representative to discuss a plan to minimize impact.

Carolyn Corbett, of 109 Olde Point Road asked why the numbers have to be changed. Ms. Dawson explained that, pursuant to the Property Addressing Ordinance, all numbering systems must start on the main thoroughfare.

Chairman Meadows closed the public hearing at 7:22 p.m. Mr. Williams made a motion to approve this Ordinance as presented. Mr. Rivenbark stated that he serves on the Pender County Fire Commission and has heard first hand the difficulties of first responders in these situations. He then seconded the motion, which carried by unanimous vote.

14. Special Use Permit – Antique and Vintage Merchandise, General Retail, No Outside Display

Mr. Thurman swore the witnesses and Chairman Meadows opened the public hearing at 7:24 p.m. Stephen Carpenter said the applicant requests a permit to use an existing 1,088 square foot building located at 22220 US Highway 17 in Hampstead for retail sales of antiques and vintage home décor accessories. He said this notice has been properly advertised and this is a permitted “special” use in this district. He said there are no violations on this property and the use is

consistent with the 2005 Land Use Plan. He said the surrounding land use is residential, forestry, and vacant, and there is direct access to Highway 17. He said staff recommends approval.

Kathryn Gasperson, applicant came forward and acknowledged that all information she submitted in support of her application is true and correct to the best of her knowledge. She also said she understands and has no problem complying with any of the proposed conditions. Mr. Rivenbark asked if she would mind amending her hours to exclude Sunday morning hours. Ms. Gasperson said she had no problem with that. Mr. Carpenter said they gave her a full range of hours in the permit, even though she only requested Thursday – Saturday, 11 a.m. to 5 p.m. He said this way, if she wants to expand her hours, she need not seek a revision to her permit. It was agreed that she would be able to open at 12:00 Noon on Sundays. Chairman Meadows closed the public hearing at 7:29 p.m. Mr. Rivenbark made motion to approve this permit, subject to changing the Sunday opening hour to 12:00 Noon. Mr. Williams seconded this motion, and it carried by unanimous vote of the Board.

Mr. Rivenbark made a motion to excuse Mr. Holland from the vote on item number 15, (in which Mr. Holland has a business interest). This motion was seconded by Mr. Williams and carried by unanimous vote of the Board.

15. Special Use Permit Revision – Mining Operation, Shelter Creek, LLC

Mr. Carpenter said that the initial estimates of material in the ground that were available at the time of the permit approval on September 20, 2004 fell short of the actual amounts. He said that more material has been discovered, thus the applicant wishes to modify his permit to allow him to mine deeper. Mr. Carpenter then outlined the areas in the existing permit where the depths were changed to the proposed new amounts. Mr. Bauer asked what would constitute and “emergency situation” as indicated on page 5, item 10. Mr. Thurman said that items could be needed quickly from the mine, such as for the DOT in a road re-fortification emergency, or for sandbags in the event of a possible weather emergency.

James Powers, a resident of Kinston, said he owns property near this proposed mining location. He said the property is 3 to 5 feet above sea level and some of it has been declared wetlands. He said he does not understand why mining is being considered for this land as there are still a lot of environmental questions. He said he was concerned that people’s wells might be dewatered, and that water might not be able to be held by the berm and would flow into Shelter Creek. He said he was not notified of the first meeting and asked the Board to deny the request to mine deeper.

Mr. Steve Holland said there are some wetlands but not all 380 acres, but acknowledged it is all in the floodplain. He said he now owns 560 acres there which he has operated as a hunting preserve. He said he is going through all the Federal, State and County permitting processes at this time. He said there are only three (3) neighbors within two (2) miles of his mining operation and he lives closest to the mine. Mr. Holland explained his mining and reclamation plan. He said he will have a settling pond for water that had been pumped out of the mine, which runs into a 100’ by 400’ pond and then into a system that runs into 129 acres of wetlands, ¼ mile away from Shelter Creek. He said the water then re-circulates into the mine. He said this is good water for a reservoir, and will be a beautiful recreation area and water source.

Mr. Holland said blasting would be kept to a minimum because they intend to utilize a new cutting system. He said the Corps of Engineers and Division of Water Quality is looking at the wetlands to see if they are protected. He said the mine-able area is 182 acres. He said the County permit comes first, then the Wetlands delineation, then State and Federal mining permits (including Wildlife and Forestry).

Mr. Powers said that marl requires blasting at such depths.

There being no further discussion, Chairman Meadows closed the public hearing at 7:53 p.m. Mr. Williams made a motion to approve the revision as presented. Mr. Rivenbark provided the second and the Board unanimously approved this revision.

16. Special Use Permit Revision– Construction of a Multi-Unit Shopping/Retail Center

Mr. Carpenter said this is a request for a revision to an existing permit to allow the Shell gas station and convenience store to erect a larger sign for their gas station as they are concerned that a small sign would eventually be dwarfed by the growing required vegetative buffer. He said the question to be answered here is whether this business, which is no longer under sole-ownership is considered a “Multi-Unit Commercial Development” or a “Shopping Center”. He said even if this action is approved, the applicant would have to go before the Board of Adjustment in order to have the proposed sign permitted as the largest he could have by the “Shopping Center B2 signage requirement” is a 72 square foot sign and he proposes to build a 79 square foot sign. Mr. Thurman asked if this would permit more than one sign and Mr. Carpenter responded that it would, thus the new Hardees could also follow suit. Mr. Thurman noted that once this condition is removed, it is removed for all future permits on this site. It was noted, however that signage size is determined by road frontage, and not every parcel has road frontage. Mr. Holland stated that, “signs make a big difference for business”. TT said the only “neighbor” that might be concerned would be the church (not in attendance). Mr. Carpenter noted that the Shell station’s canopy and wall sign would not be overgrown by the buffer trees.

At 8:07 p.m., Chairman Meadows opened the public hearing and Mr. Thurman swore the witnesses. David O’Brien, Construction Supervisor for Hardees said they are in the same boat as the Shell station and would also like to be considered a Shopping Center in the B2 district, thereby affording them the opportunity for larger signage. He asked that this be approved.

William Bostic provided a handout showing an illustration of their proposed sign. He said they want to erect a sign that will stand above the developers required buffer. He said part of his sign would be a message board. He said this is the standard “Shell” sign. He said the buffer requirement is currently four (4) canopy and three (3) understory trees per 100 feet, or a “Type A” Buffer. When asked about the sign height, he said they anticipate no higher than 18 feet because at 20 feet, the wind loads make this difficult (and expensive) to secure. The sign size will be determined by the Board of Adjustment, not the height. The sign would stand at the corner of Highway 210 and 117 and would not exceed the height of the station’s canopy.

Ken Just asked what would happen to the rest of the County should this precedent be set. He said one would have to be, “completely blind” to miss the Shell sign currently on site. He said entranceway issues should have been considered by the developer at the time of the initial application. He said he personally served on the advisory committee that defined the current buffers in the Zoning Ordinance. He said their concern was that they did not want the streets of

Pender County to look like Market Street. He asked the Board to consider the precedent being set and the repercussions across the balance of the County.

There was a brief discussion about the buffers and location of the sign on the site. Mr. Carpenter said that according to the landscaping plan on file, there would be no way to put a sign on the property without the hedges growing over it, and signs could not be erected in the buffer area. Mr. Carpenter said this parcel was initially owned by the developer but parcels have since been sold off, and there is no "Owners Association". Mr. Thurman, addressing the "precedent" issue said that someone could always contend that if this Board "does" for one, they must "do" for all. He said this could always be ruled on by the courts. Food Lion already has their sign erected, but if this is approved, they could put up a larger sign. Mr. Thurman cautioned that if this restriction is removed, it would hold for all other tenants as well. It was later determined that only four (4) of the parcels have road frontage that would entitle them to a stand alone sign (including one fronting on Highway 210).

Ken Just said the developer initially had the option to choose from four (4) buffer arrangements depending on the size. He said he could have chosen a 15, 20, 25 or 30 foot buffer and the larger the buffer, the fewer trees are required. He said these decisions are made at the time the permit is issued, and the intent of the buffer requirement was to create green space.

The Chairman closed the public hearing at 8:45 p.m. Mr. Carpenter explained that the change being requested here is to delete condition #7, which defines them as a "Shopping Center/Multi-Unit Commercial Development under Section 16.11 of the Zoning Ordinance", and states further that, "signs on the property must comply with this Section of the Zoning Ordinance. He said deleting this condition would permit them to be treated as a Shopping Center in the B2 district, for the purpose of the sign. Mr. Rivenbark made a motion to approve the revision as presented (with condition #7 removed). This was seconded by Mr. Holland and carried by a vote of 3 to 2, with Commissioners Williams and Meadows voting in opposition.

17. Zoning Map Amendment, Deuce Investments, Inc. (110.31 acres, US 17)
APPLICATION WITHDRAWN– cannot be brought back up for 6 months

18. Zoning Ordinance Amendment, Section 8.9 Table of Permitted Uses; Salvage Yards Junkyards, Scrap Processing in B-2 Highway Business District

Brian Chambers, Planner, presented this item and said the applicant is requesting a zoning text amendment to allow salvage yards in the B-2 District. He said Staff finds this proposal to be inconsistent with the plans and policies and recommends denial, as did the Planning Board.

No one was signed up to speak, but the owner, Bryan Collins, came forward. He said this is his business that he has operated on site for 21 years. He said he recently erected a chain link fence around his property because his cars, which are stored for salvage, were being vandalized. Mr. Thurman explained that a business such as this is "Grandfathered"; however, he cannot expand the non-conformity. Mr. Thurman explained that Mr. Collins was presented with the options of appealing the decision of the Zoning Administrator, Seeking variance from the Board of Adjustment, changing the ordinance, or seeking to have property re-zoned to a district that would allow this usage. In 2003, Mr. Collins property was changed from RA to B2. The Planning staff presented aerial photographs showing the increase in number of vehicles on site from 1998 to

2003. Mr. Collins explained that he stockpiles vehicles for 3 or 3 years, then crushes them, thus the amount of ground used for storage varies. It was suggested that Mr. Collins be advised and guided through the process of resolving this matter such that it would not affect the zoning of the entire county.

Mr. Carpenter explained that this evolved from a complaint made to Zoning Administrator who determined, at that time, that there was an expansion. He explained the possible methods to resolve this matter. Mr. Holland noted that he has not expanded beyond his property boundaries. Mr. Thurman explained that if a non-conformity is grandfathered, it cannot be expanded beyond the initial boundaries (not property boundaries) without loosing the "grandfather" status. He said the only issue before the Board at this time is the decision to change the table of permitted uses to allow these uses in a B-2 Business District. Mr. Holland said he is interested in helping Mr. Collins, but is not in favor of taking this action which could adversely affect the whole county. He said he does not think Mr. Collins understood this would impact the entire county. The Board asked staff to work with Mr. Collins to find an amicable resolution to this matter without impacting the entire county. Chairman Meadows closed the public hearing at 9:04 p.m. Mr. Holland made a motion to deny this Zoning Ordinance Amendment, which was seconded by Mr. Williams and carried by unanimous vote. The Board asked staff to make sure that Mr. Collins understands his options.

There being no further business, the meeting was adjourned at 9:05 p.m.

Respectfully Submitted,

Melinda Knoerzer
Deputy Clerk to the Board

Reviewed by:

John Bauer
Clerk to the Board