

## SEPTEMBER 19, 2005

The Pender County Board of Commissioners met in a regular session on Monday, September 19, 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. Rivenbark offered the invocation.

### PLEDGE OF ALLEGIANCE

Mr. Moore led the Pledge of Allegiance

### PUBLIC INFORMATION

#### **Eddie King, Hurricane Ophelia De-Briefing**

Mr. King said the County declared a State of Emergency beginning at 6 p.m. on Tuesday September 13, 2005 in anticipation of Hurricane Ophelia's arrival on September 14, 2005. Three shelters were opened on Tuesday, the first of which closed on Wednesday evening, and the last of which closed on Thursday morning. A total of 380 people stayed at these three shelters.

Mr. King reported that the most severe damage across the County was on Topsail Island, where some dunes were cut away and over-washed. He said the Town of Surf City reported damage to the Town Hall roof, one well, one wastewater treatment pump and flooding on the sound side. He said the damage reported for the Town of Topsail Beach totaled \$4 million, with some 350 homes reporting minor cosmetic damages. He said that 200 beach crossovers and 20 piers were damaged, and Topsail Beach also experienced sound-side flooding. He reported that the balance of the County fared much better, with a total of only \$350,000 in structural damage estimated. He said there were five (5) reports of trees falling on houses, two (2) reports of destroyed mobile homes, no reports of damage from flooding, and a total of \$8.35 million damage to both public and private property county wide, including the money spent by local and municipal governments to respond to the event. He said the storm debris is minimal compared to Hurricane Charley.

Mr. King said the County proposes (with Board approval) to open two (2) vegetative debris sites; one behind the Rocky Point Convenience Center and the other off US Highway 17, just north of the main entrance to Topsail Greens. He said the sites are for the disposal of vegetative debris only and will only be accepted by delivery in individual vehicles or small trailers – no tandem axle vehicles. He said the plan is to open daily from 8 a.m. to 6 p.m.; Friday, September 23 to Saturday, October 1, 2005, closed on Sunday September 25<sup>th</sup>. He said once the debris is collected and the sites are closed the amount of debris would be estimated and bids would be solicited for the hauling. He said those bids would come back to the Board for final action.

Mr. King said Pender County was included in a FEMA Category B (Emergency) Declaration, signed on September 14<sup>th</sup>. He said this covers the County for costs incurred in taking protective actions before the storm. He said FEMA Damage Assessment Teams are in the area today gathering information to see if

Pender qualifies for a Category A Declaration, which would handle the cost of the debris disposal. However, absent such a declaration, the cost of the debris sites would be borne by the taxpayers of Pender County. He said the beach towns would apply separately for FEMA assistance.

Mr. Bauer said that collection of debris has become an issue as the Governor said, in a press conference on Thursday, “get the debris beside the road and we will pick it up”. He said the Governor also instructed the State Department of Transportation to be “liberal” in their interpretation of “non system” roads. Mr. King noted that the local DOT Division Office maintains they have had no directive to pick up this debris. Mr. Williams said he does not see that it would be feasible to pick up on private roads. Mr. King told the Board the County has still not been reimbursed for expenses associated with the declaration on Hurricanes Bonnie/Charley in 2004. Mr. Holland said he believed the State should pick up this debris. Mr. King said the monthly rental on the site in Hampstead is \$1,000.

Mr. Williams then made a motion to approve the opening of these sites for a total of eight (8) days. This motion was seconded by Mr. Rivenbark and carried by a vote of 4 to 1, with Mr. Holland voting in opposition. Mr. Williams said that this site should have been established ahead of time, and it should not have taken so long to bring it on line. Mr. Bauer said that next year sites would be identified in advance.

Topsail Beach Town Councilman Steve Walter brought photographs showing 25 to 30 feet of frontal damage to the beach areas. He said the lost sand appears to have collected in a newly formed sand bar just off shore. He said experts have determined this sand should eventually migrate back to the shoreline, however, that will take a long time. He said the dunes must be restored.

Surf City Town Councilman Mike Curley said the Department of Corrections Inmates worked all weekend to clean up the beaches and the Town is in good shape now. He thanked the County for their support. Mr. Meadows thanked Mr. King for his efforts during the storm.

#### **Frank Palmer - Introduction of Planning Director**

Mr. Bauer introduced Mr. Frank Palmer who assumed the position of Director of Planning today at 8 am. Mr. Bauer said that Mr. Palmer has a variety of public and private sector development experience, including work with the Army Corps of Engineers. He said Mr. Palmer will be responsible for overseeing Planning Department operations and Mr. Holt remains in charge of Inspections. He said there has been no determination on filling the Community Development Coordinator position vacated by Mr. Johnny Sutton as yet. Mr. Palmer said he has worked with the Federal Government for ten (10) years and prior to that, served as a consultant to both the public and private sector.

#### **CONSENT AGENDA**

Chairman Meadows presented the eight (8) items on the Consent Agenda. Upon the motion of Mr. Rivenbark, second by Mr. Williams, and unanimous vote, the Board approved the Consent Agenda as follows:

1. Resolution Approving Minutes of Meeting: September 6, 2005, Closed Session of September 6, 2005
2. Resolution Approving Tax Refunds and Releases as Presented
3. Budget Ordinance Amendment: Giant Salvinia Grant: NFWF Grant: \$11,020 Decrease
4. Resolution Authorizing Purchase Order to Warren Wilson, Architect, P.C. for Architectural and Engineering Services: New Jail Kitchen Facilities: \$21,150
5. Resolution Approving a Contract with and Authorizing a Purchase Order to Norris Construction Company, Inc., for Paving: \$44,819
6. Project/Budget Ordinance: Community Development Block Grant 2005 Scattered Site Housing Program, and Establishing Account Signatories: \$400,000
7. Budget Ordinance Amendment: School Capital Projects: Bond Sale: \$35,826,319 Increase

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8. Resolution Establishing Pender County Board of Commissioners' Computer Acquisition Policy and a Standard for Communications between Commissioners and Administration

## **RESOLUTIONS**

### **9. Resolution Establishing Policy on Beach Renourishment**

Mr. Bauer said this funding is generally given in a one lump-sum allocation, and he wanted to clarify moving forward that the Board wants this split 50:50. He said the intent going forward is to keep separate accounts for Surf City and Topsail Beach, noting that they are not always at the same stage of their beach stabilization projects. He said this resolution further proposes that the minimum financial reimbursement request be \$50,000. He said this had been precipitated by a request from Topsail Beach to be reimbursed \$9,000 in expenditures. Both towns agreed it would be no problem to split the budgeted \$200,000 on a 50:50 basis between the two towns. Upon the motion of Mr. Williams and a second by Mr. Rivenbark, item number 9 was unanimously approved as presented. Mr. Steve Walter and Mr. Bill Morrison of Topsail Beach said they both understood the policy and had no problems with it.

### **10. Resolution Approving Increase in Annual Programmed Capital Outlay to Schools from \$912,000 to \$950,000, Starting in FY 06-07**

Mr. Bauer said that as a result of the school bonds being sold at a cash premium, the County will receive approximately \$426,319 in one-time revenues. He said the Board had already appropriated the one-time revenues under item #7 of this Consent Agenda, but approval of this resolution would identify that every year, as part of the budgetary process, we would provide one-time revenue to the schools over time. He recommended designating this money to the Public School Capital Fund and paying it out over a ten (10) year period, to increase the Capital Outlay from \$912,000 to \$950,000. Mr. Rivenbark made a motion to approve and Mr. Moore provided the second on the motion. The Board unanimously approved item number 10 as submitted.

### **11. Resolution Approving Inter-Local Agreement for Water and Wastewater Development between Pender and New Hanover County**

Mr. Bauer said the Counties have identified areas where they could cooperate and share costs, particularly with regard to the Highway 421 corridor. He said the future plans are to potentially develop a wastewater treatment plant there, and both entities will apply for grants and loans and share in the costs/benefits accordingly. He said another objective is to seek potable water along the Highway 17 corridor. Mr. Bauer said staff recommends this as the best way to proceed toward development of these facilities. Mr. Holland concurred as he had attended a joint meeting on this topic and felt it was a very "positive" meeting. Upon the motion of Mr. Rivenbark, second by Mr. Moore, and unanimous vote, the Board approved the execution of this Inter-local agreement. Mr. Thurman said that the agreement requires him to approve "as to form". He said since this agreement merely expresses and "intent", he has no problem with that, however, any agreement for specific payment and performance obligations should be "fine tuned" to protect both parties. For instance, he said, there is no provision in this agreement for either party to terminate. He recommended that before the money begins to be spent, he would like to "better protect" the County's interests and work with the New Hanover County Attorney "to craft" a more detailed agreement for approval by this board at a future date.

### **12. Resolution Clarifying, Modifying, and Establishing Financial Control/Management Requirements and Policies**

Mr. Bauer reviewed the proposed policy. Mr. Williams made a motion to approve the policy as proposed, which was seconded by Mr. Holland and carried by unanimous vote.

**13. Resolution Approving Two (2) additional County Fuel Sites: Hampstead and Rocky Point: W.K. Hobbs, Inc.**

Mr. Bauer said this formalizes the offer made by Mr. Hobbs and discussed by the Board at the prior meeting to put fueling stations in at Hampstead EMS and Rocky Point EMS. He said the annual fuel usage of 110,000 gallons per year does not include EMS. Upon the motion of Mr. Williams, second by Mr. Holland and unanimous vote of the Board, item number 13 was approved as presented.

**14. Ordinance Establishing History Checks on Applicants for County Positions**

Mr. Bauer said that he has coordinated this resolution with the Sheriff and this is necessary in order to be permitted access to SBI/DCI criminal history record information the County must have adopted this ordinance. He said that it is not the intent to have all final applicants finger-printed. However, that may be necessary in a case of a potential "mistaken identity". Upon the motion of Mr. Williams, second by Mr. Holland and unanimous vote, the Board approved item #14.

**14a. Resolution Opposing August 11, 2005 Interim Final Rules Proposed by Economic Development Administration (EDA)**

Mr. Bauer asked the Board to allow him to introduce this new resolution prepared at the request of Commissioner Moore. He said the Southeastern Economic Development Commission (SEDC) alerted us to the fact that EDA is proposing "phasing out" development districts in favor of private consultants as well as decreasing the percent of grant amounts available to each county. He proposed authorizing the Chairman to sign a letter included with the resolution, in opposition to the proposed changes. Upon the motion of Mr. Moore, second by Mr. Holland and unanimous vote, the Board approved item 14a as presented.

**APPOINTMENTS**

**15. Resolution Approving Appointment of Citizens to Boards, Commissions, Etc.**

Mr. Williams said this action had been suggested by Pender County's State Department of Transportation Representative Lanny Wilson. Mr. Williams said this action would remove him from consideration as the Metropolitan Planning Organization representative, and appoint Hampstead resident Al Freimark to that position. Mr. Williams stated that Mr. Freimark has been involved in transportation matters for a long time and he has the time to spend on these matters. He said that Mr. Wilson said the MPO would change their bylaws to accommodate Mr. Freimark's appointment. Upon the motion of Mr. Williams, and second by Mr. Holland, the Board unanimously approved the item as proposed. Mr. Williams noted that Pender County would not become an official member of the MPO until December of this year.

**DISCUSSION/WORK SESSION**

**16. Solid Waste Revenues: User Fees**

Mr. Bauer provided an updated "Solid Waste Revenues" sheet. He said he has asked the Tax Department to break out "User Fees" from "Availability Fees". He said the revenues don't seem to be increasing proportionately with the county's rate of growth, and he is conducting an investigation to make certain that we aren't missing out on fees.

**17. ITEMS FROM THE COUNTY MANAGER**

Mr. Bauer reported that 55 people have signed up thus far to attend the Economic Development Summit on October 12<sup>th</sup>. He provided a draft of the proposed agenda. Mr. Williams stated his intention to attend, and inquired about including an update on the status of the Pender Central Park project under Tourism/Parks Development portion of the agenda.

Mr. Bauer presented the following items of interest:

1. We are exploring getting a "Sister County" in the Gulf with whom we could provide aid and expertise, etc; Emergency Management Coordinator, Eddie King is looking into this.

2. Five (5) Year Utility Costs (electric, oil, water, sewer, trash) at York House is \$16,000 or \$3200 per year. Probably should sell the house; we will continue to pursue this.
3. FYI, based on 2000 Census: Commuting patters:
  - a. From Pender to New Hanover 8063 persons
  - b. From New Hanover to Pender 1563 persons
 Conclusion: Folks live in Pender and work in New Hanover
4. FYI, Based on court case, schools can now get – yes, it will be mandatory – Tax Penalties. We are estimating this annual sum to be \$20,000 to \$25,000 per year. Other Jurisdictions are deducting this sum (whatever it may be) from current expense. We will advise you shortly.
5. FYI: To reiterate: 8 Bond Bids: Merrill Lynch bought our Bonds at 4.0659%, \$35 million sold @ premium (\$426,000) and sold insured: settlement date is September 27, 2005.
6. Maple Hill Civic Club – Parade on October 15, 2005
7. Cooperative Extension Monthly Report, August 2005
8. Notice of Corridor Selection & Design Workshop for the NC 53, Burgaw Bypass, Thursday, September 22, 2005 from 4 p.m. to 7 p.m. – Commissioners meeting room.
9. Minutes of the September 8, 2005 meeting of the Pender County Industrial Facilities and Pollution Control Financing Authority.
10. Minutes of the Region O Provider Meeting of August 31, 2005.
11. Pender County DSS has maintained a 100% payment accuracy rate for the Quality Control Review period of October 2004 to March 2005.

In a brief discussion about moving the Tourism Department out of the York House, it was stated that the County has not moved that department yet and it has not been determined that it should move to the Train Depot.

Mr. Bauer stated, with respect to item number four (4) that we should ask the people who come to speak to the Commissioners and Board of Education at 8:00 a.m. on Monday, October 3<sup>rd</sup>. Mr. Noah Woods and James Blackburn of the NCACC will be here to address both boards on the topic of developing a “school funding formula”. He said they should be consulted as to how other counties are handling this issue. He reported that the school bond documents were executed today.

#### **ITEMS FROM COUNTY ATTORNEY**

Mr. Thurman reported that two (2) motions were scheduled for hearing today; one in the Hobbs v Pender County matter (co-habitation lawsuit) was continued because one of the attorneys for Ms.Hobbs was out of state, and in the Kilroy v Pender County matter, the motion will be heard after jury trial that began today is completed. He said he has a brief matter to discuss in closed session regarding a possible settlement on land dispute on Highway 17.

#### **ITEMS FROM THE COUNTY COMMISSIONERS**

Mr. Williams presented a letter from North Carolina Fare Share asking the Board to do a resolution in recognition of the lifetime accomplishments and contributions of Mrs. Johnnie Mae and Mr. Willie B. Nixon, to be presented at a celebration on the courthouse square on Saturday, September 24<sup>th</sup>. Mr. Williams made a motion to approve this request and direct staff to develop an appropriate resolution. Mr. Rivenbark seconded this motion, and it carried by unanimous vote of the Board.

In a brief discussion regarding the “Debt Setoff Program”, Mr. Bauer advised it permits the County to obtain taxes from state income tax returns.

#### **CLOSED SESSION**

At 5:30 p.m., Mr. Rivenbark made a motion to enter into closed session pursuant to N.C.G.S. 143-318.11 (3) to preserve the attorney client privilege in the discussion of Blackburn v Pender County.

## **OPEN SESSION**

At 5:36 p.m., Mr. Rivenbark made a motion to come out of closed session, which was seconded by Mr. Holland and carried by unanimous vote.

## **ANNOUNCEMENT FROM CLOSED SESSION**

Mr. Thurman said that in the matter of Blackburn v Pender County, Blackburn alleges that his family redeemed property from tax foreclosure, and has continued to pay taxes on this property. This is an action no "quiet title". He recommended that Pender County agree to issue a quitclaim deed to settle this matter because although records show the County owning the property, Blackburn has made a strong case for ownership and control. Mr. Rivenbark made a motion to approve this settlement and Mr. Williams provided the second. The Board unanimously approved these settlement terms.

## **PUBLIC COMMENT**

No one came forward for Public Comment.

The Board recessed at 5:37 p.m. and reconvened at 7:00 p.m.

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

### **18. Zoning Map Amendment, Tucski, Inc. (84.49 acres, US 117)**

Planner Brian Chambers presented this item and said this is a request to rezone two contiguous parcels totaling approximately 85 acres from R-20, Residential to RT, Rural Transition and R-10 Residential. He said the current land use in the surrounding area is Forestry and Residential is emerging. He said this proposal is not inconsistent with the Land Use Plan. He said the Planning Board unanimously approved the rezoning of the 4.85 acres tract (fronting on Highway 117 from R-20, Residential to RT, Rural Transition) but recommended denial of the remaining rezoning request. Documents presented with the agenda package stated, "The Planning Board based their decision on the fact that this rezoning would essentially leave an island of R-10, Residential zoning surrounded by R-20, Residential zoning thereby disrupting the continuity of the district".

Attorney Richard von Biberstein, representing Tucski, Inc., introduced experts and the owners as follows: Cindee Wolfe with Withers and Ravenel, Engineer, Owners Thomas Tucker, Jim Stevie and Mike Blackburn, Realtor Art Ricks, and Land Management representative, John Williams. Mr. Biberstein began by saying that this entire area is classified as "Urban Growth" under the 2005 CAMA Land Use Plan. He then read the plan definition of "Urban Growth Area". He said this classification is focused in Rocky Point; specifically along Highway 117. He said the parcel is presently zoned R-20, and can take advantage of County water, but residential sewer is not available. He said an R-10 zoning would prohibit them from using septic. He said the Planning Board was concerned that the development would be too dense for this area, however, only 26 acres is useable. He said they plan to "cluster" the homes among large areas of green space, and anticipate only two (2) houses per acre, however, much of the land is not able to be built upon. He said there is nothing (no type of development) allowed in R-10 that is not allowed in R-20, therefore they are not asking for anything less stringent. He said that no neighbors voiced objections at the Planning Board hearing; however others have come tonight to speak. He said the applicants are building contractors and plan to build homes that would sell in the range of \$175,000 to \$250,000 per home. He said they will build their own package sewer system, and the construction of these homes would be an "economic boon" to the area. He said the Planning Staff recommended approval because they find no conflicts with the ordinances.

Mr. Biberstein provided photographs of existing development at Hampstead Pines, and stated that development here would be essentially the same type. He said the folks living there would be sustained with community assets provided by the Food Lion shopping center, and the surrounding commercial development. He asked that the Board of Commissioners uphold the Planning Board recommendation on the 4.85 acres and allow the other 80 acres on the backside to be rezoned as well.

Commissioner Williams asked about the longevity of the sewer package plant. Mr. John Williams, (no relation to Commissioner Williams) with Land Management stated that he is a Licensed Soil Scientist hired to determine the feasibility of this package system. He said they are presently preparing a permit application to submit to the Division of Water Quality (DWQ) of the NC Department of Environmental Resources. He said waste is treated through a package plant with recirculation mechanism and filtration device allowing high quality water effluent. He said that as part of the permit process, they must address long term maintenance of the system. He said after everything is built and permitted it will be turned over to the Homeowners Association, and that a condition of the DWQ permit is that the system's long term care must be addressed in the covenants. Mr. Chambers added that the County's Subdivision Ordinance would require them to turn the operation of the system over to a "Public Utility", not the HOA. He said the minimum size lots would be 10,000 square feet, and that the presently surrounding lots on Camellia, Magnolia and Strawberry Lane are R-20.

Mr. John Williams explained how the package system would work; stating that the septic tank is on line as part of the larger unit and tied in as a component of the larger package treatment plant. He said it does not drain into the ground, but sits in holding tanks, where it is then fed through a drip system similar to those found at golf course communities. He said the capacity will be designed to be expandable, up to a maximum of 150 homes. Mr. Biberstein reminded the Board that approval of the re-zoning is the first step, and all these issues will be up for review during the Subdivision process.

Pat Kerr, an adjacent property owner said he is concerned about development here because there is a branch (creek) running through the middle of the large lot. He said he too is concerned about the issue of density, and asked, "How do you keep green spaces green for a long time"? Cindee Wolfe, registered landscape architect and surveyor said that preservation of green space is designated and required in the wastewater permit. She said the green spaces would serve as areas to receive the drip, which is a combination of grey water and the treated effluent. She said the whole purpose for this water is to filter the drip through soils and further clean itself, and it is not intended to sheet-flow across lands. She said it is not "dirty" water that is being applied in the green spaces. She said the green space is required as part of the wastewater permit and would be maintained as such unless and until a large public sewer system became available and they no longer need to maintain the permit. She said that a licensed public utility would manage the system, but the HOA owns the land as common property; therefore, in order to effect any change, the entire HOA must agree. She said the designated drip fields are far away from the creek. Mr. Stephen Carpenter added that any reduction in green space must also be approved by the Planning Board as it is a requirement of the Subdivision Ordinance.

Ms. Norma Kerr said she lives at the end of Strawberry Lane. She said this property is located in a curved area and she concerned about traffic moving in and out of the development, as well as density and the creek area.

Kevin Reynolds, Planning Board Member said the Planning Board was concerned about density, but moreover, the whole 117 corridor is zoned R-20 and approval of this request would create an isolated pocket of R-10. He said the Planning Board was concerned that this would create opportunities for others to seek the same rezoning.

Burt Millette, Planning Board Member said that when considering a rezoning request, future development plans are irrelevant and this must be decided based on all possible uses allowed under the new zoning classification. He said they were concerned that this would, "opens the door to spot zoning". The County Attorney concurred with Mr. Millette's statement and cautioned the Board that once a property is rezoned, no matter how well intentioned initial plans are at the time, all uses approved under that classification are possible. Mr. Millette stated that there is a difference in restrictions between the R-10

and R-20 zones; sewer package plants are not permitted in an R-20, only in an R-10. (*Clerk's note –sewer package plants are permitted in Residential zones, including R-10 and R-20*)

Don Royal of Royal and Associates said he developed property on Strawberry Lane into 5 acre lots and while he is not opposed to development there, he is concerned with density. He said this could end up to be over 300 homes on 80 acres at a zoning classification of R-10. He said this looks suitable for development as an R-20. He said the possibility for vehicle traffic impact may put a strain on the traffic flow there.

James Davis, who owned 89 acres adjacent to this parcel at one time, said that Land Management checked that property in 1998 and determined that only three (3) spots perked. He said he was thinking of developing another Marlboro Farms to supplement his retirement, but that did not work. He said he recently sold a thirty (30) acres tract and only one (1) acre would perk. He said this land not drain, and during the flood, it was a big problem.

Tom Tucker, Owner, developer, and builder said they asked for the R-10 classification because the sewer package system they plan to install, an "Earthtek" system is expensive and they needed to build more homes to defray the cost of that system. He said the on site drip field will take up 25 acres of green space containing the best soils in the tract. He said this may possibly be developed as a park. Mr. Holland asked about ingress and egress on Highway 117. Mr. Tucker said there will be two roads for access. Stephen Carpenter said these are site plan factors that would be considered in the Subdivision Review process, however, they would anticipate at a minimum, a deceleration lane on Highway 117 and an access vial Strawberry Lane. He said the Department of Transportation would require a turning lane and a permit to access their road.

Mr. Tucker said they anticipate constructing 150 homes, however DENR and DWQ would analyze the soil and determine the exact number. Ms. Wolfe said the overriding theme here is that the County has spent lots of money developing the CAMA Land Use Plan wherein this corridor is identified as a "large growth node". She said this area has been identified as "Rural Transition", allowing business and residential uses. She said approval of this zoning request is appropriate considering the "Urban Growth" and the fact that the water system is already in place.

Mr. Bauer asked the Planning Staff to address the concerns of the Planning Board and to speak to the potential proliferation of the rezoning requests for R-10. Mr. Carpenter said the main factor in determining rezoning is the adjacent zoning. He said that if you are located near one, you probably would be successful in asking for a rezoning. Mr. Thurman stated that said failure to do that would be good basis for county to use a lawsuit.

Mr. Biberstein said that if the County is concerned about a proliferation of R-10, it should reconsider whether or not this should be an urban growth area. He said if it should not be developed, then the Land Use Plan should be changed.

Chairman Meadows closed the public hearing at 7:47 p.m. At the request of Mr. Rivenbark, Mr. Carpenter reviewed the staff recommendation. Mr. Williams made a motion to deny the rezoning request, which died for lack of a second. Mr. Moore made a motion to approve the request as presented, which died for lack of a second. Mr. Williams stated that the Chairman can neither make nor second a motion. Mr. Thurman confirmed that absent any action to change the zoning, it stands "as is". He said the Planning Board approved the rezoning of the 4.85 acre parcel that fronts along Highway 117. Mr. Carpenter said that the applicant cannot reapply within six (6) months under the current decision because it was not unanimous. Upon the motion of Mr. Rivenbark, second by Mr. Moore and unanimous vote, the Board permitted this applicant to make re-application at any time including within six (6) months.

**19. Public Hearing and Resolution Requesting the North Carolina Wildlife Resources Commission to Undertake Rulemaking for the Purpose of Establishing a No Wake Zone on the Black River**

Mr. Bauer explained that Mr. Carl Royal made a request on August 10, 2005 of the County Manager's Office to begin the process of requesting a No Wake Zone on the Black River in Atkinson. He said that if the Board approves this request today, the Wildlife Resources Commission (WRC) would conduct its own investigation. He noted that minutes of prior related discussions were included in the agenda packet.

Mr. C.H. Royal, owner at Thoroughfare Estates, said this is being requested strictly from a "safety" standpoint – on a narrow cut (one third to one half mile long) through off the Black River. He said he has witnessed two boats overturned and several "Jet Ski" accidents in that branch of the Black River. He said that since the flooding that came with Hurricane Floyd, there have been trees and debris on the river bottom, creating underwater hazards. He said it was cleaned out at high tide and not everything got removed in the post-hurricane clean out. He said the cost of each buoy is approximately \$100 and two (2) would be needed. He said he is concerned that kids swimming in this area could get killed. Mr. Moore asked who would enforce this "No Wake Zone" if it were approved. Mr. Royal said that WRC told him that "No Wake Zones" are not enforced anywhere except in the waterway. He said it will be up to the local people to get boat numbers and report them. He said if the signs are there, most people do abide by the rules. He said there are 14 homes all along this stretch of river.

Mr. Holland said that in the past some of his neighbors have asked for the same thing. He said that if the Board approves one, there will be no end of requests, and soon the entire river will be one large "No Wake Zone".

Jim Moore from Harrells came forward and said he is a property owner in Thoroughfare Estates. He said this situation is different because this portion is a "cut through" off of the Black River. He said "Hunts Bluff" does have a "No Wake Zone" which NC Wildlife established on its own accord. He said it is most appropriate that this would be an "exception" to the general rule because it is a creek off of the black river. He asked this Board to approve the request and let the WRC make the decision.

Chairman Meadows closed the public hearing at 8:20 p.m. Mr. Moore made a motion to approve the request, which died for lack of a second. No action was taken by the Board on this matter, therefore a request to establish a "No Wake Zone" will not be made to the WRC.

**DISCUSSION/WORK SESSION**

**20. Floodway Issues**

Mr. Carpenter said that on May 31, 2005, new flood maps were delivered to the County, and on July 25<sup>th</sup> and August 16<sup>th</sup>, public hearings were held to review and discuss the maps. He said the County has a problem with the "non encroachment" areas as defined in these maps and has filed the appropriate protest. In the interim, he said that Mr. Robert Stevens and wife applied for a building permit on a lot that is three (3) miles from any body of water, but because he is in a "non-encroachment" area (which is 6 miles wide in some areas) he must have a "No Rise Certification" prepared. He said these certifications can be extremely expensive, and only two (2) engineers in the state do them for Pender County.

Mr. Carpenter showed a comparison of the previous flood maps to the new flood maps. He said the "No Rise Certificate" shows that their construction would cause no rise in the Base Flood Elevation. He said that if Mr. Stevens had obtained his building permit last year, he would not have had to take this course of action. He said the difference is in a "detailed flood study" versus a "limited flood study" and Mr. Steven's land now lies in a "limited flood study" area. He said a "non encroachment" area is not even mentioned in the County's Land Use Plan.

Mr. Carpenter said the County's appeal is under the protest category of the validity of the width of the non-encroachment area. He said the new flood maps left 58 square miles of "floodway" total along the Cape Fear River, which is 6% of the county. By contrast, he said a detailed flood study of the Northeast Cape Fear River turned up only 1.5 square miles of floodway. He said the County's protest is now sitting on a desk in Washington DC, where they can either determine that there IS a problem, or there IS NOT a problem.

Mr. Carpenter said, and Mr. Bauer emphasized that in the interim, the County is enforcing the "No Rise Certificate" requirement so as not to jeopardize the entire County's ability to obtain flood insurance and FEMA assistance after storms. He said we need to write to the folks in Congress to make them aware of this problem. Mr. Palmer said he would like to amend the protest letter to specifically reference the 58 miles versus 1.5 miles comparison to actual floodways and use that letter as the means of congressional contact.

Mr. Bauer commended the Planning Board for their professional presentations.

### **PUBLIC COMMENT**

Burt Millette, resident of Hampstead, said most people in Hampstead live on private roads and it is difficult, if not impossible for them to get vegetative debris to the sites that have been established for this purpose. He said, "To deny people debris pickup service is untenable". He said he conducted an informal survey and determined that 1 out of 5 homes has debris to be picked up and hauled away. He said the criteria to receive debris pick up service should not be whether you live on a public or private road. Mr. Williams said he and Mr. Millette had discussed this and the problem is "where do you start and where do you stop", especially when some homes are located two (2) miles off the main roads, on dirt roads. Mr. Holland said that when this was done in the past, after Hurricane Fran in 1996, the State picked up on all roads. He said that the County is 840 square miles and it would be a dangerous precedent to set not knowing if state/federal reimbursement is available. Mr. Williams stated that some Homeowners Association are actively taking care of this problem. Mr. Bauer said the Board took positive action today to open two vegetative debris sites; one of which is located just north of Topsail Greens. He said the other is at the Rocky Point at the Convenience Center and both will be open for eight (8) days. He said the County would then deal with cost of disposal of debris at those sites. He encouraged folks to use those sites and said the County would encourage DOT to pick up debris on private roads as well.

John Tomlinson, President of the Old Point Homeowners Association said that he agrees with Mr. Millette because all pay taxes equally, whether one lives on a private or public road. Mr. Meadows said the state is picking up debris and we understand the Governor has requested the DOT to be "liberal" in the construction of the term "public" road. Mr. Bauer clarified that no tax money paid to the County goes to the roadways and DOT. He said only state income tax monies support that. He said when this was undertaken on private roads in the past, it was repaid with state and federal dollars. He said, "No County tax money goes, public or private, for road maintenance". He suggested that possibly the County could send a letter to the state on behalf of all Pender County taxpayers asking them to pick up debris on private and public roads. Upon the motion of Mr. Williams and a second by Mr. Rivenbark the Board unanimously approved this letter being sent.

Mr. Meadows noted that there would be a DOT public hearing on September 22, 2005 regarding the selection of the actual route of The Highway 53 Burgaw Bypass. He said this is an opportunity for individuals to express opinions on this issue.

Upon the motion of Mr. Rivenbark and second by Mr. Williams, the Board voted unanimously to adjourn 8:51 p.m.

Respectfully Submitted,

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Melinda Knoerzer  
Deputy Clerk to the Board

Reviewed by:

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John Bauer  
Clerk to the Board

Reviewed by:

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Planning Department