

CURRITUCK COUNTY  
NORTH CAROLINA  
November 17, 2008

The Board of Commissioners met at 7:00 p.m. for its regularly scheduled meeting at the Historic Courthouse in the Commissioners Meeting Room with the following members present: Chairman Nelms, Commissioners Bowden, Gregory, Taylor and Etheridge.

### **Invocation and Pledge of Allegiance**

Chairman Nelms presented the invocation.

### **Approval of Agenda**

Commissioner Gregory moved to add to consent agenda approval of agreement with ABC Enforcement and authorize the Sheriff to execute. Commissioner Bowden seconded the motion. Motion carried.

- Item 2            **Public Comment**  
*Please limit comments to items not appearing on the regular agenda, please limit comments to 3 minutes.*
  
- Item 3            **Discussion on NC Division of Aging Service Breach**
  
- Item 4            **Public Hearing and Action** PB 04-71 Swan Beach Corolla, LLC:  
Request to amend the Currituck County Unified Development Ordinance, Chapter 4: Overlay Districts, to create an Off Road Historic Village Commercial Overlay District.
  
- Item 5            **Public Hearing and Action** PB 04-72 Swan Beach Corolla, LLC:  
Request to establish an Off Road Historic Village Commercial Overlay District on approximately 25.77 acres. The property is located on Ocean Pearl Road north of the intersection of Albatross Lane, Swan Beach. Tax Map 101, Lot 1, and Tax Map 101A, Lots C & D Section 1, Fruitville Township.
  
- Item 6            **Public Hearing and Action** PB 08-50 Currituck County Planning Board: Request to amend the Currituck County Unified Development Ordinance, Table of Permissible Uses, to allow wastewater treatment plants with a Special Use Permit.
  
- Item 7            **Public Hearing and Action** PB 08-41 Bissell Professional Group - Text Amendment for R02 Roads and Lots: Request to amend UDO Chapter 9: Infrastructure; Chapter 2: Zoning Districts; and Chapter 10: Subdivision Requirements to allow existing larger parcels to be re-subdivided into open space subdivisions in the R02 zoning district with sand roads that follow the configurations of previously approved roads and lots (Carova Beach, Swan Beach, etc.).
  
- Item 8            **Public Hearing and Action** PB 08-53 Morrison/Myers (Horgan): Request to rezone approximately 119.96 acres from Agricultural (A) to Residential (R). The property is located at 291 West Side Lane, Tax Map 112, Lot 3C, Poplar Branch Township.
  
- Item 9            **Public Hearing and Action** PB 08-48 Currituck Marina/Horgan: Request to establish a Conditional District - Planned Unit Development Overlay Zone (CD-PUD) on approximately 119.96 acres. The property is located at 291 West Side Lane, Tax Map 112, Lot 3C, Poplar Branch Township.

- Item 10        **Consideration of Bid Award for RO Outfall Pipe and Diffuser-Mainland Water System Upgrades**
- Item 11        **Consideration and Action** on Member Waste Management Agreement with Albemarle Regional Solid Waste Management Authority
- Item 12        **Consideration and Action** on Agreement for operation of Transfer Station with Republic Services of NC, LLC
- Item 13        **Consent Agenda:**
  - 1. Budget amendments
  - 2. Approval of November 3, 2008, Minutes
  - 3. Co-Signature Authority-North Carolina Cooperative Extension
  - 4. Charge to Tax Collector Levy on Motor Vehicles for August Renewals
- Item 14        Commissioner's Report
- Item 15        County Manager's Report

Adjourn

**Special Meeting**

Tourism Development Authority

Budget Amendments

Adjourn

**Public Comment**

***Please limit comments to items not appearing on the regular agenda, please limit comments to 3 minutes.***

Chairman Nelms stated that the Board has received an award from the North Carolina Board of Education for working so well with the Board of Education. The award was presented at their annual conference in Greensboro.

Dean Gregory, thanked the Board for working with the Northern Outer Banks Beach Task Force on improving the 4-wheel drive area.

Marshall Cherry, requested the Board to adopt a conflict of interest policy.

Ike McRee, County Attorney, stated that Commissioner Bowden had no conflict with voting on Item 4.

There being no further comments, Chairman Nelms closed the public comment period.

**Discussion on NC Division of Aging Service Breach**

Dan Scanlon, County Manager, stated that an employee with the Division of Aging had her laptop computer stolen. The computer contained information from a Division database. Seniors were asked to take steps to insure their information was not used to obtain credit. Seniors are requesting that

the State take a more proactive role to keep this information safe.

Commissioner Etheridge moved to send a letter to the state to take more of the burden with the cost of helping seniors. Commissioner Gregory seconded the motion. Motion carried.

**Public Hearing and Action PB 04-71 Swan Beach Corolla, LLC: Request to amend the Currituck County Unified Development Ordinance, Chapter 4: Overlay Districts, to create an Off Road Historic Village Commercial Overlay District.**

Ben Woody, Planning Director, reviewed the request.

Bissell Professional Group and Currituck County Board of Commissioners have requested an amendment to the Currituck County Unified Development Ordinance, Chapter 4: Overlay Districts, and the Official Zoning Atlas. The proposed amendment has been submitted in conjunction with an overlay rezoning request of 25.77 acres in the Northern most part of Swan Beach Subdivision. The overlay rezoning request is contingent upon the approval of this amendment request. (A copy of this proposed amendment is attached for your review).

The Staff's concerns are the following:

- Approval of this amendment and subsequent zoning request would create an increase in traffic along the beach, currently the only way to get to and from the site. There is a concern that this additional traffic will endanger people who choose to recreate along these secluded beaches.
- The Currituck County Fire Marshall has concerns about the water availability for fire suppression for the proposed buildings since there is no county water available. The North Carolina Building Code, Vol., Fire Prevention Code specifically mentions requirements for commercial areas such as all weather driving surfaces, proper turning radius, and water availability. Additionally, the NC Building Code restricts the height of commercial buildings to 35 feet in areas where there is no aerial fire apparatus. The proposal is calling for a height limitation of 42 feet.
- There appears to be an area of the northern part of this proposed site that overlaps into the U.S. Fish and Wildlife property as shown on the property survey. This boundary dispute should be resolved prior to any approval.
- According to FEMA maps, the property is located almost entirely in the 100 year floodplain and extends approximately 700 feet in the new VE (high risk) area as shown of the new Flood Insurance Rate Map (FIRM). A concern has also been raised regarding how this proposal if built would affect the FEMA flood insurance rating for other structures in this area.
- Staff would like to have an Environmental Impact Study be prepared for the site to study the current verses proposed conditions, especially in the area of stormwater, wastewater treatment, access to the site, and how the proposed development and nearby properties will be affected by the CBRS Zone (Coastal Barrier Resource System).

Staff is recommending denial on the basis that this proposal would create further safety concerns for the recreating public using the northern beaches as well as the residents of the area. It's the staff's position that the Off Road Historic Commercial Overlay District would have more of an adverse impact on the fragile environment in this area of the Outer Banks than the traditional residential development in the RO2 zone.

**RECOMMENDATION:** request and recommended denial.

**PLANNING BOARD DISCUSSION;**

Mr. Bell asked why the height limitation was being increased.

Mr. Bissell said that the purpose is to allow a more attractive structure, similar to the old Nags Head lifesaving station structure.

Mr. Kovacs asked what accessory lodging units are.

Mr. Bissell said that accessory lodging units are separate bungalow type structures.

Mr. Bell asked how water and sewer concerns would be addressed.

Mr. Bissell said they'd be provided on site, regulated by the State.

Mr. Hawley asked how they proposed to get the supplies to that end of the beach. Linens, food, etc.

Mr. Bissell said the same is now and that traffic would not be different than it is now, and cited examples of the log trucks and such that are going in now to build homes. The issues presented by the Fire Marshall could be addressed at the design stage.

Mr. Ferguson asked if there would be a sprinkler type fire suppression system.

Mr. Bissell said yes.

Gene Snow, co-director of Corolla Wild Horse fund, said that this will open the door to commercial development and the horses will be eliminated. The horses have been designated as a NC cultural resource. They have no where else to go, they have been pushed to the outer limits.

Tom Hudak, President of Swan Beach property owner's assn., spoke on behalf of the membership of the association. 97% of the people are in agreement to preserve the area as is and spoke against the amendment.

Ron Darrow, resident of Carova, said he and his wife wanted to see the area stay as it is as well. He is afraid that this will be the first of many commercial developments in this area, and spoke against the amendment.

Nyla Johnson, Corolla Wild Horse fund, lives in Moyock and works at the beach. She spoke against the proposed amendment and the preservation of the horses.

Gene Walters, resident, spoke against the amendment.

Doris Jordan, Norfolk, spoke about the beautiful environment and spoke against the amendment. She said the investors are the only ones who will benefit from this proposal and the environment is the issue, not the money that will be made.

Carl Newton, resident of Swan Beach, spoke against the amendment and for the preservation of the environment in the area.

Linda Spencer, resident, spoke against the amendment.

Bill Vann, Fire Chief of Carova Beach, said a letter was written by the fire dept expressing concerns about fire issues. The fire department cannot get high enough in the air in the event of a fire and wonders if the developer or the county is willing to provide manpower to this area.

**PLANNING BOARD ACTION**

Mr. Kovacs motioned to deny the request as presented. Mr. Keel seconded the request. Motion passed unanimously.

***Since the Planning Board meeting the applicant has made some slight modifications to the text amendment. The changes include reducing the maximum height of the buildings down to 35', eliminating bridal trails and stables. The maximum amount of accessory lodging units was changed from 15 – 2 bedroom units to 10 bedrooms per acre.***

**PB 04-71  
UDO AMENDMENT REQUEST**

Bissell Professional Group and Currituck County Board of Commissioners requests the following amendment to the Currituck County Unified Development Ordinance:

PB 04-71: Amendment to Chapter 4: Overlay Districts of the UDO to create an Off Road Historic Village Commercial Overlay District.

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

**Item 1:** That the following sections be amended:

Chapter 4: Overlay Districts, Section 4.8 Off Road Historic Village Commercial Overlay

1. The Off Road Historic Village Commercial Overlay District is a floating district intended to provide a vital, place-appropriate, and community-enhancing area of limited commercial activities to serve existing and developing residential subdivisions in the County. These uses are in addition to the RO2 uses authorized in Chapter 2.
2. The Off Road Historic Village Commercial Overlay District designation shall only apply to contiguous parcels of land greater than 20 acres with common ownership, and shall have a specific height limitation of **42 35** feet.
3. The Off Road Historic Village Commercial Overlay District designation shall only apply to parcels within the RO2 zoning district.
4. Permitted Uses - The following uses shall be permitted by right and require only a zoning permit(s):
  - a. Post Office
  - b. Fire/Emergency Medical/Sheriff's Satellite Office (County leased facilities)
  - c. Churches, Synagogues, and Temples
  - d. Convenience Stores
  - e. Inn (not to exceed 50 bedrooms)
  - f. Real Estate Offices
  - g. Professional Offices
  - h. Accessory lodging units not to exceed **15 – 2 bedroom units (30 bedrooms total) 10 bedrooms per acre**
5. Conditional Uses - The following uses may be permitted subject to the requirements of this district and additional regulations and requirements imposed by the Board of Commissioners:
  - a. Retail Shops
  - b. Seafood Market
  - c. Theatres

- d. Outdoor recreation areas, including parks, picnic areas, nature trails, **bridle paths, riding stables**, playgrounds, boat ramps, and customary concessions connected therewith
  - e. Restaurants- Restaurants maybe permitted subject to other requirements of this chapter and provided that the following minimum conditions be met: (i) the restaurant shall not feature a drive-through window service whereby patrons are served while seated in a motor vehicle; and (ii) the restaurant shall include facilities for indoor seating and consumption of food and/or beverages.
6. Dimensional Requirements – Unless otherwise specified in this ordinance, dimensional standards in Chapter 2 shall apply.
7. Specific Development Requirements:
- a. Street Design and Construction Standards
    - (i) All streets serving any uses within the Off Road Historic Village Commercial Overlay District shall be designed to meet the requirements of NCDOT.
    - (ii) "Hatteras" Ramps, a minimum of 24 feet in width shall be provided in those areas that are consistent with the dynamics and character of the site.
    - (iii) All streets serving any uses within the Off Road Historic Village Commercial Overlay District shall be constructed in a manner consistent with NCDOT guidelines but will at a minimum utilize compounded (compacted) subgrade materials and surfaced with minimum of three (3) inches of shell or other similar substance.
    - (iv) Roadside drainage swales shall be installed a minimum depth of 15 inches with side slopes not greater than 3:1. Associated drainage plans and improvements shall be required and approved by the Currituck County Engineer and meet the requirements of Chapter 6 of the UDO.
    - (v) All construction standards shall be made n accordance with Exhibit A, attached hereto and incorporated herein by reference
  - b. All utilities shall be placed underground for all uses within the Off Road Historic Village Commercial Overlay District.
8. Parking
- a. All required parking shall meet the use standards in Chapter 8.
  - b. All vehicle accommodation areas shall be improved in accordance with the street construction standards in paragraph 7 (a) above.
9. Signs
- a. All signs shall comply with Chapter 4: Overlay Districts, Outer Banks Overlay District for all uses within the Off Road Historic Village Commercial Overlay District.

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

Chairman Nelms opened the public hearing.

Mark Bissell, Engineer, reviewed the request.

Gerald Friedman, Developer, reviewed the history of the area and requested the Board's support.

Brian Plumlee, Attorney, reviewed the 1969 signed plat for commercial area and requested the Board to honor its agreement signed when it went to record in 1969.

Rick Carstater, opposed the request.

Elizabeth White, opposes the request and presented a signed petition from residents and tourist.

Lynne Wilson, stated this request was not consistent with the LUP and opposes the amendment.

Debra Ianucci, opposes the request.

Jane Overstreet, opposes the request.

Kim Hoey, opposes the request with traffic concerns.

Edna Baden, opposes the request.

Rufus Baldwin, opposes the request.

Karen McCalpin, expressed concerns with wild horses and opposed the request.

Bob White, Swan Beach Property Owners Association, opposes the request.

Cary Browning, opposes the request.

Jan DeBlieu, Coastal Federation opposes the request.

Bob Wright, opposes the request.

Woody Archer, opposes the request.

Mike Hoff, US Fish & Wildlife, opposes the request.

Richard Baecher, opposes the request.

Bob Schultz, opposes the request.

Marie Baecher, opposes the request.

Marshall Cherry, opposes the request due to fire and EMS service.

Vance Aydlett, opposes the request.

Chairman Nelms requested the Attorney to give his opinion on vested right.

Ike McRee, Attorney, stated that there was no vested right with the 1969 signed plat.

Commissioner Bowden reviewed the history of businesses that did operate in Swan Beach back to the late 1800's.

Chairman Nelms closed the public hearing.

Chairman Nelms moved to deny the text amendment as presented with the findings and determination that the denial of the text amendment is consistent with the Land Use Plan and that the denial of the text amendment is reasonable and in the public interest due to denial being consistent with the Land Use Plan which furthers the goals and objectives of the plan. Commissioner Gregory seconded the motion. Motion carried.

**Public Hearing and Action PB 04-72 Swan Beach Corolla, LLC: Request to establish an Off Road Historic Village Commercial Overlay District on approximately 25.77 acres. The property is located on Ocean Pearl Road north of the intersection of Albatross Lane, Swan Beach. Tax Map 101, Lot 1, and Tax Map 101A, Lots C & D Section 1, Fruitville Township.**

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**Public Hearing and Action PB 08-50 Currituck County Planning Board: Request to amend the Currituck County Unified Development Ordinance, Table of Permissible Uses, to allow wastewater treatment plants with a Special Use Permit.**

Commissioner Etheridge moved to table. Chairman Nelms seconded the motion. Motion carried.

**Public Hearing and Action PB 08-41 Bissell Professional Group - Text Amendment for RO2 Roads and Lots: Request to amend UDO Chapter 9: Infrastructure; Chapter 2: Zoning Districts; and Chapter 10: Subdivision Requirements to allow existing larger parcels to be re-subdivided into open space subdivisions in the RO2 zoning district with sand roads that follow the configurations of previously approved roads and lots (Carova Beach, Swan Beach, etc.).**

Ben Woody, Planning Director, reviewed this amendment.

**MEMORANDUM**

**To:** Board of Commissioners

**From:** Ben E. Woody, AICP  
Planning Director

**Date:** November 10, 2008

**Re:** PB 08-50 Wastewater Treatment Plants

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The Currituck County Planning Board recently requested that staff develop a text amendment to require a special use permit for wastewater treatment plants. Currently the Unified Development Ordinance permits wastewater treatment plants (utility facilities) “by-right” in all zoning districts. This means that a wastewater treatment plant would be permitted in any zoning district with an administrative approval.

The Planning Board is recommending that a special use permit be required for the establishment of any wastewater treatment plant due to its often incompatible nature with surrounding land uses. The special use permit process requires a public hearing and approval by the Board of Commissioners, rather than relying on an administrative approval. Considering the range of secondary impacts commonly associated with a wastewater treatment plant, this type of oversight is common in other governmental jurisdictions.

A copy of the proposed text amendment and meeting minutes from the October Planning Board meeting are attached. Should you have any questions, do not hesitate to contact me at 232-6029.

**Wastewater Treatment Plants  
PB 08-50  
UDO AMENDMENT REQUEST**

An amendment to Chapter 2: Zoning Districts and Chapter 17: Definitions to establish and require a special use permit for wastewater treatment facilities.

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

**Item 1:** That Section 2.5 Permitted Uses Table is amended by adding in alphabetical order the following underlined language:

Use	LUC	Zoning Districts											Special Requirements
		A	RA	R	RO1	RO2	RR	GB	C	LBH	LM	HM	
<u>Wastewater Treatment Facilities</u>	<u>IV</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	

**Item 2:** That Section 17.2 Definitions is amended by adding in alphabetical order the following underlined language:

**Section 17.2 Definitions**

**Wastewater Treatment Facilities**

Any facility used for the treatment of sewage. The term shall not include on-site septic tank systems or similar in-ground systems approved by Albemarle Regional Health Services.

**Item 3:** The provisions of this Ordinance are severable and if any of its provisions or any sentence, clause, or paragraph or the application thereof to any person or circumstance shall be held unconstitutional or violative of the Laws of the State of North Carolina by any court of

competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions which can be given effect without the invalid provision or application.

**PLANNING BOARD DISCUSSION**

No discussion.

**ACTION**

Mr. Kovacs motioned to recommend approval to amend the Currituck County Unified Development Ordinance to allow wastewater treatment plants with a Special Use Permit. Mr. West seconded the motion. Motion carried unanimously.

Chairman Nelms opened the public hearing.

Mark Bissell, Engineer, reviewed the request.

Marshal Cherry questioned open space.

There being no further comments, Chairman Nelms closed the public hearing.

Commissioner Bowden moved to approve with findings of fact and is consistent with the Land Use Plan and is reasonable in the public interest. Commissioner Gregory seconded the motion. Motion carried.

**Public Hearing and Action 08-53 Morrison/Myers (Horgan): Request to rezone approximately 119.96 acres from Agricultural (A) to Residential (R). The property is located at 291 West Side Lane, Tax Map 112, Lot 3C, Poplar Branch Township.**

Ben Woody, Planning Director, reviewed the request.

**CASE ANALYSIS FOR THE  
BOARD OF COMMISSIONERS  
MEETING DATE: November 17, 2008  
Zoning Map Amendment:  
PB 08- 53 Currituck Marina**

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<b>TYPE OF REQUEST:</b>	To rezone 119.96 acres from Agricultural (A) to Residential (R)
<b>LOCATION:</b>	291 West Side Lane, adjacent to Kilmarlic
<b>TAX ID:</b>	Tax Map 112, Parcel 3C, Poplar Branch Township
<b>OWNER:</b>	Denny Horgan 291 West Side Lane Powells Point, NC 27966
<b>AGENT/APPLICANT:</b>	Tim Morrison/Edward Myers 2600 South Virginia Dare Trail Nags Head, NC 27959
<b>CURRENT ZONING:</b>	Agricultural (A)

**PROPOSED ZONING:** Residential (R)

**ZONING HISTORY:** The property was zoned Agricultural (A) on April 2, 1989.

**SURROUNDING PROPERTY:**

	<b>Land Use</b>	<b>Zoning</b>
<b>NORTH:</b>	Undeveloped	Conservation
<b>SOUTH:</b>	Albemarle Sound	N/A
<b>EAST:</b>	Kilmarlic Subdivision	Limited Service
<b>WEST:</b>	Undeveloped	Conservation

**EXISTING LAND USE:** Undeveloped

**PROPOSED LAND USE:** Mixed use development with public marina

**LAND USE PLAN CLASSIFICATION:**

The 2006 Land Use Plan classifies this site as **Full Service** and **Conservation** within the **Point Harbor Sub-Area**.

Areas designated as Full Service are those parts of the county where a broad range of infrastructure and service investments have been provided or will be made available by the public and/or private sectors. Central wastewater treatment and disposal whether public or community is considered reasonable in the Full Service Areas.

Base development densities for the Full Service Area is contemplated to be 2 units per acre but could be increased to 3-4 units per acre through overlay zoning. Commercial development in Full Service Areas should be designed to protect and preserve the existing community in scale, architectural style, materials, landscaping, and site design.

The purpose of the Conservation class is to provide for the long-term management and protection of significant, limited, or irreplaceable areas. Proper management is needed to conserve the natural, cultural, recreational, scenic or biologically productive values of these areas.

The policy emphasis of the Point Harbor Sub-Area is to allow this area to continue to evolve as a full service community, but with better attention to the planning needed to protect residential areas and the natural features that make the area so attractive. Vegetative buffers should be required/maintained along shorelines to preserve public access and open space at the waters edge and to protect water quality in the sound

The following Land Use Plan policies are also relevant to this 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.

**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.

**PUBLIC SERVICES AND UTILITIES:**

The site is located within the Jarvisburg Elementary School District. The Lower Currituck Volunteer Fire Department provides fire protection for this area. Public water is available to this site from the Kilmarlic Subdivision.

**TRANSPORTATION:**

The site is accessible by vehicle from West Side Lane and presumably by boat from the Intracoastal Waterway.

**FLOOD ZONE:**

The entire site is located in Flood Zone AE(7).

**WETLANDS:**

Approximately 95 acres of wetlands are located on the site (including the existing lake and canal). The remaining 23 acres primarily consists of uplands.

**SOILS:**

The Currituck County Soils map indicates the property contains primarily non-suitable soils and limited amounts of suitable soils.

**STAFF RECOMMENDATION:**

Staff recommends approval of the request to rezone 119.96 acres from Agricultural (A) to Residential (R) for the following reasons:

1. The proposed request is in general compliance with Full Service designation of the 2006 Land Use Plan and the Point Harbor Sub-Area Policy Emphasis.
2. The subject property is adjacent to the Kilmarlic subdivision and is in keeping with the character of the surrounding area.
3. Adequate infrastructure capacity such as improved roads and public water are directly accessible to the site.

**PLANNING BOARD DISCUSSION**

No discussion.

**ACTION**

Mr. West motioned to recommend approval with staff recommendations to rezone approximately 119.96 acres from Agricultural (A) to Residential (R) according to the 2006 Land Use Plan. Ms. Turner seconded the motion. Motion carried unanimously.

Chairman Nelms opened the public hearing.

Wayne McCoy, Developer, reviewed the request.

There being no further comments, Chairman Nelms closed the public hearing.

Chairman Nelms moved to approve with findings of fact and is consistent with the LUP. Commissioner Gregory seconded the motion. Motion carried with Commissioner Etheridge voting no.

**Public Hearing and Action PB 08-48 Currituck Marina/Horgan: Request to establish a Conditional District - Planned Unit Development Overlay Zone (CD-PUD) on approximately 119.96 acres. The property is located at 291 West Side Lane, Tax Map 112, Lot 3C, Poplar Branch Township.**

Ben Woody, Planning Director, reviewed the request.

**CASE ANALYSIS FOR THE  
BOARD OF COMMISSIONERS  
MEETING DATE: November 17, 2008  
Zoning Map Amendment:  
PB 08- 48 Currituck Marina**

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<b>TYPE OF REQUEST:</b>	To establish a Conditional District – Planned Unit Development Overlay Zone (CD-PUD) on 119.96 acres
<b>LOCATION:</b>	291 West Side Lane, adjacent to Kilmarlic
<b>TAX ID:</b>	Tax Map 112, Parcel 3C, Poplar Branch Township
<b>OWNER:</b>	Denny Horgan 291 West Side Lane Powells Point, NC 27966
<b>AGENT/APPLICANT:</b>	Tim Morrison/Edward Myers 2600 South Virginia Dare Trail Nags Head, NC 27959
<b>CURRENT ZONING:</b> (R)	Agricultural (A): PB 08-53 if approved will establish Residential
<b>PROPOSED ZONING:</b> PUD)	Conditional District-Planned Unit Development Overlay (CD-
<b>ZONING CONDITIONS:</b>	<u>Uses</u> <ol style="list-style-type: none"> <li>1. Limited to mixed residential uses, neighborhood serving retail uses, restaurants, traditional uses associated with a marina, and other items contained in the Currituck Marina Conceptual Plan.</li> <li>2. Maximum gross residential density shall not exceed 2.0 dwelling units per acre.</li> <li>3. No more than 50 residential dwelling units shall receive a certificate of occupancy prior to the public marina being fully permitted and approved by any local, state, and federal regulatory or permitting agency.</li> </ol>

4. No more than 100 residential dwelling units shall receive a certificate of occupancy prior to the marina being fully operational and open to the public.
5. No more than 150 residential dwelling units shall receive a certificate of occupancy prior to the commercial components of the request being approved and fully constructed.

#### Transportation

1. Multimodal pathways a minimum of six feet in width shall be provided throughout the development. This shall include interconnected sidewalks, bikeways and natural trails.
2. Internal pedestrian circulation shall be required for all commercial areas through the use of clearly defined walkways.

#### Landscaping/Screening

1. All inland, non-tidal and coastal wetlands shall remain undisturbed. Delineated CAMA, 404 and 401 wetlands shall be placed in a conservation easement or preservation trust preventing individual ownership or development.
2. There shall be no development, land disturbing, or logging activities in areas designated by the 2006 Land Use Plan as Conservation
3. Existing mature trees within 300 feet of the mean high water mark or 100 feet of any adjacent property line shall be identified as a tree conservation area and be preserved to the extent practicable.
4. When developing within 300 feet of the shoreline, precedence should be given to "soft" stabilization approaches including but not limited to preservation of existing vegetation, creation of natural, living shorelines for areas needing stabilization, and establishment of vegetative buffers.
5. In commercial areas every parking space shall be entirely located within 120 feet of a landscape island containing a minimum of 2 canopy trees, a minimum of 2 inches in caliper at time of planting. Landscape islands shall be a minimum of 10 feet in width and 400 square feet in size.
6. In commercial areas pedestrian plazas or similar shaded outdoor seating areas shall be provided at a rate of 100 square feet for every 2,000 square feet of gross floor area.

#### Site Design/Architectural

1. The proposed development will be in accordance with the Currituck Marina conceptual site plan.
2. Maximum size of an individual commercial building shall not exceed 10,000 square feet of gross floor area.
3. Residential structures shall include vertical and horizontal relief in buildings, including but not limited to façade articulation and other architectural elements that add visual interest; variation in exterior architectural materials or styles; and, inclusion of front porches, projecting bays, or vestibules.
4. Commercial structures, including mixed use structures, shall be subject to the following requirements:
  - a. Building facades shall incorporate the traditional architectural style or vernacular of the general area.
  - b. Large expanses of blank walls shall be avoided. Facades shall incorporate architectural elements that add visual interest, including but not limited to variation in exterior materials; functioning windows and doorways; and, projecting elements such as eaves, cornices,

canopies, bays, shadow lines, overhangs, porticos and colonnades.

- c. Corrugated metal building materials shall not be permitted. Architectural grade finished metal may be used as an accent material or on elevations not visible from a right-of-way or area designated for residential uses.

Water Access

1. Public access to the waterfront and Albemarle Sound shall required and include at a minimum a marina, public boat launching and parking, and multimodal pathways.
2. The marina shall include docking for a minimum of ten vessels.
3. The marina shall participate and become a Certified Clean Marina in the North Carolina Clean Marina program.
4. No permanent structures shall be built within 100 feet of the mean high water mark, or on or over a pier.
5. Waterfront property within 100 feet of the mean high water mark shall remain in common open space.

**DENSITY:** Approximate gross density (including wetlands) – 2.0 du/acre  
 Approximate net density (excluding wetlands) – 10.4 du/acre

**ZONING HISTORY:** The property was zoned Agricultural (A) on April 2, 1989.

**SURROUNDING PROPERTY:**

	<b>Land Use</b>	<b>Zoning</b>
<b>NORTH:</b>	Undeveloped	Conservation
<b>SOUTH:</b>	Albemarle Sound	N/A
<b>EAST:</b>	Kilmarlic Subdivision	Limited Service
<b>WEST:</b>	Undeveloped	Conservation

**EXISTING LAND USE:** Undeveloped

**PROPOSED LAND USE:** Mixed use development with public marina

**LAND USE PLAN**

**CLASSIFICATION:** The 2006 Land Use Plan classifies this site as **Full Service** and **Conservation** within the **Point Harbor Sub-Area**.

Areas designated as Full Service are those parts of the county where a broad range of infrastructure and service investments have been provided or will be made available by the public and/or private sectors. Central wastewater treatment and disposal whether public or community is considered reasonable in the Full Service Areas.

Base development densities for the Full Service Area is contemplated to be 2 units per acre but could be increased to 3-4 units per acre through overlay zoning. Commercial development in Full Service Areas should be designed to protect and preserve the existing community in scale, architectural style, materials, landscaping, and site design.

The purpose of the Conservation class is to provide for the long-term management and protection of significant, limited, or irreplaceable areas. Proper management is needed to conserve

the natural, cultural, recreational, scenic or biologically productive values of these areas.

The policy emphasis of the Point Harbor Sub-Area is to allow this area to continue to evolve as a full service community, but with better attention to the planning needed to protect residential areas and the natural features that make the area so attractive. Vegetative buffers should be required/maintained along shorelines to preserve public access and open space at the waters edge and to protect water quality in the sound

The following Land Use Plan policies are also relevant to this 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.

*The applicant has included a zoning condition that prohibits development within areas of the site designated as Conservation Area by the 2006 Land Use Plan. There is county water and fire protection readily available to the site, as well as vehicular access from a State maintained road. The surrounding land uses include the Kilmarlic subdivision and golf course, a regional health and racquet club, and approximately 25 acres of land zoned for multifamily uses (4 du/acre). Centralized sewage treatment is also proposed for the development.*

**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.

*By zoning condition, the subject property is required to provide public access to the Albemarle Sound. The construction of residential dwelling units is contingent upon successful permitting and operation of the marina.*

**POLICY PA5:** PUBLIC AND PRIVATE MARINAS offering access to area waters should be encouraged when developed in accordance with the CAMA specific use standards for marinas (i.e. docks for more than 10 vessels). Marinas shall not be approved, however, that are incompatible with nearby land uses or whose designs fail to meet the environmental quality and development standards of the County's Unified Development Ordinance.

*The zoning conditions will require the marina to provide docking for a minimum of 10 vessels and participate and become a Certified Clean Marina in the North Carolina Clean Marina program.*

**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.

*The request includes a mixture of uses including townhomes, condominiums, retail uses, a restaurant, and a public marina. Pedestrian elements have been included to ensure the development is walkable.*

**POLICY WQ6:** Currituck County supports the retention or preservation of VEGETATED BUFFERS along the edge of drainage ways, streams and other components of the estuarine system as an effective, low cost means of protecting water quality.

*The zoning conditions require the preservation of mature trees around the perimeter of the site. When developing within 300 feet of the shoreline, precedence should be given to "soft" stabilization approaches. Additionally, property within 100 feet of the shoreline shall remain in common open space.*

**POLICY ML3:** The interests of Mainland Area residents in having ACCESS TO THE AREA'S OCEAN AND ESTUARINE WATERS shall be fostered through County actions to increase the number of additional public access sites at a rate commensurate with the population growth of the Currituck County. Included in the actions taken to increase public access shall be a consideration given to transportation needs, including boat docks and ferry services.

*The subject property will provide the county's first direct western public access south of the Intracoastal Waterway.*

**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.

*By zoning condition, all inland, non-tidal and coastal wetlands shall remain undisturbed and will be placed in a conservation easement or preservation trust preventing individual ownership or development.*

**POLICY WQ5:** Development that preserves the NATURAL FEATURES OF THE SITE, including existing topography and significant existing vegetation, shall be encouraged. COASTAL AND NON-COASTAL WETLANDS shall not be considered part of a lot's acreage for the purpose of determining minimum lot size or development density.

*The permitted gross density of 2 dwelling units per acre is based on the total acreage of the tract. Although wetlands are typically included in the county's UDO density calculations (gross), the Division of Coastal Management has indicated they will exclude wetlands from their density calculations (net). This creates a*

*conflict between the UDO and Land Use Plan, which may arise during the CAMA Major permitting process.*

**PUBLIC SERVICES  
AND UTILITIES:**

The site is located within the Jarvisburg Elementary School District. The Lower Currituck Volunteer Fire Department (Kilmarlic Station) provides fire protection for this area. EMS coverage is provided from the Grandy Volunteer Fire Department Station. Public water is available to this site from the Kilmarlic Subdivision.

**TRANSPORTATION:**

The site is accessible by vehicle from West Side Lane and presumably by boat from the Intracoastal Waterway.

**FLOOD ZONE:**

The entire site is located in Flood Zone AE(7).

**WETLANDS:**

Approximately 95+/- acres of wetlands are located on the site (including the existing lake and canal). The remaining 23+/- acres primarily consists of uplands.

**SOILS:**

The Currituck County Soils map indicates the property contains primarily non-suitable soils. There are limited amounts of suitable soils which are located in the areas proposed for development.

**STAFF  
RECOMMENDATION:**

Staff recommends **approval** of the request to establish a Conditional District – Planned Unit Development Overlay Zone (CD-PUD) on 119.96 acres for the following reasons:

4. The proposed request is in general compliance with Full Service designation of the 2006 Land Use Plan and the Point Harbor Sub-Area Policy Emphasis.
5. The proposed zoning conditions are consistent with the objectives of the Currituck County Unified Development Ordinance and 2006 Land Use Plan, and promote compatibility between the subject property and surrounding area.
6. This request establishes the mainland's first direct western public access south of the Intracoastal Waterway. Additionally, the construction of residential units is contingent upon proper permitting and operation of the marina, which includes becoming a Certified Clean Marina in the North Carolina Clean Marina program. (LUP Policies PA1, PA5, ML3)
7. The subject property is adjacent to the Kilmarlic subdivision and is in keeping with the character of the area. Surrounding land uses include a golf course, a regional health and racquet club, and approximately 25 acres of land zoned for multifamily uses. (LUP Policy HN1)
8. Adequate infrastructure capacity such as improved roads and public water are directly accessible to the site. The applicant is also proposing a centralized wastewater system which will limit environmental impacts on environmentally sensitive areas. (LUP Policy PP2)

9. As depicted on a conceptual site plan submitted as part of the application, this request includes a mixture of uses including townhomes, condominiums, retail uses, a restaurant, and a public marina. (LUP Policy CD8)
10. All inland, non-tidal and coastal wetlands will remain undisturbed and placed in a conservation easement or preservation trust preventing individual ownership or development. (LUP policy ES2)
11. The preservation of mature trees around the perimeter of the site and adjacent to the shoreline is required. Additionally, property within 100 feet of the shoreline shall remain in common open space. (LUP Policy WQ6)

### **PLANNING BOARD DISCUSSION**

Mr. West asked how many restaurants will be on the site.

Mr. Woody stated there is one restaurant near the waterfront and conceivably another could locate in the commercial building.

Mr. West asked if public access to the water will be free to the public.

Mr. Woody stated it will be a free public access where you could launch your boat, but you could not dock your boat without a fee.

Mr. West stated this is a good example of what they intended conditional use zoning to be, which spells out what they are going to do.

Mr. Kovacs asked if this is an age restrictive development.

Mr. Woody stated no.

Mr. Morrison stated the development will be geared towards an active retirement age.

Mr. West asked what the total number of units is.

Mr. Morrison stated 240 units.

### **ACTION**

Mr. Kovacs motioned to recommend approval with staff recommendations to establish a Conditional District-Planned Unit Development Overlay Zone (CD-PUD) on approximately 119.96 acres according to the 2006 Land Use Plan. Mr. Winter seconded the motion. Motion carried unanimously.

Chairman Nelms opened the public hearing. There being no comments, he closed the public hearing.

Chairman Nelms moved to approve with findings of fact and is consistent with the LUP. Commissioner Gregory seconded the motion. Motion carried.

### **Consideration of Bid Award for RO Outfall Pipe and Diffuser-Mainland Water System Upgrades**

Chairman Nelms moved to award the bid to Mad Dawg, Inc., in the amount of \$982,000. Commissioner Gregory seconded the motion. Motion carried.

**Consideration and Action on Member Waste Management Agreement with Albemarle Regional Solid Waste Management Authority**

Commissioner Gregory moved to approve. Chairman Nelms seconded the motion. Motion carried.

**Consideration and Action on Agreement for operation of Transfer Station with Republic Services of NC, LLC**

Commissioner Gregory moved to approve. Commissioner Etheridge seconded the motion. Motion carried.

**Consent Agenda:**

1. Budget amendments
2. Approval of November 3, 2008, Minutes
3. Co-Signature Authority-North Carolina Cooperative Extension
4. Charge to Tax Collector Levy on Motor Vehicles for August Renewals

Chairman Nelms requested to add a budget amendment for the Airport. Commissioner Gregory seconded the motion. Motion carried with Commissioner Etheridge voting no.

Commissioner Etheridge moved to approve consent agenda. Commissioner Bowden seconded the motion. Motion carried.

<u>Account Number</u>	<u>Account Description</u>	<b>Debit</b>	<b>Credit</b>
		Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
55818-561000	Professional Serv - Wells	56,431	
	Professional Serv - H2O		
55818-562000	Plant	1,425	
	Professional Serv - Dist		
55818-563000	Sys	11,673	
	H2O Plant - Outfall		
55818-592003	Diffuser	580,000	
	Contingency - Water		
55818-588002	Plant		450,149
55818-588004	Contingency - Tanks		73,290
55818-592002	H2O Plant - Ground Storage		63,907
	Dist Sys - 14" Tie High		
55818-593002	Cotton		1,517
	Dist Sys - 12' Gravel		
55818-593003	Road		1,296
	Dist Sys - Tulls Creek		
55818-593006	Booster		59,370

649,529	649,529
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**Explanation:** Mainland Water Construction (55818) - To close our the ground water storage tank, 14" tie line to the High Cotton tank and the 12' gravel road to the tank, to transfer residuals from these projects to fund shortfalls for the outfall diffuser and to reduce budget for the Tulls Creek Booster Pump which came in under budget estimates.

**Net Budget Effect:** Mainland Water Construction Fund (55) - No change.

<u>Account Number</u>	<u>Account Description</u>	<b>Debit</b>	<b>Credit</b>
		Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
10510-540000	Worker's Compensation	66,805	
10530-540000	Worker's Compensation	104,138	
10511-545000	Contract Services - Jail		10,000
10350-468000	Sale of Fixed Assets		10,609
	Fund Balance		
10390-499900	Appropriated		150,334
61818-540000	Worker's Compensation	25,544	
61360-471000	Tap & Connection Fees		25,544
		196,487	196,487

**Explanation:** Sheriff (10510); Emergency Services (10530); Jail (10511); Mainland Water (61818) - To increase appropriations for FY 2008 worker's compensation audit adjustment.

**Net Budget Effect:** Operating Fund (10) - Increased by \$160,943.  
Mainland Water Fund (61) - Increased by \$25,544.

<u>Account Number</u>	<u>Account Description</u>	<b>Debit</b>	<b>Credit</b>
		Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
10640-532005	Supplies - Agriculture	1,310	
10330-449900	Miscellaneous Grants		1,310
		1,310	1,310

**Explanation:** Cooperative Extension (10640) - To increase appropriations to record grant award by the NC Department of Agriculture and Consumer Services for the Currituck County Pesticide Container Recycling Program.

**Net Budget**

**Effect:** Operating Fund (10) - Increased by \$1,310.

<u>Account Number</u>	<u>Account Description</u>	<b>Debit</b>	<b>Credit</b>
		Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
10550-502000	Salaries - Regular	26,044	
10550-505000	FICA	148	
10550-506000	Insurance	5,363	
10550-507000	Retirement	2,568	
10550-540000	Worker's Compensation	1,547	
10550-503000	Salaries - Part Time		23,996
	Fund Balance		
10390-499900	Appropriated		11,674
		35,670	35,670

**Explanation:** Airport (10550) - To appropriate fund balance to combine two part-time positions to one full-time position at the airport.

**Net Budget**

**Effect:** Operating Fund (10) - Increased by \$11,674.

**Commissioner's Report**

County Manager's Report

**Adjourn**

**SPECIAL MEETING**

**Tourism Development Authority**

Chairman Nelms called the meeting to order

**Budget Amendments**

Commissioner Etheridge moved to approve the amendments.  
Commissioner Taylor seconded the motion. Motion carried.

<u>Account Number</u>	<u>Account Description</u>	<b>Debit</b>	<b>Credit</b>
		Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
15442-540000	Worker's Compensation	\$ 5,380	
15320-415000	Occupancy Tax		\$ 5,380
		<u>\$ 5,380</u>	<u>\$ 5,380</u>

**Explanation:** Occupancy Tax - Tourism Promotion (15442) - To appropriate funds for additional worker's compensation for FY 2008 required after audit.

**Net Budget Effect:** Occupancy Tax Fund (15) - Increased by \$5,380.

<u>Account Number</u>	<u>Account Description</u>	<b>Debit</b>	<b>Credit</b>
		Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
15447-545000	Contract Services	\$ 40,000	
15447-516001	Signs	\$ 5,000	
15320-415000	Occupancy Tax		\$ 45,000
		<u>\$ 45,000</u>	<u>\$ 45,000</u>

**Explanation:** Occupancy Tax - Tourism Related Expenditures (15447) - To appropriate funds for shrubs and gravel at public parking areas and for additional signage on the Outer Banks.

**Net Budget Effect:** Occupancy Tax Fund (15) - Increased by \$45,000.

**Adjourn**

There being no further business, the meeting adjourned.