

**CURRITUCK COUNTY PLANNING BOARD**

August 8, 2006

A work session was held prior to the meeting to discuss items on the agenda.

The Currituck County Planning Board met in the Historic Courthouse on August 8, 2006. The following members were present: Forrest Midgette, Alvin Keel, Joe Kovacs, Arthur Winter, Bobby Bell, Manly West, Pat Riley, William Etheridge and Liz Turner. Sarah Keifer, Planning Director, and David Webb, Chief Planner, were also present.

Planning Board Chairman Midgette called the meeting to order.

Everyone stood for the Pledge of Allegiance and a moment of silence.

**APPROVAL OF AUGUST 8, 2006 AGENDA**

Mr. West motioned to approve the August 8, 2006. Mr. Etheridge seconded the motion. Motion passed unanimously.

**APPROVAL OF JULY 11, 2006 MINUTES**

Mr. Kovacs motioned to approve the July 11, 2006 minutes. Mr. Winter seconded the motion. Motion passed unanimously.

**Currituck County  
Planning Board Agenda  
Historic Currituck County Courthouse  
August 8, 2006  
7:30 p.m.**

- 7:00 p.m.            Work Session
- 7:30 p.m.            Call to Order  
                         Pledge of Allegiance and Moment of Silence

- Item 1                Approval of Agenda
- Item 2                Approval of July 11, 2006 Minutes

**PLEASE LIMIT PUBLIC COMMENTS TO THREE MINUTES**

- Item 3                **PB 06-19 EEPKO, LLC:** Preliminary Plat for 1-commercial lot on property located at 6708 Caratoke Highway, approximately 250 feet south of Hickory Hill Drive, Tax Map 108, Lot 62S, Poplar Branch Township.
- Item 4                **PB 06-36 RAY-D-O BIZ TOWERS, INC.-** Amendment to Section 204 of the Unified Development Ordinance to eliminate the setback requirements for accessory structures associated with communication towers.
- Item 5                **PB 06-35 CHRISTIE/ MOORE:** Rezone approximately 58 acres from Agricultural (A) to Residential (R). The property is located on Tulls Creek Road., 50 feet north of the intersection with Shingle Landing Road, Tax Map 9, Parcel 41, Moyock Township
- Item 6                **PB 98-21 FREEDOM BUSINESS PARK PH III:** Final Plat for 27 lots. The property is located on the north side of Freedom Ave approximately 1600' east of Caratoke Hwy. Tax Map 124, Parcels 27B and 41A, Poplar Branch Township, Currituck County.

Item 7 Old Business

Item 8 Adjournment

**PB 06-19 EEPKO, LLC: Preliminary Plat for 1-commercial lot on property located at 6708 Caratoke Highway, approximately 250 feet south of Hickory Hill Drive, Tax Map 108, Lot 62S, Poplar Branch Township.**

Mr. John Sawyer appeared before the board.

Ms. Keifer presented the following case analysis to the board.

**ZONING DISTRICT:** General Business

**PRESENT USE:** Vacant/Agriculture

**OWNER/  
APPLICANT:** EEPKO, LLC  
PO Box 519  
Manteo, NC 27951

**ENGINEER:** Hyman & Robey, PC  
150A US Hwy 158 East  
Camden, NC 27921

**LAND USE/ZONING OF SURROUNDING PROPERTY:  
SURROUNDING PROPERTY:**

	<b>Land Use</b>	<b>Zoning</b>
<b>NORTH:</b>	Restaurant/Business	GB
<b>SOUTH</b>	Farm field/Business	GB/A
<b>EAST:</b>	Low density residential uses and farm fields/woods	GB/A
<b>WEST:</b>	Low density residential uses and farm fields/woods	A

**SCHOOL DISTRICT:** Poplar Branch - Griggs Elementary

**FIRE DISTRICT:** Lower Currituck V.F.D.

**SIZE OF SITE:** 9.85 acres

**NUMBER OF LOTS:** 1 lot and a residual lot

**DENSITY:** .20 unit / acre

**MINIMUM LOT SIZE:** 106,565 square feet

**MAXIMUM LOT SIZE:** 333,234 approximate square feet - residual

- STREETS:** The proposed development will directly access Caratoke Highway (US HWY 158).
- WATER:** County water is available along Caratoke Highway.
- WASTEWATER:** On-site septic systems are proposed. A site evaluation was submitted that indicates the proposed lot 1 is provisionally suitable for an on-site septic system designed for 175gpd.
- OPEN SPACE:** No open space is required or provided.
- DRAINAGE:** The preliminary drainage plan indicates existing ditches and side lot line swales will be used to accommodate on-site drainage.
- FLOOD ZONES:** The property is located outside of a 100-year floodplain.
- LAND USE PLAN CLASSIFICATION:** The 1990 Land Use Plan classifies this property as Limited Transition. The classification provides for development in areas that will have some services, but are suitable for lower densities than those associated with the urban transition class, and/or are geographically remote from existing towns and municipalities.
- The proposed subdivision is in keeping with the Land Use designation.

### **NARRATIVE OF REQUEST:**

Due to the previous divisions of the parent parcel, the proposed one-lot division will exceed the total number of lots allowed under the minor subdivision review process. The proposed subdivision was submitted as a conventional subdivision (greater than five lots) The sketch plan and special use permit were approved by the Board of Commissioners on June 5, 2006.

The preliminary plat was submitted to the Planning Department on June 22, 2006. The Technical Review Meeting was held on July 19, 2006 to review the preliminary plat. A revised plan with technical review corrections was received July 26, 2006.

#### **A. TRC REVIEW**

The Technical Review Meeting met on July 19, 2006 to review the preliminary plat, and the reviewing agencies had the following comments:

1. **NCDOT:** The plan was approved with the following comments:
  - a. The type of development may require improvements within the right-of-way, proper permits, and encroachment agreements.

- 2. CURRITUCK COUNTY PUBLIC WORKS/ CURRITUCK COUNTY SOIL AND WATER:** The plan was approved as submitted.
- 3. CURRITUCK COUNTY WATER DEPARTMENT:** The proposed subdivision will be subject to the following conditions:
  - a. For developments that come in from this point forward, the developer will be required to pay the tap fees and post with the County a bond to cover the cost of installing infrastructure for the development to connect to the County water system, if the UDO so requires.
  - b. Until water is available, each individual property owner will be allowed to install a well.
  - c. Once water is available, each individual property owner will be required to connect to the County water system.
  - d. Fire hydrants located along Caratoke Highway will be permitted and installed by Currituck County, but will be subject to the payment of an impact fee.
- 4. CURRITUCK COUNTY FIRE SERVICES:** The subdivision shall install fire hydrant(s) within 500 feet of the lots being created. The existing fire hydrant will meet the 500 foot spacing requirement. In addition, the proposed development on the lot created will require a fire hydrant within 400 feet of all portions of any proposed structure.
- 5. N.C. DIVISION OF COASTAL MANAGEMENT:** The proposed development is not located within an area of environmental concern as regulated by the Division of Coastal Management.
- 6. ALBEMARLE REGIONAL HEALTH SERVICES:** A site evaluation was submitted that indicates the proposed lot 1 is provisionally suitable for an on-site septic system designed for 175gpd.
- 7. EMERGENCY SERVICES:** No comment received.
- 8. SPRINT:** No comment received.
- 9. DOMINION POWER:** No comment received.
- 10. PARKS AND RECREATION:** No comment received.
- 11. SCHOOLS:** No comment received.
- 12. LOWER CURRITUCK VOLUNTEER FIRE DEPARTMENT:** No comment received.

**B. PLANNING STAFF RECOMMENDATION:**

The staff recommends **conditional approval** of the application subject to the following conditions:

**Code Requirements:**

1. Appendix 9-A of the UDO requires the adjacent property owner information shown on the plat. The property owner to the north should be verified and corrected and shown accurately on the recorded final plat. The current tax records show this property owned by Nags Head Ventures, LLC.
2. Section 922 Environmental and Appendix 9-A of the UDO require the each subdivision to provide:
  - a. adequate storm drainage, a combination of storage and controlled release;
    - *After the TRC meeting, the engineer worked with Mike Doxey, Soil and Water, who has approved the plan as submitted.*
  - b. the building pad elevation; and,
  - c. property line swales along all side property lines.
3. Appendix 9-A of the UDO requires the actual lot numbers to be shown for the entire tract.
4. Section 916 Fire Protection and Appendix 9-A of the UDO require every proposed lot to be within 500 feet of a fire hydrant.
  - a. *An existing hydrant located to the north of the development meets this requirement.*
5. Section 304 Access to Streets of the UDO restricts the number of driveways for the development for lots with less than 1,000 feet of street frontage to a maximum of two driveways.
  - *A note on the revised preliminary plat will restrict driveway access onto Caratoke Highway and addresses this condition of the special use permit. In addition, a note was added to the plat that limits the number of curb cuts or driveways on Caratoke Highway. The southern property line swale will be rerouted or piped when the development plans for each lot are reviewed. Stormwater from each lot will be directed to on-site stormwater improvements.*

**Staff Recommendations:**

1. Appendix 9-A II. 1. of the UDO requires the name of the subdivision to be indicated on the plat. The subdivision name provided is the owner of the property and, it is suggested that the subdivision be given a name other than the property owner's name for subdivision index purposes.

DISCUSSION

Mr. Kovacs commented that he was pleased with the shared access.

There was no further discussion on this item.

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

**PB 06-36 RAY-D-O BIZ TOWERS, INC.- Amendment to Section 204 of the Unified Development Ordinance to eliminate the setback requirements for accessory structures associated with communication towers.**

Mr. Robert Hobbs, Hornthal, Riley, Ellis, and Mayland appeared before the board. Ms. Keifer presented the following case analysis to the board.

**MEMORANDUM**

TO: Planning Board

FROM: Sarah E. Keifer, AICP, Director

DATE: July 31, 2006

SUBJECT: PB 06-36 Ray-D-O Biz Towers, Inc. Ordinance Amendment

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Attached please find a proposed text amendment submitted by Ray-D-O Biz Towers, Inc. designed to eliminate the setback requirements for structures accessory to communication towers in the Agricultural Zoning District. Please see the enclosed Attachment B provided by the applicant for a detailed explanation of the request.

As you know, Section 2406 of the Unified Development Ordinance provides the criteria that should be used in evaluating proposed changes to the Ordinance. Specifically the UDO provides:

**Section 2406 Ultimate Issue Before Board on Amendments.**

1. In deciding whether to adopt a proposed amendment to this Ordinance, the central issue before the board is whether the proposed amendment advances the public health, safety or welfare. All other issues are irrelevant, and all information related to other issues at the public hearing may be declared irrelevant by the

Chairman and excluded. In particular, when considering proposed atlas amendments:

(a)the board shall not rely upon any representations made by the petitioner that, if the change is granted, the rezoned property will be used for only one (1) of the possible range of uses permitted in the requested classification. Rather, the Board shall consider whether the entire range of permitted uses in the requested classification is more appropriate than the range of uses in the existing classification; and,

(b)the Board shall not regard as controlling any advantages or disadvantages to the individual requesting the change, but shall consider the impact of the proposed change on the public at large.

Should you have any questions regarding the amendment, please do not hesitate to contact me directly.

Thank you.

**RAY-D-O BIZ TOWERS, INC.**

**PB 06-36**

**UDO AMENDMENT REQUEST**

**RAY-D-O BIZ TOWERS, INC.** requests an amendment to Section 204 of the Unified Development Ordinance to eliminate the setback requirements for accessory structures associated with communication towers by adding a new Item 15.

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 Article 2, Density and Dimensional Regulations, Section 204, Setback Requirements be amended by adding the following underlined language:

**Section 204 Setback Requirements.**

15. The structure setbacks contained in this Section 204 shall not apply to structures located in an Agricultural "A" Zone, if:

(a) The structure is an accessory use to a tower or antenna; and

(b) The use of the tower or antenna complies with Section 1403, Subsection 19 of this Ordinance.

**Item 2:** The provisions of this Ordinance are severable and if any of its provisions or any sentence, clause, or paragraph or the application thereof to any person or

circumstance shall be held unconstitutional or violative of the Laws of the State of North Carolina by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions which can be given effect without the invalid provision or application.

**Item 3:** This ordinance amendment shall be in effect from and after the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Board of Commissioners' Chairman

Attest:

\_\_\_\_\_  
Gwen H. Keene  
Clerk to the Board

DATE ADOPTED: \_\_\_\_\_  
MOTION TO ADOPT BY COMMISSIONER: \_\_\_\_\_  
SECONDED BY COMMISSIONER: \_\_\_\_\_  
VOTE: \_\_\_\_\_AYES\_\_\_\_\_NAYS\_\_\_\_\_

\*\*\*\*\*  
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PLANNING BOARD DATE: \_\_\_\_\_  
PLANNING BOARD RECOMMENDATION: \_\_\_\_\_  
VOTE: \_\_\_\_\_AYES\_\_\_\_\_NAYS\_\_\_\_\_  
ADVERTISEMENT DATE OF PUBLIC HEARING: \_\_\_\_\_  
BOARD OF COMMISSIONERS PUBLIC HEARING: \_\_\_\_\_  
BOARD OF COMMISSIONERS ACTION: \_\_\_\_\_  
POSTED IN UNIFIED DEVELOPMENT ORDINANCE: \_\_\_\_\_  
AMENDMENT NUMBER: \_\_\_\_\_

**DISCUSSION**

Mr. Hobbs addressed the staff comments concerning the public health, safety, and welfare. He indicated that he feels that this amendment would be limited in application for the county as a whole, but would apply primarily to the property he represents. The owner of the tower has told the applicant that a sufficient security fence cannot be built because the property line is five feet from the structure. The owner of the tower has indicated that there is not enough room to maintain the tower after the fence is erected unless the property line is moved. This would affect the safety of the public.

Mr. West asked how this situation occurred and how a tower was built within five feet of the property line.

Mr. Hobbs described the business venture that the owner of the property and the owner of the tower were involved in previously. The county allowed the owner to record a shifting of the

lot lines and setbacks were affected and therefore, created problems for both parties. The line was created too close to the tower to place a fence around the structure.

Mr. Keel asked why this wasn't taken to the Board of Adjustment.

Mr. Hobbs said that they felt that a variance would have been difficult because it was a self imposed hardship.

Ms. Turner said that she has been to this site and the building is at the base of the tower and that this problem was self created.

Mr. Hobbs stated that the owner of the tower leases the transmitter building and surrounding property from the applicant.

Mr. West stated his agreement with Ms. Turner, and feels that this application should have been taken to the Board of Adjustment. A single issue should not change the entire UDO.

Mr. Hobbs restated that they did not feel that a variance would be successful and that although it would be a county wide application, this seems to be a rare instance elsewhere in the county. Concerns about widespread application may not be as big a concern; the application was tailored to be narrow as possible. There may not be any other with these extenuating circumstances.

Mr. Keel stated that the tower would not have been constructed had the setbacks not been met and there was discussion about the 1:1 fall zone and whether this tower would have been grandfathered.

Mr. Hobbs stated that if new towers were created throughout the county, this amendment wouldn't affect them because they would have to meet the current standards.

Mr. Keel stated that property could not be leased for a tower unless it was long term, so it is his opinion that this property should still be under contract and shouldn't be divided.

Mr. Hobbs said that under the current position, lot lines are not permitted in the fall zone, so there should never be an instance in the future where this situation would recur.

Mr. West asked if this property was on a 99 year lease, why it couldn't be treated as one lot.

Mr. Hobbs said that the idea is to eliminate the lease and convey the lot to the tower owner, who would then fence the lot but the lot line is so close to the tower that it is a safety problem because of the proximity of the fence to the property line and the tower. The parties in question wish to terminate the lease and adjust the property line to allow the fencing.

Mr. Webb summarized the history of this situation and described how the property lines were adjusted.

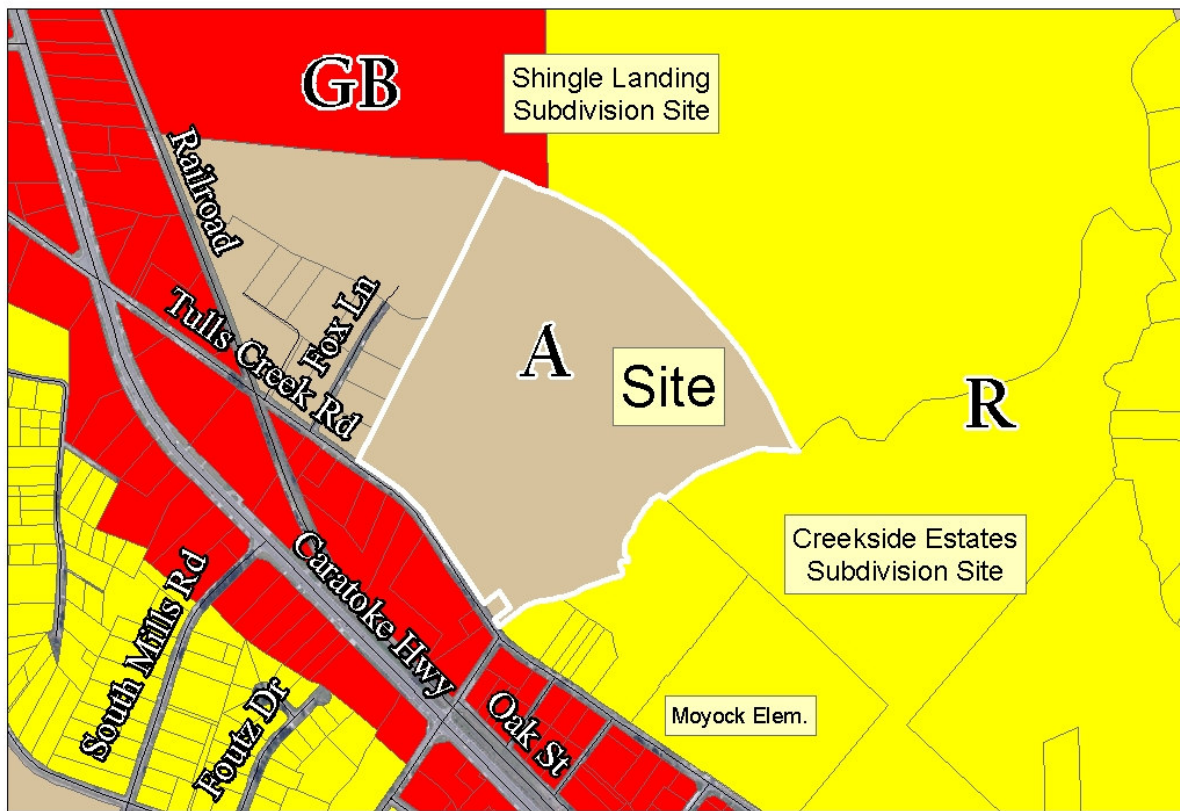
Mr. Kovacs motioned to deny the request and recommended the applicant go to the Board of Adjustment. Mr. Etheridge seconded the motion. Motion passed unanimously.



- TRANSPORTATION:** The property is accessed by Tulls Creek Road
- FLOOD ZONE:** The property is located in Flood Zone AE (5) and Shaded X.
- SOILS:** The Currituck County Soil Suitability map indicates the soils to the northern third of the property are Suitable and the soils on the remainder of the property are Not Suitable
- STAFF RECOMMENDATION:** Section 2406 of the Unified Development Ordinance provides the standards by which the Board shall evaluate proposed amendments to the Official Zoning Atlas. Specifically, the Ordinance provides that the “central issue before the board is whether the proposed amendment advances the public health, safety or welfare” of the county and further directs that “the Board shall not regard as controlling any advantages or disadvantages to the individual requesting the change, but shall consider the impact of the proposed change on the public at large.” In addition, the Ordinance provides that the “Board shall consider whether the entire range of permitted uses in the requested classification is more appropriate than the range of uses in the existing classification”.
- The Residential (R) Zoning District provides for low density residential development at a development density of approximately one (1) unit per acre which is in keeping with the Rural with Services Land Use Plan designation. The subject site is located in an area of the County experiencing an increase in residential development. The majority of the surrounding area is currently zoned for General Business and Residential purposes making this application an extension of an existing district. Finally, the uses permitted in the Residential district appear compatible with the surrounding area.
- It appears that the request satisfies the criteria set forth in the Ordinance; therefore, staff recommends **approval** of the application.

*This staff recommendation was made without the benefit of public testimony and is based on the information presented when the application was received by the Department of Planning and Inspections. The Board of Commissioners shall give*

*considerable weight to public testimony received during public hearing in considering its decision in this matter.*



## **PB 06-35 CHRISTINE/ MOORE REZONING**



### **DISCUSSION**

Mr. West asked if there was a development planned.

Mr. Moore said yes, but it is not imminent.

Earl Sutton, resident of Fox Lane, asked about schools and road improvements. He commented on standing water and voiced his concern with the application.

Jason Reed, resident of Fox Lane, also stated that he is in opposition to the project.

Mr. Keel and Mr. West commented on the rights of property owners to sell their property.

Mr. Moore stated that the county also has interest in the property.

Mr. West motioned to approve the request as requested. Ms. Turner seconded the motion. Motion passed unanimously.

**PB 98-21 FREEDOM BUSINESS PARK PH III: Final Plat for 27 lots. The property is located on the north side of Freedom Ave approximately 1600' east of Caratoke Hwy. Tax Map 124, Parcels 27B and 41A, Poplar Branch Township, Currituck County.**

Mike Kuntz appeared before the board.

Ms. Keifer presented the following case analysis to the board.

**ZONING DISTRICT:** Light Manufacturing

**OWNER:**

Michael & Gay Kuntz  
326 N. Spot Road  
Powells Point, NC 27966

**DESIGN ENGINEER:**

The Spectra Group  
563 Central Drive  
Virginia Beach, VA 27966

**SURVEYOR:**

Coastal Engineering and Surveying  
PO Box 1129  
Kitty Hawk, NC 27949

**LAND USE/ZONING OF SURROUNDING PROPERTY:**

**NORTH:** Low Density Residential - zoned A  
**SOUTH:** Light Manufacturing & Business Uses – zoned GB & LM  
**EAST:** Low Density Residential - zoned A  
**WEST:** Low Density Residential - zoned A & R

**SCHOOL DISTRICT:** Poplar Branch

**FIRE DISTRICT:** Lower Currituck V.F.D.

**SIZE OF SITE:** 21.08 Acres

- NUMBER OF LOTS:** 27 total in Phase 3,  
51 Total Lots for the Business Park
- DENSITY:** 0.9 unit / acre
- MINIMUM LOT SIZE:** 40,000 SF
  
- STREETS:** The streets are built to NCDOT Design and Construction standards. The developer expects the street will be dedicated to NCDOT for maintenance.
- WATER:** This development is served by County water.
- FIRE:** This development is located within the jurisdiction of the Lower Currituck Volunteer Fire Department and will be served by fire hydrants.
- WASTEWATER:** Individual, on-site septic systems are proposed.
- OPEN SPACE:** No open space is required or provided.
- DRAINAGE:** Stormwater permit SW7 050207 for Phases II and III was issued May 31, 2005. This high density permit required 2 of the lots to be used for stormwater retention areas. The design complies with this permit.

**NARRATIVE OF REQUEST:**

The Kuntzs are seeking Final Plat for approval for the 27 lots to complete the third phase. Corrections to the plan were made following the Technical Review Committee meeting May 17, 2006.

The subdivision has one point of entry from Caratoke Highway. Each lot will have an individual septic system. Waterlines and fire hydrants are installed.

The original four lots of this development were approved as a Private Access Subdivision. In March 2001 sketch plan approval was granted for a 27 lot commercial and light manufacturing subdivision. On January 7, 2002 preliminary plat approval was granted for 25 of the lots, a two lot reduction from the originally approved sketch plan. Final Plat approval for 24 lots was granted in April of 2002. Due to on-site stormwater retention requirements, there was the loss of one lot in Phase II.

In June 2002, the Board of Commissioners approved a rezoning of 29.27 acres from A (Agricultural) to LM (Light Manufacturing) for the purpose of allowing the continued expansion of this commercial & light manufacturing

subdivision. In December 2002, amended sketch plan approval was granted for Phase III and an additional 28 lots for a total of 52 lots within the development. Two of the lots were required to be stormwater retention area by NC Division of Water Quality on May 31, 2005. On July 17, 2006, the Board of Commissioners approved a Amended Preliminary Plat for Phase III.

#### **REQUIRED IMPROVEMENTS:**

The Technical Review Committee met on May 17, 2006 and review the project. The application was not compliant at that time. The plat was submitted Stormwater and roadway corrections have been made to the site and the reviewing agencies have now granted approval of the plat.

1. Developer has installed all of the necessary streets, waterlines, water services, and required fire hydrants and is connected to the county water system.
2. The streets meet NCDOT construction standards and the NC Fire Prevention Code.
3. Pavement acceptance letter has been submitted by NCDOT.
4. Stormwater drainage as-built plans have been submitted and approved.
5. Waterline as-built plans have been submitted and approved.
6. Water usage during the line flushing has been paid for.
7. Water connection fees for each lot will be paid at the building permit stage according to UDO Section 915(2)(e).
8. The developer has entered into a relinquishment agreement with the County Water Department for the waterlines.
9. A Street Maintenance Bond for Peace Court in the amount of **\$11,789.00** (15% of the \$78,590.00 construction cost from 2-17-06 letter from Barnhill Contracting) has been submitted and will be held by the County for a minimum period of at least 18 months and then the bond will only be released at such time as the streets are turned over to NCDOT. This is a BB&T letter of credit dated May 19, 2006.
10. A replacement for a 12-9-03 Street Maintenance Bond for Freedom Avenue in the amount of **\$24,709.00** has been submitted. This is a BB&T letter of credit dated May 19, 2006.
11. The Street Maintenance Agreement documents and the Final Plat address the responsible party for the stormwater drainage facilities.
12. The required street trees have been installed.
13. The application is in substantial conformance to the approved Amended Preliminary Plat dated July 19, 2006. Lot layouts, utilities, drainage and streets conform with the approval given at Amended Sketch Plan.

14. The applicant meets the standards and requirements within the County's UDO for Final Plat approval. Based upon staff's review, the applicant has met the standards and requirements within the UDO.

**STAFF RECOMMENDATION:**

Because the conditions of sketch and preliminary approval have been satisfied, the required improvements have been installed and the Technical Review Committee has reviewed and approved the plan, staff recommends **approval** with the following conditions:

1. The Phase III Property Owners Association documents shall be recorded at the time of Final Plat recordation.
2. As a continuing condition of Final Plat approval the development shall meet all the requirements of the Currituck Unified Development Ordinance.

**DISCUSSION**

There was no discussion on this item.

Mr. Kovacs motioned to approve the request as presented. Ms. Turner seconded the motion. Motion passed unanimously.

**OLD BUSINESS**

There was no old business to discuss.

**ADJOURNMENT**

With there being no further business to discuss, Mr. Riley motioned for adjournment. Ms Turner seconded the motion and the motion passed unanimously. The meeting adjourned at 8:10 p.m.

Respectfully Submitted,

Tammy J. Underwood /s/

Tammy J. Underwood  
Clerk to the Board