

Minutes
Work Session
Aberdeen Town Board
January 11, 2016
Monday, 6:00 p.m.
Robert N. Page Municipal Building
Aberdeen, North Carolina

The Aberdeen Town Board met Monday, January 11, 2016 at 6:00 p.m. for the Work Session. Members present were Mayor Robert A. Farrell, Mayor Pro-tem Jim Thomas, and Commissioners Joe Dannelley, Ken Byrd, Buck Mims, and Eleese Goodwin. Staff members in attendance were Planning Director Pam Graham, Planner Kathy Blake, Town Manager Bill Zell, and Town Clerk Regina Rosy. Tammy Lyne, Allan Casavant, Jeff McCluskey, Tim Marcham, Frances Bosworth, Julia Thomas, Barbara Allred, Bryan Bowles, Reporter for The Pilot Laura Douglass, Kam Hurst, Reverend Douglas Kelly, Jim Ransdell, David Keith, Becky Brown, Kristy Ransdell, and approximately 20 others were also in attendance for the meeting.

Mayor Farrell called the meeting to order at 6:03 p.m.

1. Continued Public Hearing on Conditional Use Permit CU #15-07 Submitted by Bethesda Ives.

Mayor Farrell stated he has been recused from Items 1 and 2, due to the proximity of Bethesda Cemetery. Mayor Farrell turned the floor over to Mayor Pro-tem Thomas.

Mayor Pro-tem Thomas opened the continued public hearing for Conditional Use Permit CU #15-07 submitted by Bethesda Ives. Clerk Regina Rosy swore in Tammy Lyne, Jeff McCluskey, Tom Van Camp, Allan Casavant, Becky Brown, Douglas Kelly, Kam Hurst, David Keith, Jim Ransdell, Kristy Ransdell, Dale Wroiko, Jackie Davis, and Frances Bosworth.

Planning Director Pam Graham stated this is a continued public hearing on Conditional Use Permit CU #15-07. Director Graham stated Bethesda Ives, LLC requests a conditional use permit for a 38 lot single family subdivision on a vacant tract comprising 51.46 acres. The property is accessed from Bethesda Road just north and across from the historic Bethesda Presbyterian Church. The applicant seeks approval of the use, open space, general layout, and number of lots subject to final engineering through the Site Plan Review process. Additional construction detail will be provided at that time for staff review. Director Graham stated

Aberdeen's UDO requires that all major subdivisions apply for a conditional use permit. Director Graham stated the property was previously considered for the same use under Conditional Use Permit CU #15-03. The application ultimately was denied by the Board of Commissioners for failure to meet the UDO's cul-de-sac maximum length requirement (500 ft. except where no practicable alternative is available, in which case they may not exceed 900 ft.)

Director Graham stated the Town Board ruled that evidence had not been submitted sufficient to prove that no practicable alternatives were available to justify exceeding the 500 ft. length threshold.

Director Graham stated a revised plan has been submitted (referenced to as "Plan C" by staff) that contains no cul-de-sacs in excess of 500 feet. Director Graham stated the applicant and their legal counsel have advised that Plan C is what they want considered this evening. Director Graham stated in Plan C a couple new cul-de-sacs have been added to the plan, a stub-out road has been eliminated, and a road has been moved to the north and will connect with E.L. Ives Drive. Director Graham stated the new cul-de-sacs do not exceed the 500 ft. standard. The current plan also indicates sidewalks on both sides of all new roads within the subdivision. The property would be developed in 4 distinct phases.

Director Graham stated the current plan differs from the previous one as follows:

- Proposed Road D has been converted from a stub-out road to a cul-de-sac serving lots 25 and 26. The length of Road D is 88.91 ft. and is considered a minor street by the UDO. There is no minimum length requirement for cul-de-sacs. *Cul-de-sacs are defined as minor or local streets that terminate in a vehicular turnaround. Minor streets provide access to abutting properties and are designed to serve not more than 9 dwelling units and to handle less than 75 trips per day.*
- An additional cul-de-sac is proposed on the plan by Road E, located approximately 236 ft. from the end of Road A. The distance between Roads D and E is 986.85 ft. *The UDO calls for streets to be laid out so that residential blocks do not exceed 1,000 ft., unless no other practicable alternative is available.*

Proposed open space is reduced from 27.5 acres to 27.1 acres, or 52.7%. *The UDO requires that a minimum of 20% of the development acreage be set aside as permanent open space.*

An alternate "Plan B" has also been submitted for consideration. While the Board is required to rule on Plan C, it may, but is not required to, rule on Plan B. Plan B differs from Plan C in a single respect: Proposed Road C culminates in a cul-de-sac measuring 676.64 linear ft., 176.64 ft. longer than the 500' standard.

- Should the Board decide to consider Plan B, they must determine if there is no practicable alternative to Road C exceeding the 500' standard. Where no practicable alternative exists, cul-de-sacs may be as long as 900'.

Director Graham displayed a map of Plan C. Director Graham stated the property is located in the R20-16 zoning district. This district was established where the principle use of land is for low-density residential or agricultural purposes. The regulations of this district are intended to protect the agricultural sections of the community from an influx of uses that would likely render them undesirable for farms and future development.

Director Graham displayed a vicinity zoning map. Director Graham stated the open space proposed for the project exceeds the 20% requirement, primarily due to the existence of +/- 27.51 acres of wetlands contained within the parcel. The applicant proposes to construct an 8' wide natural walking trail along the existing sewer easement to meet the usability requirements for open space.

Director Graham displayed an aerial image of the site. Director Graham displayed a green growth toolbox assessment map, which shows the elevation, contours, streams, existing sewer easement for the property, etc.

Director Graham stated the applicant had originally requested relief from sidewalk requirements for portions of the development by reducing the sidewalks to only one side of the road in those areas. The current plan shows sidewalks on both sides of all new roads. *The UDO does provide some flexibility on the sidewalk requirement:*

- *Walkways of alternate material may be allowed when they would serve the development as adequately, and when they would be more environmentally desirable;*

- A condition may be added that deviates from the requirements when extraordinary circumstances are present – the extensive presence of wetlands constitutes an extraordinary circumstance.

Director Graham stated last Monday she was contacted by some folks that had concerns about the cemetery and proximity to the development. Director Graham stated she met those folks on site, and her understanding is the two primary concerns are the possibility of unmarked graves on the property and the impact to the historic character of the area. Director Graham stated the town attorney has advised that there are no specific requirements regarding the siting of development in relation to graves, but that a condition could be included that allows for reasonable access for a limited period of time for others to investigate the existence of graves at the site. Condition #18 is recommended for the Board's consideration.

Director Graham stated the Town's consulting engineer Gary McCabe provided a review of soils and drainage for the site. Recommended conditions #16 and #17 reflect the recommendations included in his summary.

Director Graham stated the Board must consider the following in their deliberations and may not approve the application if they determine that:

- The application is not complete as submitted, or
- The application does not comply with one or more requirements of the UDO.

Director Graham stated if the Board determines that the application is complete, and complies with the UDO, it may not deny the application unless it finds that, if completed as proposed, the development more probably than not:

- Will endanger the public health or safety, or
- Will substantially injure the value of adjoining property, or
- Will not be in harmony with the area in which it is to be located, or
- Does not generally conform with plans adopted by the Town Board.

Director Graham stated staff considers the proposal to be in general conformity with plans adopted by the Town due to the following:

The 2030 Land Development Plan's Future Land Use Map identifies the project area as low-density residential with environmentally sensitive areas evident. Low density residential is consistent with both the current zoning and existing residential uses in the immediate vicinity.

- The Land Development Plan also states that conservation subdivisions may be an appropriate development pattern for new development within the Town. Conservation subdivision design is intended to identify what is important to preserve on a site with development concentrated in the more suitable portions. Considerations such as preserving farmland and environmentally sensitive areas are common elements in conservation subdivisions.

Director Graham stated the Planning Board, at their 11/19/2015 meeting, made a unanimous recommendation for approval, with amended conditions as will be provided in a few minutes. Director Graham stated the Town Board is not bound by recommendations of the Planning Board, or of staff. However, they shall consider these recommendations and are required to use the same criteria in formulating their decision as is used by the Planning Board in their recommendation.

Director Graham entered the letter received from Bill Marts into the record. Director Graham read the letter received from Bill Marts in entirety.

Director Graham stated another letter was received from the Van Camp, Meacham and Newman Law firm – addressed to T.C. Morphis. Director Graham read the letter received, which in summary requested that Mayor Pro-tem Thomas consider recusing himself from this item. Mayor Pro-tem Thomas stated his understanding is that a recusal is based on financial interests, and he assured the Board that he does not stand to lose or gain anything financially based on this conditional use permit. Mayor Pro-tem Thomas stated he has no more clout on this Board than any other member. Mayor Pro-tem Thomas asked the other Board members if they feel him owning the adjoining lot is grounds for recusal or not. Commissioner Mims stated he has no doubt that Mayor Pro-tem Thomas would make a fair decision, but he would like to understand what the proximity is between Mayor Pro-tem Thomas' lot and the proposed subdivision. Director Graham displayed a map of the proposal and Mayor Pro-tem Thomas pointed out that one of the cul-de-sacs ends about 100' below his property.

Attorney Benshoff stated he is here on behalf of the Brough Law Firm. Commissioner Mims asked if there are any legal issues with Mayor Pro-tem Thomas not recusing himself from this item. Attorney Benshoff read Section 152.107 in the UDO which states that a member of the Board shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected person's constitutional rights to an impartial decision maker.

Attorney Van Camp stated he would like to clarify that the concern is that a family member in his home signed a petition against this project, which would trigger the conflict of interest statute for Plans B and C. Attorney Van Camp stated it is the familial association he is concerned about with Mayor Pro-tem Thomas, not a financial interest.

Commissioner Byrd asked Mayor Pro-tem Thomas if he would disclose who signed the petition. Mayor Pro-tem Thomas stated his wife signed the petition. Commissioner Byrd asked Mayor Pro-tem Thomas if his wife would influence his decision. Mayor Pro-tem Thomas stated no, she is a smart woman and makes her own decisions.

Commissioner Dannelley asked if the petition is a part of the record for CUP #15-07. It was determined that the petition is not a matter of the public record for this CUP, since it was not re-submitted.

Commissioner Byrd stated based on the information he has just heard, he sees no reason to rescue Mayor Pro-tem Thomas. A motion was made by Commissioner Byrd, seconded by Commissioner Goodwin, to not recuse Mayor Pro-tem Thomas since they do not feel there is a conflict. Commissioner Dannelley stated there is no reason for him to feel there is a conflict of interest, and if Mayor Pro-tem Thomas feels he is not biased on this item, then that is what he wants to hear. Motion carried 3-1, with Commissioners Goodwin, Byrd, and Dannelley voting yes, and Commissioner Mims voting no.

Director Graham read the recommended conditions for the record:

1. Conditional Use Permits (CUPs) run with the land and as such CU #15-07 applies to the entirety of the property reflected in Parcel ID #00054112. An amendment to the CUP is needed to remove property from the CUP or to make changes to the CUP. If an activity is a use by right, it is not subject to the CUP.

2. The proposed use is authorized by the CUP, however, approval of CU #15-07 is contingent on a successful inter-departmental review to insure that the development has met all Federal, State and local regulations and permitting requirements, as well as any conditions attached to the CUP approval. Plans submitted for this review shall include, but not be limited to, tree survey indicated all trees with a dbh of 12" or greater, utility locations including size, material, and vertical alignment of waterlines, engineering calculations assuring that proposed stormwater measures meet or exceed the requirements of Article XVI, Part 2, Drainage, Erosion Control and Stormwater Management of the UDO.

3. Any and all required permits and/or approvals from other regulatory agencies must be in place prior to issuance of a Notice to Proceed by the Planning Department.

4. The development is authorized to create a maximum of thirty-eight (38) single family lots and construction documents generally based on the Site Sketch Plan with a revision date of 12/1/15 (or 12/4/15).

5. Open Space shall generally comply with the 12/1/2015 (or 12/4/15) Site Sketch Plan, including proposed improvements, and in no case may be reduced to less than 20% of the total land area for the development. Prior to approval of the Final Plat for the subdivision, the developer shall establish a Homeowners' Association with covenants to include a policy for maintenance of the open space, including any improvements such as walking trails. A copy of the covenants shall be provided to staff for review and record-keeping. Covenants shall comply with the requirements of §152-179 and 152-180.

6. Tree harvest and mass grading are not authorized as a result of this approval. Construction documents, including a grading plan, shall be reviewed by staff for compliance with the UDO.

7. The applicant is required to install sidewalks on both sides of all new streets, or provide a guarantee with initiation of each phase of development in accordance with the requirements of the UDO.

8. The applicant shall supply Planning staff with an assessment from US Fish and Wildlife Agency with regards to Red Cockaded Woodpecker, or other protected species, activities on the property prior to site disturbance. Evidence of such activities authorizes staff to require amendments to the plan to minimize impacts.

9. Approval of CU #15-07 is contingent upon a revised site layout plan that shows all rear and/or side lot lines that encroach into the wetlands have been altered

to coincide with the wetland boundary when doing so would not make the lot unbuildable. At a minimum, Plan B lots 1, 6, 28, 29, 32, 34, 35, and 36 or Plan C lots 1, 5, 28, 29, 32, 34, 35 and 36 shall be adjusted to meet this condition unless the applicant can provide evidence to staff that the lot will be rendered unbuildable by doing so. Additionally, setback lines on Plan B lots 5, 17, 27, 31, 33, 37, and 38 or Plan C lots 3, 6, 17, 27, 31, 33, 37, and 38 are to be adjusted to coincide with the wetland boundary where doing so will increase the setback area rather than lessen it. Buildability in this instance refers strictly to the lot's ability to meet the dimensional standards required for the district. JV

10. Streets, sidewalks, waterlines, and sewer and stormwater facilities shall meet all UDO requirements and are to be dedicated to the Town of Aberdeen contingent upon inspection and approval by the Public Works Department. Preliminary and Final Plats shall identify any and all Town easements related to these facilities. Details shall be reviewed by staff during the Site Plan Review process following approval of the conditional use permit. JI (MS) to add revise a P/W

11. The Fire Department must sign off on the drawings as well as available capacity for treating fires. Hydrants are required consistent with Fire Department spacing requirements. Adequate turning radius must be provided for the fire trucks currently in use. JI (MS) to add revise a P/W

12. Prior to approval of final plat(s), all infrastructure must be complete or guaranteed per UDO requirements. JI (MS) to add revise a P/W

13. Street trees shall be installed prior to final plat approval or as a requirement of the building permit for each lot and shall be consistent with official species list provided in §98.03 of the Aberdeen Code of Ordinances or with "Trees of the Carolinas" (Appendix J of the UDO) and planted at the appropriate rate. Compliance with the street tree requirements will be reviewed by staff and staff is authorized to verify compliance prior to issuing a certificate of occupancy for each lot. JI (MS) to add revise a P/W

14. Sharrows and marked crosswalks shall be installed or guaranteed prior to final plat approval consistent with the requirements of the Comprehensive Pedestrian and Bicycle Plans. JI (MS) to add revise a P/W

15. All additional conditions or requirements as provided from the Town of Aberdeen Unified Development Ordinance are enforceable with regards to the proposal CU #15-07. JI (MS) to add revise a P/W

16. Approval of CU #15-07 is contingent on evaluation of soils by a NC licensed Geotechnical Engineer or Soil Scientist where the proposed roads, houses, and

utilities will be constructed prior to Site Plan approval. Staff is authorized to not require amendments to the plan to accommodate/remedy any evidence of soils unsuitable for building determined by the evaluation. The evaluation shall also include design recommendations for the roadway, wetland crossing, and stormwater and utility improvements.

17. Approval of CU #15-07 is contingent on a hydrologic analysis performed by a NC licensed engineer of the downstream unnamed tributary to Aberdeen Creek to determine if it has sufficient capacity to accept the proposed increase in stormwater runoff as a result of the subdivision proposed by CU #15-07.

18. There is evidence that enslaved persons are buried in the cemetery, and there is also concern that the unmarked graves of enslaved persons lie on the periphery of the main cemetery, including possibly on the property proposed for development by CU #15-07. Because the exact location of such graves remains unknown, the Property Owner shall for a period of six months from the date of this permit allow representatives of the Bethesda Cemetery Association or other individuals having a legitimate historical, genealogical or governmental interest to access the property for the purpose of determining whether graves exist on the Property. Persons entering the Property for this purpose shall submit a written request to the Property Owner, with a copy to the Town. The Property Owner may not prohibit access, but the Property Owner or designee may place reasonable restrictions on access to the Property for safety purposes. Any person entering the Property pursuant to this condition shall be responsible for repairing any property damage that may result from searching for graves.

Becky Brown stated she is interested in the cemetery and wants to make sure it is taken care of, since she has grandparents from 4 generations back that are buried in the old part of the cemetery.

Tammy Lyne stated she is one of the owners of the land and they are willing to sell 3-4 lots to the cemetery, at a price not to exceed fair market value.

Commissioner Byrd asked if there has been any discussion between Ms. Lyne and the Cemetery Association regarding the purchase. Ms. Lyne stated an offer has been made by the Cemetery Association to buy the first 4 lots, but it is less than half of what a builder has offered for the property.

Attorney Tom Van Camp, stated he represents the owner of the property. Mr. Van Camp stated when the Board members did not second the motion by

Commissioner Mims for Plan B, the Town Attorney was contacted and told in the abundance of caution, a second CUP was going to be filed. Attorney Van Camp stated this second CUP was presented. Attorney Van Camp stated more than a majority of the Town Board apparently does not want this subdivision developed. Attorney Van Camp stated he advised his client to present a proposal that meets all requirements of the UDO. Attorney Van Camp stated his client was advised they needed to choose one plan to move forward with. Attorney Van Camp stated Plan C complies with all requirements of the UDO, and the Board must consider it for approval. Plan B can also be considered if the Board would like. Attorney Van Camp stated Plan C can only be denied if it is found to endanger the public health or safety, substantially injure the value of adjoining property, not be in harmony with the area in which it is to be located, or does not generally conform with plans adopted by the Town Board. Attorney Van Camp stated the only way this Board can appropriately deny under procedure, Plan C, is the harmonious concern. Attorney Van Camp stated his argument for the harmony issue, is that the Town Board has designated this area as residential for the zoning. Attorney Van Camp stated all of the surrounding zoning areas are residential too. Attorney Van Camp stated the law is very clear, and the possibility of graves on this site is not competent evidence to deny this item on. Attorney Van Camp stated his client is willing to sell 3-4 lots to the Cemetery Association, or a conservation easement. Attorney Van Camp stated his client is willing to let others come in and search for graves, but he wants to make sure there is some type of construction easement available so that construction can begin, even while those searches are going on. Attorney Van Camp stated the burden is not on the petitioner, it is on whoever takes that position when they present arguments. Attorney Van Camp stated he would like to reach some type of common ground on this issue, so that a lot of time is not spent in court, and spending tax payer dollars on legal fees.

Allan Casavant stated initially they were going to donate the lots in question to the cemetery. Mr. Casavant stated then the cluster subdivision was removed by the Board, he lost \$400,000, so now they can not afford to donate those lots any longer.

Mr. Van Camp stated Plan C is what they are asking to be considered tonight, but Plan B would also be agreeable if the Board would prefer that option.

Mr. Casavant stated at the last meeting after Commissioner Dannelley stated the subdivision does not appear to be harmonious with the surrounding area, the next day he went to the court house, and got a map that shows basically they are just finishing up what was started 45 years ago on E.L. Ives Drive. Mr. Casavant showed a map of the current platted lots on the proposed property.

Jackie Davis stated she has lived on Devonshire Trail for 37 years. Ms. Davis asked about the archway, and if there is going to be a road on the outside or the inside of the archway. Director Graham stated the archway will not be disturbed by the development. Ms. Davis stated she is not opposed to development, she just does not want the cemetery affected by development.

Jeff McCluskey stated he is the engineer for the project. Mr. McCluskey stated he has designed several thousands of lots in subdivisions. The intent with this development is to conform with the UDO 100%. Mr. McCluskey stated the road can be shifted as needed, to be located near the archway, since the right of way is 60'. Mr. McCluskey stated this property is not included in the historic district. Director Graham stated Mr. McCluskey is correct and the property is not included in the historic district, but the church and the grounds are locally designated historic landmarks and the church structure is on the National Register of Historic Places.

Kam Hurst stated her great grandfather was one of the founding fathers of the old Bethesda Church. Ms. Hurst stated citizens in Aberdeen are very concerned about historic preservation in the whole Town. Ms. Hurst stated the old Bethesda Church was the site of a fight from the Civil War, and the soldiers actually slept underneath the church. Ms. Hurst stated all of the Board members were voted in by the citizens of Aberdeen, and they are respected by the citizens. Ms. Hurst stated surrounding communities do not have enough water for their area, and Aberdeen has shown great responsibility in not over-building, so that resources are available for its citizens. Ms. Hurst stated citizens are not against development, but want it done respectfully. Ms. Hurst stated she really wants to see protection for the cemetery, but she is not against the subdivision.

Kristy Ransdell stated she is here to speak on behalf of the Bethesda Presbyterian Church. The church was founded in 1788, and was the only church for 100 years. Existing records from the 1830s mention numerous times where slaves were active members of the church, so from the 1830s to the 1890s where

they buried? History shows that slave graves were typically located on adjacent swamp lands. Markers were typically made out of wood. Ms. Ransdell requested the Board to add in another condition that if bones are found, then there needs to be a cease and desist, so that the bones can be excavated and cared for in a dignified matter. Mr. Casavant stated that is state law. Commissioner Byrd stated he spoke with an individual the other evening, and understands that students from UNCP might be doing the research on the graves. Ms. Ransdell stated UNCG and UNCP will both be contacted, and there is another company out of Georgia that might be a possibility. Commissioner Mims stated without evidence of unmarked graves, building cannot be stopped.

Frances Bosworth stated she serves on the Bethesda Cemetery Board. Ms. Bosworth stated the first lot was offered for free by Ms. Lyne, with the exception that a sign be placed on that one lot. Ms. Bosworth stated a selling price has been given to the Cemetery Association, but it is a substantial amount of money. Tammy Lyne stated at any time if someone wants to start looking for graves immediately, that is available to them.

Jim Ransdell stated he and a few others met with Pam Graham at those lots this past week. Mr. Ransdell stated the history and harmony of that area is unbelievable. And it would be good to have the time and resources to research and determine if there are unmarked graves on those lots.

Douglas Kelly stated many of his ancestors are buried in the old Bethesda Cemetery – 7 generations. His concern is not to block development, but that the road would come on the inside of the arch, and he would really like to see the first 4 lots worked out with the Cemetery Association. Mr. Kelly stated he would be willing to lead a search for unmarked graves, because he remembers where those graves are alleged to be. He wants to make sure the respect and history of the cemetery is not compromised.

David Keith stated it sounds like there is a way to negotiate this thing. Mr. Keith stated he feels strongly about the integrity of the cemetery and the graves.

Attorney Benschoff stated before the public hearing is closed, he wants to make 2 remarks about the public comments. Attorney Benschoff stated the plat submitted does not show an offer of dedication to any government authority and is just the testimony of Mr. Casavant, and there is no evidence at this time. Attorney

Benshoff stated Section 152-54 in the UDO states that applications may be denied if you can make a conclusion based on the information at the hearing, that the application will endanger the public health or safety, or will substantially injure the value of adjoining property, or will not be in harmony with the area in which it is to be located, or does not generally conform with plans adopted by the Town Board.

Attorney Van Camp stated he would recommend Condition 18 be revised to read 3 months, instead of 6 months, and the applicant be given permission to begin construction while the graves search is being conducted. Director Graham stated Condition 18 was drafted after the last meeting, and 6 months seemed to be a reasonable time frame, but certainly the Board can tweak this condition as they see fit.

Commissioner Mims asked Attorney Benshoff if motions can begin on one of the plans, and if that is denied, can the second Plan be considered tonight as well. Attorney Benshoff stated the Board can consider both plans if they want to.

With no further discussion, Mayor Pro-tem Thomas closed the public hearing.

2. Consider Action on Conditional Use Permit CU #15-07 Submitted by Bethesda Ives.

A motion was made by Commissioner Byrd, seconded by Commissioner Goodwin, that Plan C is within the jurisdiction of the Town Board according to the Table of Permissible Uses. Motion unanimously carried 5-0.

A motion was made by Commissioner Byrd, seconded by Commissioner Goodwin, that CU #15-07 is complete as submitted for Plan C. Motion unanimously carried 5-0.

A motion was made by Commissioner Byrd, seconded by Commissioner Goodwin, that CU #15-07 if completed as proposed, will comply with all requirements of the UDO for Plan C. Motion unanimously carried 5-0.

A motion was made by Commissioner Byrd, seconded by Commissioner Goodwin, that CU #15-07 satisfies Finding #1: will not endanger public health or safety. Motion unanimously carried 5-0.

A motion was made by Commissioner Byrd, seconded by Commissioner Goodwin, that CU #15-07 satisfies Finding #2: will not substantially injure the value of adjoining or abutting property. Motion unanimously carried 5-0.

A motion was made by Commissioner Byrd, seconded by Commissioner Goodwin, that CU #15-07 satisfies Finding #3: will be in harmony with the area in which it is located, with the amendments proposed. Commissioner Mims asked for clarification on what those amendments are. Commissioner Byrd stated Condition #18 would be tweaked to say construction be permitted elsewhere besides the first 4 lots on the left (Lots 18, 19, 20 and 21), and there was a request to change the time frame to 3 months instead of 6 months. Commissioner Byrd stated he would prefer it stay at 6 months. Commissioner Dannelley stated he is still not convinced it is in harmony with the area. Commissioner Dannelley stated he has heard all the testimony, listened to the attorneys, read all the information, and there is no doubt in his mind that this will impact the history and character of the area. Commissioner Dannelley stated he just does not believe this development will be in harmony with the historic character of the cemetery and the church. Commissioner Dannelley stated in respect to harmony, he agrees it is zoned for residential. Commissioner Dannelley stated what has happened over the course of this CUP, is he has educated himself after each instance he received information. Commissioner Dannelley stated he has completed a lot of his own research regarding zoning as it relates to harmony, and he is convinced that harmony does not relate to just zoning. Commissioner Mims stated he feels like he has to go by the law, and this property is zoned R20-16, which is what was applied for with this proposal. The 2030 Land Development Plan Future Land Use Map adopted in 2005 identifies this project area as low-density residential with environmentally sensitive areas evident. Commissioner Mims stated when the Town identifies zoning for a property, and a developer spends hundreds of thousands of dollars on property to develop, then he feels like they should be able to develop it. Commissioner Mims stated the developer has tried to work with every request that has been brought up. Commissioner Mims stated if somebody applies using the current zoning, then it should be the Board's job to make it work. Respectfully, Commissioner Mims stated if the Board members disagree, then they just disagree. Commissioner Mims stated he does not want to see taxpayer dollars going to pay for litigation. Commissioner Dannelley asked if it is Commissioner Mims' opinion that Plan B be considered for approval instead, due to the reasons stated for impervious surface, and not creating a road to cut through a

neighborhood. Commissioner Mims stated he would be scared to risk denying Plan C, in the hopes that Plan B can be approved. Attorney Van Camp stated if the Board approves Plan C, but then decides to approve Plan B, then he will make sure the developer goes with Plan B. Motion carried 3-2, Commissioners Byrd, Goodwin and Mims voting yes, and Commissioner Dannelley and Mayor Pro-tem Thomas voting no.

A motion was made by Commissioner Byrd, seconded by Commissioner Goodwin, that CU #15-07 satisfies Finding #4: will be in general conformity with the Land Use Plan or other plans specifically adopted by the Board. Motion unanimously carried 5-0.

A motion was made by Commissioner Byrd, seconded by Commissioner Goodwin, that based on the findings of fact and the evidence presented, the Town Board issues approval with conditions of CU #15-07 as amended, with the amendment being in Condition #18 - add a statement that says construction may be permitted elsewhere besides Lots 18, 19, 20 and 21, during the first 6 months, while the search for graves is being conducted. Motion carried 4-1, with Mayor Pro-tem Thomas and Commissioners Byrd, Mims and Goodwin voting yes, and Commissioner Dannelley voting no.

A motion was made by Commissioner Mims, seconded by Commissioner Goodwin, to make Plan B an option for the applicant, with the same amended conditions just approved for Plan C. Attorney Benschhoff stated the Board can consider Plan B, but would need to go through the steps again, and there is a standard that the cul-de-sac length can be waived if there is no practicable alternative. For the record, Attorney Van Camp stated the developer/owner would accept the approval of Plan B and utilize Plan B, instead of Plan C. Ms. Tammy Lyne stated she would prefer Plan B as well. Commissioner Mims stated what we have done here is start with Plan A, but he made a motion for Plan B to be approved, and then Plan A got denied. Commissioner Mims stated going with Plan C is cutting through a current neighborhood, and also creates more impervious surface. Commissioner Byrd stated he still supports only Plan C. Mayor Pro-tem Thomas stated he is trying to protect the appearance of the area immediately across from the church. Mayor Pro-tem Thomas stated the developers have said repeatedly that they are willing to work with everyone within reason. Mayor Pro-tem Thomas stated he believes very strongly that when a person purchases a piece of property,

and wants to develop it, then they are casting a net that people will want to live there. Commissioner Mims stated he is trying to protect the neighbors in the adjoining neighborhood. Motion carried 3-2, with Mayor Pro-tem Thomas and Commissioners Mims and Goodwin voting yes, and Commissioners Dannelley and Byrd voting no.

3. Consideration of Applicants for Planning Board Appointment.

Director Graham stated there are 3 applicants for the Planning Board vacancy. Director Graham stated the applicants are Bill Prevatte, Mike Ratkowski, and Ron Utley. Commissioner Dannelley asked if there have been any issues with making a quorum for the Planning Board. Director Graham stated there have not been any issues with making a quorum for the Planning Board. Commissioner Dannelley proposed not filling the vacancy until August 2016, and then seat a full Board. Commissioner Byrd respectfully requested filling the vacancy now, so it does not impose on staff to make sure there is a quorum for the Planning Board meetings. A motion was made by Commissioner Byrd, seconded by Commissioner Goodwin, to recommend Bill Prevatte be appointed to fill the Planning Board vacancy for a term to expire June 2016. Motion unanimously carried 5-0.

4. Resolution Supporting the Connect NC Bond Act of 2015.

Item deleted from agenda

5. Resolution in Support of Quarter Cent Sales and Use Tax Referendum to Fund Major Capital Building Projects for Moore County Schools.

A motion was made by Commissioner Byrd, seconded by Mayor Pro-tem Thomas, to approve the Resolution in Support of Quarter Cent Sales and Use Tax Referendum to Fund Major Capital Building Projects for Moore County Schools. Motion unanimously carried 5-0.

6. Consider Requesting NCDOT to Lower the Speed Limit on 15/501 from Burney Hardware to Pinebluff Lake Road from 55 MPH to 45 MPH.

Commissioner Byrd stated members from his community have asked him to start working on this item. The biggest issue is when you pull out of Legacy Lakes, it is extremely dangerous and the need to control the speed in that area is really important. Commissioner Byrd stated he is looking for a way to help the residents in

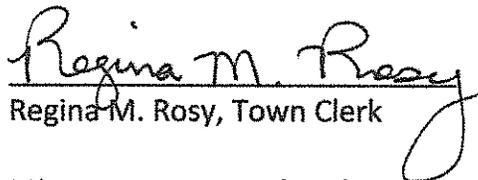
that area. Commissioner Mims asked if there have been any accidents in that area. Commissioner Byrd stated accidents happen regularly. A motion was made by Commissioner Byrd, seconded by Commissioner Mims, to request a speed study by NCDOT for the section of 15/501 from Burney Hardware to Pinebluff Lake Road. Motion unanimously carried 5-0.

7. Other Business.

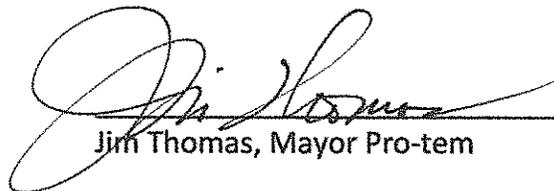
Commissioner Goodwin stated she would like to recommend prior to a Board meeting one evening, for all of the Board members to meet over at the Depot, to see the work being done on the Railroad train display. Commissioner Goodwin stated she will work on arrangements.

8. Adjournment.

A motion was made by Mayor Pro-tem Thomas, seconded by Commissioner Goodwin, to adjourn the Work Session. Motion unanimously carried 5-0.


Regina M. Rosy, Town Clerk

Minutes were completed in
Draft form on January 11, 2016


Jim Thomas, Mayor Pro-tem

Minutes were approved
on January 25, 2016

that area. Commissioner Minors asked if there were any children in that area. Commissioner Ford stated students' requests happen regularly. A motion was made by Commissioner Ford, seconded by Commissioner Minors, to request a field study by BDOY for the section of 15th St. from Huron Highway to 15th St. East. Motion was seconded by Commissioner Ford.

Other Business 7

Commissioner Ford stated the results of the study will be presented prior to a board meeting one evening for all of the board members to meet over at the depot for the work being done on the Board and the study. Commissioner Gordon stated the work being done on the Board and the study.

Adjournment 8

A motion was made by Mayor Pro-Tem Thomas, seconded by Commissioner Gordon, to adjourn the Board meeting at 7:00 p.m.

[Signature]
 Jim Thomas, Mayor Pro-Tem

Minutes were approved at
 on January 22, 2018

[Signature]
 Regina M. Kelly, Town Clerk

Minutes were approved in
 full form on January 22, 2018