

## MINUTES OF THE DARE COUNTY PLANNING BOARD MEETING

The Dare County Planning Board held their regularly scheduled meeting on Monday, March 10, 2014. This meeting was held in the Dare County Board of Commissioners meeting room located at the Dare County Administrative Building, 954 Marshall C. Collins Drive, Manteo, NC.

**CALL TO ORDER** 7:00 pm

<b>MEMBERS PRESENT</b>	Elmer R. Midgett, Jr., Chairman	John Finelli
	Michael Barr	Dan Oden
	Beth Midgett	David Overton

**MEMBERS ABSENT** Richard "Ricky" Scarborough, Jr.

### APPROVAL OF MINUTES

There being no corrections or additions to the minutes of the February 10, 2014 meeting of the Dare County Planning Board, Michael Barr made a motion to approve the minutes as submitted. John Finelli seconded this motion.

Vote: Ayes – Unanimous

### PUBLIC COMMENT

-None-

### OLD BUSINESS

-None-

### NEW BUSINESS

#### ***Subdivision Review, Timothy and Ruth Midgett, 7628 Landing Road, Manns Harbor***

Timothy Midgett was present, as well as Mearl Meekins, Surveyor.

Mearl Meekins began the discussion. He informed the board this is a two lot division of a previously platted "Lot 2" for the Sadler Subdivision. The proposed lots would be lots 2A and 2B. The access is provided off Highway 64 across the Calvin Gibbs property. There is 45' adjacent to the two lots that was part of lot 1 in the Sadler Division. This has been granted by Calvin and Laurie Gibbs to Timothy Midgett as an access to connect to the proposed 20' easement.

Donna Creef continued the discussion. She said the purpose of the 20' easement across the Gibbs property and the 45' easement is so the property will be in compliance with the Dare County Subdivision Ordinance. Both easements are improved with gravel and maintained by the property owners. The final plat will need appropriate notes and certificates and Ms. Creef believes this needs to include the language stating trash trucks and school buses will not be provided access via the Landing Road easement.

Chairman Midgett asked if lending institutions will have problems with the property because of the access as shown on the preliminary plat. Timothy Midgett responded that he has contacted lending institutions and was told it will not be a problem.

Mr. Finelli asked if utility easements will be required. Ms. Creef responded that the properties use private wells so there are no water lines. Timothy Midgett said telephone and power lines use Landing Road to access properties. Mr. Finelli asked if the easements have been recorded and Timothy Midgett said they have not but will be recorded once plat approval is granted. Mr. Finelli proposed that the final plat easements specify that vehicular and utility access is being provided.

Dan Oden made a motion to recommend preliminary plat approval subject to the addition of appropriate minor subdivision certificates as well as a note stating the easements are for access by vehicles and utilities as needed.

Michael Barr seconded the motion.

Vote: Ayes – Unanimous

***Kinnakeet Shores Phase 16 Group Development / Conditional Use Permit Application***

A motion was made by Beth Midgett to recuse Michael Barr from the following portion of the meeting as he is employed by Bissell Professional Group and they are representing the applicant.

David Overton seconded the motion.

Vote: Ayes – Unanimous

Mark Bissell of Bissell Professional Group was in attendance and represents Kinnakeet Shores 16 LLC, the applicant. David Pharr operates the wastewater treatment plant at the proposed development and was also in attendance.

Mark Bissell addressed the Planning Board. Mr. Bissell said George Brown is the managing member of Kinnakeet Shores 16, LLC and they are the new developer for Kinnakeet Shores Phase 16. The original plan was approved in 1989 for 51 building sites. The original plan was refined in 2006 and a preliminary plat was submitted and approved. In 2009 the roads and water lines were constructed in accordance with the approved construction plans. Following this construction, the final plat was conditionally approved to go to record in December of 2009 but due to financial constraints, the plat was never recorded and has now expired. The new developer is proposing to proceed with the project as originally planned. They have submitted a plat which shows essentially the same 51 unit development plan. There have been some complaints about the wastewater treatment plant. David Pharr is the operator in charge of the wastewater facility. Last year, the Utilities Commission performed a site visit and both Mark Bissell and David Pharr accompanied them. Overall, the Utilities Commission was favorably impressed however there were a few deficiencies.

Mr. Bissell continued. Bill Grantmyre, the Utilities Commission Public Staff Attorney, provided a report regarding the current status of the wastewater plant. Mr. Bissell read a quote from the Utilities Commission "long" report which states: "All DWQ notices of violation have been resolved except for the notice of violation for failure to comply with permit condition 310, standby generator inoperable." The generator is still inoperable but the Utilities Commission Public Staff was not overly concerned with that, and they went on to state that "due to the fact that the plant is enclosed and one of the 175,000 gallon aeration basins is on standby, the treatment plant has plenty of additional storage in the event of an emergency until a generator can be rented or the existing generator repaired."

On February 27, 2014, Mr. Grantmyre provided a summary of his report and Mr. Bissell discussed this summary with the Planning Board. The summary mentioned one of the bonds has expired and was not renewed. The company that wrote the bond no longer writes those types of bonds and because the utility has been losing money for some time, they have been unable to replace the bond. The summary also talks about the generator, saying it can be repaired or replaced during the general rate case. The utility needs to apply for a rate increase because it has been operating at a loss. The utility will require legal and accounting expertise to move the rate case forward and they plan to fund that representation through revenue from taps and so forth that will be coming from Phase 16. The third item in Mr. Grantmyre's

summary is about settling a complaint with the Plewinskis. The utility company owes them money and this is expected to be resolved within a couple weeks.

Next, Mr. Bissell spoke about the letter dated March 7, 2014 from George Brown, Managing Member of Kinnakeet Shores 16, LLC. Mr. Brown states that he doesn't have any involvement in the operation or ownership of the treatment plant but he recognizes that he is going to have to make a financial commitment in order to be sure the repairs are funded.

The last document Mr. Bissell referred to was a note from Jim Coleman, the backup wastewater treatment operator. He works with David Pharr. It explains some of the repairs that were made to resolve the notices received last year.

Mr. Finelli asked if the utility is obligated to allow the development to connect to their wastewater treatment system. Mr. Bissell said there is a letter of commitment written by the utility to serve this phase. He added that the utility is using less than half of the capacity of their plant.

Chairman Midgett asked if water is considered part of this utility or is it separate. Mr. Bissell said water is provided by Dare County.

Mr. Finelli asked how the utility can continue operating at a loss. Mr. Bissell explained there is enough revenue from operating fees to cover day to day operations but it cannot cover major repairs or debts. Mr. Finelli asked what the bond covered. Mr. Bissell explained the bond is used by the Utilities Commission as an emergency operating fund and there is still one bond available. Mr. Bissell said the new developer would like to obtain a permit, move forward, fund the repairs, and help get the bond back in place. The current owner understands that he may have to put \$100,000 into the wastewater system in order to be able to move forward with this project.

The board discussed the bonds with Mr. Bissell. He said the total of the two bonds is approximately \$110,000. They are generally renewed annually. The one that is currently expired will be replaced by either another bond, a letter of credit, or by a cash bond. Ms. Creef mentioned that the applicant needs to be aware the existing bond is subject to renewal.

Chairman Midgett asked about an increase in fees charged for the utility. Mr. Bissell explained that the tap and operating fees are the same as they were when the plant was established in

1989. The utility company would plan to hire legal and accounting firms in Raleigh that have experience in dealing with utility rate increase cases.

David Pharr addressed the board next. He is the Operator in Responsible Charge (ORC) at the wastewater treatment plant. The plant is regulated by the NC Department of Environmental Health and Natural Resources (DEHNR). DEHNR performs inspections and monitors samples and reports submitted by the treatment plant. The plant is indoors, in physically good shape, and operates far below all permit limits.

Mr. Bissell told the board that the homeowner's association has contacted the developer and they are in support of this project. Their only request was that the road name be changed from Carvella to Pony Pasture Road to reflect a more historic name of the property. Mr. Bissell added that they would like to request a permit period of 18 months instead of 12 months to record the final plat. He believes 12 months should be adequate but wants to prevent the need to request an extension if it is not.

Mr. Finelli asked about the accessory building setbacks. Ms. Creef pointed out the table provided to the board delineating what happens in the footprint area. She said the group housing development final plat will show the built upon area, described by the meets and bounds, the roads, the utility easements, and limited common areas. The table depicts some of the accessory use areas as shaded areas and some of them have not been granted a shaded area. The ones that are on the table will be included in the covenants and will also be included in the conditional use permit. This will portray what is allowed to occur and that will help when the developer has reached the point of obtaining building permits. Ms. Creef has concerns about accessory use areas that are adjacent to the footprint/built upon areas at a couple of the sites. She mentioned that Section 22-31, which governs group developments, states there must be a 25' setback from all of the property lines. In addition to that, a 20' separation between the buildings is required, with no distinction between accessory uses and the building itself. She recommends being specific as to what can be included in an accessory use area.

There was a discussion about additional plat requirements. Ms. Creef said the wetland delineation needs to be updated. She asked Mr. Bissell if there is a bulkhead around the lake and he said the intent is to install the bulkhead on a house-by-house basis as they go around the lake. The plan is to provide the homeowner with the ability to build a dock there. Ms. Creef said we may want to include a note about that for clarification. She also recommended requiring a letter from the Utilities Commission saying the treatment plant is in good standing before the final plat can be recorded.

Ms. Creef asked Mr. Bissell to provide the full report from the NC Utilities Commission for her file as well as the letter of commitment from the owners of the treatment plant. Ms. Creef also asked Mr. Bissell to provide copies of the stormwater permits issued for the site.

Mr. Finelli made a motion to recommend approval of the preliminary site plan and draft conditional use permit for Kinnakeet Phase 16 subject to the following:

1. Revise condition #4 to indicate an approval period of 18 months.
2. Revise condition #3 to require letters of compliance from the NC Utilities Commission and the Department of Environmental Health and Natural Resources for the wastewater treatment plant.
3. Add a condition requiring the submission of an updated wetland plat and the submission of stormwater permits issued in the current owner's name.
4. Revise the site plan to ensure that a 25' setback from all property lines is maintained.
5. Change the proposed street name from Carvella Parkway to Pony Pasture Road.
6. Provide a note on the site plan indicating that bulkheads and docks are permitted for sites adjacent to the lake.

David Overton seconded the motion.

Vote: Ayes – Unanimous

A motion was made by Beth Midgett to unrecuse Michael Barr.

David Overton seconded the motion.

Vote: Ayes – Unanimous

#### **OTHER BUSINESS**

None

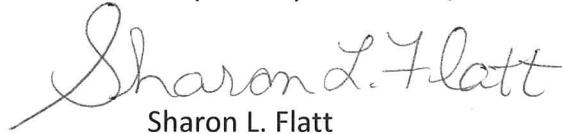
#### **ADJOURNMENT**

There being no further business before the Dare County Planning Board, a motion to adjourn was made by Michael Barr and seconded by David Overton.

Vote: Ayes – Unanimous

The meeting adjourned at 8 p.m.

Respectfully Submitted,



Sharon L. Flatt

Planning Board Clerk

APPROVED: April 14, 2014



Elmer R. Midgett, Jr.

Chairman, Dare County Planning Board