



## **CURRITUCK COUNTY PLANNING BOARD June 8, 2010**

### **WORK SESSION**

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

### **REGULAR MEETING**

The Currituck County Planning Board met in the Board Room of the Historic Courthouse. The following members were present: Joe Kovacs, Susan Taylor, Manly West, Fannie Newbern, Lynne Wilson, John Wright, Jim Clark and Forrest Midgette. Absent: William Etheridge.

Ben Woody, Planning Director, Holly White, Senior Planner, and Susan Tanner, Clerk to the Planning Board 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 AGENDA**

Mr. West moved to approve the agenda as presented. Ms. Newbern seconded the motion. Motion carried unanimously.

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| 6:30 p.m. | Work Session  |
| 7:00 p.m. | Call to Order<br>Pledge of Allegiance and Moment of Silence |
| Item 1    | Approval of Agenda  |
| Item 2    | Approval of May 11, 2010 Minutes                            |

### **OLD BUSINESS:**

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| Item 3 | <b>PB 10-13 Richard Chapman:</b> Request to amend the Unified Development Ordinance, Chapter 2: Zoning Districts, Chapter 3: Special Requirements, Chapter 8: Parking & Driveways, and Chapter 17: Definitions to allow Internet Sweepstakes Cafés and Electronic Gaming Operations in the GB and C zoning districts with a conditional use permit. |
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### **NEW BUSINESS:**

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| Item 4 | <b>PB 10-19 OBX Monster Bus &amp; Limo Service:</b> Request for a special use permit for an outdoor tour operator located at 795 Sunset Blvd., Tax Map 116D, Parcel 6A, Poplar Branch Township. |
| Item 5 | <b>PB 10-18 Turnpike Properties LLC:</b> Request for a third-party rezoning of 12.75 acres owned by National Audubon Society from Limited Business Hotel (LBH) to                               |

Outer Banks Standard Residential (RO1), Tax Map 128, Parcel 1D, Poplar Branch Township.

Item 6            **PB 10-20 Andrew Copeland:** Request for a conditional zoning from RA (Mixed Residential) to CD-GB (Conditional District - General Business) for 2.59 acres located at 1617 Caratoke Highway, Tax Map 23, Parcel 33H, Moyock Township.

Item 7            **ADJOURNMENT**

### **APPROVAL OF MINUTES**

Mr. Clark moved to approve the Planning Board minutes for May 11, 2010 as presented. Ms. Wilson seconded the motion. Motion carried unanimously.

Mr. Midgette read a statement on speaker time limitations.

### **OLD BUSINESS:**

**PB 10-13 Richard Chapman:** Request to amend the Unified Development Ordinance, Chapter 2: Zoning Districts, Chapter 3: Special Requirements, Chapter 8: Parking & Driveways, and Chapter 17: Definitions to allow Internet Sweepstakes Cafés and Electronic Gaming Operations in the GB and C zoning districts with a conditional use permit.

Alex Rich, Richard Chapman, and Ron Rose appeared before the board. Mr. Woody presented the following case analysis to the board.

**[Link for case analysis for PB 10-13 Richard Chapman](#)**

### **DISCUSSION**

Mr. Rich stated he represents the applicant and the applicant is not against allowing Internet Sweepstakes as an accessory use. Mr. Rich stated that cafes are safer as a primary use vs. an accessory use because of the control and supervision. Mr. Rich stated they are fine with Southland Trade Corporation proposal as an accessory use. Mr. Rich asked for clarification on #2 of Southland's proposal regarding the maximum of 10% of the gross floor area of the principal building. Mr. Rich asked why it is better for the county to have Internet Sweepstakes as an accessory use vs. a primary use.

Mr. Woody stated many jurisdictions are treating Internet Sweepstakes as tattoo parlors or similar uses and making the assumption that when they are a principle use they may have secondary impacts, i.e. later hours of operation, more noise and traffic later a night.

Mr. West stated as he understands it, 10% would be of your place of business and not the entire strip mall.

Mr. Rich stated 10% of a Walmart building would be a lot but 10% of a smaller building would not be very much. Mr. Rich stated 10% is part of the common definition for accessory use.

Mr. Kovacs stated he visited one of the applicant's establishments. It had about 20 to 30 machines, 3 men and 3 women playing and one of the women had her 12-year old daughter with her. The person supervising stepped in looked at what was going on for about 10 seconds and then left. Mr. Kovacs asked why the age limit wasn't enforced.

Mr. Rich asked if it was a primary use or a part of a business.

Mr. Kovacs stated it was part of a business.

Mr. Rich stated this is one of the concerns they have with an accessory use that anyone can walk in and out.

Mr. Clark asked if children were allowed to accompany their parents to the cafes.

Mr. Chapman stated children are not allowed under the age of 18 years old.

Mr. Rich stated Mr. Chapman only has primary use cafes and no accessory use cafes.

Mr. Midgette asked Mr. Chapman if he was restricted to the number of machines he could have.

Mr. Chapman stated Elizabeth City has restricted the number of machines but they are open to expanding the number of machines.

Mr. Rose stated he owns the Moyock Commons Shopping Center and during these economic times he would like to see this request approved. Mr. Rose stated this will be a benefit to Moyock.

#### **ACTION**

Mr. West moved to **approve** PB 10-13 as an accessory use and signage on the door that states no one under 18 years of age shall be permitted to utilize the sweepstakes terminals. Mr. Wright seconded the motion. Ayes: Mr. Clark, Ms. Newbern, Ms. Taylor, Ms. Wilson, Mr. Wright, Mr. Midgette, and Mr. West. Nays: Mr. Kovacs. Motion carried.

#### **NEW BUSINESS:**

**PB 10-19 OBX Monster Bus & Limo Service:** Request for a special use permit for an outdoor tour operator located at 795 Sunset Blvd., Tax Map 116D, Parcel 6A, Poplar Branch Township.

Jennifer Marshall appeared before the board.

Mr. Woody presented the following case analysis to the board.

**[Link for case analysis for PB 10-19 OBX Monster Bus & Limo Service](#)**

## **DISCUSSION**

Mr. West stated he has some concern with giving a Special Use Permit for someone to operate at TimBuck II and then they cannot load or unload at TimBuck II. A lot of the streets and cul-de-sacs where the rental homes are may not allow for such a large bus to turn around without going on adjacent properties.

Ms. Wilson stated that if renters are in a private community how would the bus get access to pick them up.

Ms. Marshall stated that Currituck Club did allow them to come in and pick up customers.

Mr. Midgette asked Ms. Marshall if she has read all the staff recommendations and if she was in agreement with them.

Ms. Marshall stated yes. Ms. Marshall stated they are trying to establish closer parking. The office space at TimBuck II is for reservations only.

Mr. Wright asked in regards to the UDO that when the taxi service is not in service, vehicles shall be stored in a secure compound, fully enclosed with a fence and gate and the taxi service compound shall be fully screened from adjacent rights-of-way. Does this request meet these requirements?

Mr. Woody stated the Harbinger Center does.

Ms. Wilson asked Ms. Marshall if they have ever encountered a problem with the first customers who are picked up being on the bus too long to the end of the tour.

Ms. Marshall stated that most cases customers are picked up at one house or two houses at the most. Ms. Marshall stated they try to very respectful of people who live in Corolla, mind all traffic laws and try not to block anyone's right of passage.

Ms. Wilson asked if the same routes would be used for the tours as in the past in the four wheel drive area.

Ms. Marshall stated yes.

Ms. Wilson stated that several residents in the Carova beach area who live on dead end streets that have limited turn around have asked that this be addressed. Ms. Wilson suggested the route be altered so the tours not go down dead end streets.

Mr. Wright stated that in the staff recommendations tour bus(s) shall not be parked or standing and loading and unloading cannot be done at TimBuck II. Mr. Wright stated this will take away from the core of the business.

Ms. Taylor stated she has concerns that residential neighborhoods will turn into businesses as the bus comes through.

Mr. Midgette asked Ms. Marshall if she would agree that this case be tabled until a resolution to the parking situation is reached.

Ms. Marshall stated she is working on a resolution and would like to pick up customers at their residents if allowed.

### **ACTION**

Mr. Clark moved to **deny** PB 10-19 that the special use permit will endanger the public health and will injure the value of abutting property and will not be in harmony with the area in which it is located. Ms. Taylor seconded the motion. Motion carried unanimously.

**PB 10-18 Turnpike Properties LLC:** Request for a third-party rezoning of 12.75 acres owned by National Audubon Society from Limited Business Hotel (LBH) to Outer Banks Standard Residential (RO1), Tax Map 128, Parcel 1D, Poplar Branch Township.

Bill Holland, Eric Braun and Stephen Sposato appeared before the board. Mr. Woody presented the following case analysis to the board.

**[Link for case analysis for PB 10-18 Turnpike Properties LLC](#)**

### **DISCUSSION**

Mr. Midgette stated that whether or not the planning board approved or denied this request, the special use permit which was approved by the Board of Commissioners on May 17, 2010 is good for two years.

Mr. West asked that for a third party rezoning request does the requestor have to have any vested interest in the property.

Mr. Woody stated that anyone can file a third party rezoning request.

Mr. Holland stated this is unusual for a third party to make a request to rezone someone else's property but it does happen. Mr. Holland stated this property was mistakenly rezoned from RO1 to LBH when the county maps went digital and this is why they are asking for the third party rezoning request. Mr. Holland stated the federal government has designated the property in a COBRA area which means the property cannot receive federal flood insurance or any federal disaster funds. Mr. Holland stated the federal government has deemed this property

inappropriate for any development. Mr. Holland provided a zoning history of the property. Mr. Holland stated that the official zoning map was adopted by the Board of Commissioners in 2007 which was an official act by the commissioners; the mistake that was made when the maps went from hand to digital, will stand. Since the maps were not appealed during the statutory period (two months) the error could no longer be corrected by the staff; it could only be corrected by a rezoning request. Mr. Holland stated this is not consistent with the county's Land Use Plan for the proposed use of the property. Mr. Holland stated this property should not be designated as a full service district in the 2006 Land Use Plan. Mr. Holland stated this request does not set a precedence because they are trying to get the property back to RO1 which it was originally zoned before the mistake was made when the maps went digital.

Mr. Braun stated he represents the contract purchaser of the property in question as well as the developer. Mr. Braun stated this property has been zoned LBH for approximately 10 years. Mr. Braun provided an overview of the history of events leading up to the approval of the special use permit. Mr. Braun stated the LBH zoning is consistent with the Land Use Plan.

Mr. Midgette asked Mr. Braun if the contract purchaser and developer were aware of the mapping error.

Mr. Braun stated they did not know initially. Mr. Braun stated his client would not have invested into this project if they knew the property was not zoned LBH.

Mr. Woody stated staff was not aware of the mapping error at any point until after the special use permit request went to the Planning Board.

Mr. Sposato stated he is Certified Planner and he is here on behalf of the contract purchaser and developer. Mr. Sposato stated this property is consistent with the Land Use Plan and this request should be denied. Mr. Sposato provided an overview of reasons to support the special use permit that was approved in May. Mr. Sposato stated the request before the board is inconsistent with the Land Use Plan and sound planning.

Mr. West stated that in the past the board has had different rezonings or special use permits and ended up with noncompliance lots. If this request is approved to put back to RO1, would this lot become a non compliance lot?

Mr. Woody stated yes but the developer would have the right to build on it. Once the project is built and sits on residential it would be a nonconforming project. Mr. Woody stated at the end of the two years of the special use permit if the hotel was not built the developer could build single-family homes.

Ms. Wilson asked from the point the mapping was incorporated into a digital layer and this mapping was accepted by the Board of Commissioners as the official zoning map, was there a public hearing?

Mr. Woody stated there was a public hearing. When the official zoning map was adopted in 2007 by the Board of Commissioners staff did not know there was an error on the map. There was a sixty day statutory appeal period at which no appeal was applied for. Mr. Woody stated this error has been in place for approximately 10 years.

Mr. Braun stated that the property can be developed and it is consistent with the Land Use Plan. Mr. Braun asked that the Planning Board recommend denial of the request.

Mr. Holland stated this piece of property is not consistent with the Land Use Plan. Mr. Holland stated this property has been zoned in error and the full service designation is inappropriate. Mr. Holland stated the county should correct the error in mapping. Mr. Holland asked the Planning Board to recommend approval of the rezoning request.

Mr. Woody stated the county attorney provided a memo with the interpretation of the property zoned LBH.

Mr. Wright asked if this is the final option to correct a zoning error.

Mr. Woody stated the county attorney's position is that two months after the digital map was adopted in 2007 there was not an appeal. As far as third party rezoning they can file a request every year.

Ms. Taylor asked if the same person owned the property now that owned it before the error.

Mr. Woody stated yes, National Audubon Society.

### **ACTION**

Ms. Newbern moved to **deny** PB 10-18 due to the current zoning (LBH) is consistent with the Full Service designation of the 2006 Land Use Plan, the Board of Commissioners approved a special use permit for the development of this property on May 17, 2010, and granting a third party rezoning request would set precedence for future requests in an effort to delay development projects. Mr. Kovacs seconded the motion. Ayes: Ms. Newbern, Mr. Kovacs, Mr. West, Mr. Wright. Nays: Ms. Taylor, Mr. Clark, Ms. Wilson, Mr. Midgette. The request is denied as it did not receive approval by a majority vote.

**PB 10-20 Andrew Copeland:** Request for a conditional zoning from RA (Mixed Residential) to CD-GB (Conditional District - General Business) for 2.59 acres located at 1617 Caratoke Highway, Tax Map 23, Parcel 33H, Moyock Township.

Eddie Hyman, Andrew Copeland, Beulah Spellman, Easter Dozier, Ronald Powell and Bishop Powell appeared before the board.

Mr. Woody presented the following case analysis to the board.

**Link for case analysis for PB 10-20 Andrew Copeland**

**DISCUSSION**

Mr. Hyman stated he represented Mr. Copeland. Mr. Hyman stated Mr. Copeland will not be running a distribution center from this site rather Mr. Copeland's business will be a truck broker. Mr. Hyman stated the site plan will show screening will be put up so it would not be visible from the sides. The building will look like a house from the front. Mr. Hyman provided pictures of the site from the church side and from the inside of the property looking out. Mr. Hyman stated they did have a community meeting where he explained what a conditional zoning is and what they are asking for. If the property was sold the conditions still apply to the property. Mr. Hyman stated again that this will be a truck broker business and not a distribution center.

Mr. Midgette asked if his client knew from the start what the property was zoned.

Mr. Copeland stated that when he purchased the property it was being sold as a commercial property that could be rezoned.

Mr. Hyman provided a flood elevation and septic permit for commercial property.

Ms. Spellman stated there was no application on file with the county for Mr. Copeland to clear the land in 2009. Ms. Spellman stated the trucks are very loud and next to a daycare facility. Ms. Spellman stated she is against this request.

Mr. Woody stated you would not need a permit from the county to clear land on property you own. You may need one from the State of NC depending on what you will be doing.

Mr. West stated that you do not need a permit to clear your land, but if you are disturbing more than one acre you would need a Sediment Control Plan from the Sediment Control Board so that any dirt that is disturbed will not run off into adjoining properties.

Ms. White stated that you can remove trees but if you remove the tree stumps then that is considered land disturbing and then you are in need of a permit from the Sediment and Erosion Board from the State of NC.

Ms. Dozier stated she lives within 100 yards of Mr. Copeland property. There is no barrier between her property and Mr. Copeland's. Ms. Dozier stated Mr. Copeland hauled tons of sand onto the property. Ms. Dozier stated one Friday evening there was loud music, slamming of doors and lights shining into her house. Another night after 10:00 p.m. Mr. Copeland started his truck which was very loud. Ms. Dozier stated their community has been a quiet community. Ms. Dozier is asking the planning board to deny this request.

Mr. Powell stated he would like to keep their community a quiet and safe one. Mr. Powell stated he has lived in this community over 30 years and has seen fires over on Mr. Copeland's property. Mr. Powell is asking that this request be denied.

Bishop Powell stated that he is speaking for the church which is adjacent to Mr. Copeland's property. Bishop Powell stated he is opposed to Mr. Copeland having a commercial lot next to the church and this would be detrimental to the community if this was approved. Bishop Powell stated Mr. Copeland came onto the church property without permission last week to take pictures. A staff member was afraid to get out of her car because she thought he was taking pictures of her and the Child Care Center that operates at the church which has thirty to forty children per day. Bishop Powell stated he is deeply concerned as the pastor of the church and owner of the Child Care Center and asked that this request be denied.

Mr. Hyman stated his client is a truck broker. Mr. Hyman stated since this is a conditional district zoning request conditions could be recommended. Mr. Hyman stated if this request was approved a site plan would come back to the Planning Board for review.

**ACTION**

Mr. Kovacs moved to **deny** PB 10-20 due to inconsistency with the 2006 Land Use Plan and staff recommendations. Mr. West seconded the motion. Motion carried unanimously.

**ADJOURNMENT**

With there being no further business to discuss, Mr. West moved for adjournment. Mr. Clark seconded the motion and the motion carried unanimously. The meeting adjourned at 9:45 p.m.

Respectfully Submitted,

Susan M. Tanner/s/

Susan M. Tanner  
Clerk to the Board