

CURRITUCK COUNTY  
NORTH CAROLINA  
DECEMBER 6, 2004

The Currituck County Board of Commissioners met on Monday, December 6, 2004, at 7:00 p.m. for their regularly scheduled meeting at the Historic Courthouse in the Commissioners Meeting Room with the following members present: Chairman O'Neal, Commissioners Martin, Bowden, Miller and Gregory.

The Reverend Lamar Herndon, Rehoboth Baptist Church, was present to give the invocation.

**Approval of November 15, 2004 Minutes.**

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

**Presentation of plaque to Commissioner Gregory**

Chairman O'Neal presented a plaque to Commissioner Gregory for his 12 years of dedicated service to the citizens and wished him well in his future endeavors.

**Oath of office for newly elected officials and the Walnut Island Sanitary District Members.**

Sheila Romm, Clerk of Superior Court, presented the oath of office to newly elected Commissioner Bowden and Commissioner Etheridge.

Ms. Romm also presented the oath of office to the Walnut Island Sanitary District members.

**Approval of Agenda**

Commissioner Miller moved to delete items 14, 16, 17 and add appointment to Albemarle Commission and waive tipping fees for Moyock Church. Commissioner Etheridge seconded the motion. Motion carried.

Item 2  
Presentation of plaque to Commissioner Gregory

Item 3  
Oath of Office for newly elected Commissioners

Item 4  
Approval of Agenda

Item 5  
A. Election of Chairman  
B. Election of Vice-Chairman

Item 6  
Presentation of Plaque to out going Chairman

Item 7  
Public Comment  
**Please limit comments to items not appearing on the regular agenda, please limit comments to 3 minutes.**

Item 8

Discussion on Currituck Sound Restoration Project-Colonel Ray Alexander, Jr., Army Corps of Engineers

Item 9

Public Hearing and Action PB 04-62 Amendment to UDO prohibiting billboards and off-premise signs in Currituck County.

Item 10

Action PB 03-43 ALBEMARLE ESTATES Preliminary Plat for 35 lots on the south side of Harbinger Ridge Rd. approximately 650' east of Owens Beach Rd. Tax Map 132, Lots 155, and Lots 179-184, Poplar Branch Township

Item 11

Public Hearing and Action PB 04-64 Linda Kay Cole and Macon Brock Rezoning 1.1 acres from Residential Outer Banks Standard (RO1) to General Business (GB) on property located in Ocean Hill Section 1, lots 112 and 113 located at the intersection of Ocean Trail and Coral Lane. Tax Map 114C, Lots 112, 113 Poplar Branch Township.

Item 12

Public Hearing and Action PB 04 - 68 Heirs of RO Givens Sr. Rezoning 1.5 acres from Agriculture (A) to General Business (GB) on property located on the west side of Caratoke Hwy (US 158) at intersection with Danruth Ln. Tax Map 94, Lot 76. Poplar Branch Township.

Item 13

Public Hearing and Action PB 04-67 Frank and Maria Mashuda Rezoning 15.8 acres from Agriculture (A) to Residential (R) on property located at the end of Patriot Way Tax Map 60, Lot 99E, Crawford Township.

Item 14

Public Hearing and Action PB 04-63 Currituck County amendment to UDO section 811 and Article 25 to allow family and church cemeteries in all zoning districts.

Item 15

Discussion on Tipping Fees

Item 16

Appointment of Commissioner to Albemarle Hospital Board.

Item 17

Appointment of Commissioner to Regional Health Board.

Item 18

Appointment to Board of Adjustment

Item 19

Appointment to Whalehead Drainage District.

Item 20

Consideration to purchase Dunston property.

Item 21

Consent Agenda:  
Budget Amendments  
Resolution WUND-TV License

Item 22

Commissioner's Report

Item 23

County Manager's Report

Item 24

Closed Session to discuss legal issues

Adjourn

**A. Election of Chairman**

County Manager Scanlon presided over the election of Chairman.

Commissioner Miller moved to nominate Commissioner Martin. Commissioner Etheridge seconded the nomination. Commissioner Martin was elected by acclamation.

**B. Election of Vice-Chairman**

Commissioner Miller moved to nominate Commissioner O'Neal. Commissioner Etheridge seconded the motion. Commissioner O'Neal was elected by acclamation.

**Presentation of Plaque to outgoing Chairman**

Chairman Martin presented Commissioner O'Neal a plaque commending his duties as Chairman for 2004.

**Public Comment**

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

Chairman Martin opened the public comment period.

Ralph Webster, Whalehead Trust, presented the Board with a book written by Susan Davis on the Whalehead Club.

John Schrote, commended Commissioner Gregory for his service to the county as commissioner.

Mitchell Copeland, Lower Currituck Fire Dept, stated that his department supports and is looking forward to working with the Waterlily Fire Department. He went on to state that there were no volunteers in the area and requested that anyone interested in volunteering to please get in touch with him.

John Snowden, The Independent, requested county to keep him informed of any news or legal advertisement.

Carl Classen, Manager of the Town of Southern Shores, commended Commissioner Gregory for his support and hard work on the mid-county bridge and wished him well in the future.

Commissioner Miller thanked everyone for the cards and flowers during his recent illness.

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

**Discussion on Currituck Sound Restoration Project-Colonel Ray Alexander, Jr., Army Corps of Engineers**

Colonel Ray Alexander, Jr., Army Corps of Engineers, presented an update on the study proposed to address salinity increases in the sound which have adversely

impacted freshwater fisheries and submerged aquatic vegetation. Colonel Alexander stated that the feasibility cost sharing agreement was executed in February 2004. He further reviewed the study area, improvements desired, completion date and the points of contact.

The total cost estimate is \$2,125,000.

Colonel Alexander answered questions from the Board.

**Public Hearing and Action PB 04-62 Amendment to UDO prohibiting billboards and off-premise signs in Currituck County.**

Commissioner Etheridge requested to be recused from voting on this item. Commissioner Etheridge left the room.

Gary Ferguson, Planning Director, reviewed the request.

**ARTICLE 17**

**SIGNS**

**PART 1. GENERAL PROVISIONS FOR ALL SIGNS**

**Section 1702 Signs Excluded From Regulation.**

1. The following signs are exempt from regulation under this Article except for those stated in Section 1714 (Miscellaneous Restrictions and Prohibitions): **(Amended 11/6/95)**
  - (g) signs proclaiming religious, political, or other non-commercial messages (other than those ~~regulated by section 1703(1)(a)~~ that do not exceed one (1) per lot and thirty-two (32) square feet in area and that are not internally illuminated;

**Section 1704 Sign Permits.**

1. Except as otherwise provided in Sections 1702 (Signs Excluded from Regulation) and 1703 (Certain Temporary Signs: Permit Exceptions, and Additional Regulations), no on premise signs ~~and no off-premise signs~~ may be constructed, erected, moved, enlarged, illuminated, or substantially altered except in accordance with a sign permit issued pursuant to this section. **(Amended 11/6/95)**
2. An application for a sign permit shall be submitted to the Administrator. The Administrator may require the applicant to complete a form supplied by the county and submit whatever information, including plans and specifications, if reasonably required by the Administrator to determine whether the proposed sign will comply with the provisions of this Article. A sign permit from the building inspector, certifying that the sign complies with the North Carolina State Building Code, will also be needed in most every case, even when the sign is exempt under this Ordinance. ~~In addition, most off-premises signs will also require a permit from the North Carolina Department of Transportation.~~  
(Amended 11/6/95)

**Section 1709 Miscellaneous Restrictions and Prohibitions.**

8. No new billboards or off-premise signs shall be erected or maintained except in accordance with Section 1710 on nonconforming signs.

**Section 1710 Nonconforming Signs.**

4. A nonconforming off-premise sign may be replaced on the same location so long as: (Amended 4/17/00)
- (a) the new sign does not exceed the specifications of the nonconforming sign being replaced in terms of height, display surface area, number of sides, setback and illumination; (Amended 11/6/95)
  - (b) application for a permit to erect the new sign is made within 180 days after the existing nonconforming sign is removed; and
  - (c) The new sign is located within the footprint boundaries of the nonconforming off-premise sign being replaced. In the case of nonconforming on-premise signs, the sign can be relocated on the same property subject to applicable setback standards. (Amended 11/6/95)
5. When all or a portion of a nonconforming sign will be removed as part of a state road widening project, then such nonconforming sign may be relocated or replaced in a manner not to exceed the specifications of the original sign (i.e. height, size, lighting, etc.) subject to the following: (Amended 5/15/95, 9/18/95)
- a. the relocation or replacement shall be parallel to the original sign location away from the right-of-way; and,
  - b. application for a permit to erect the new sign or replace what was lost for a sign partially in the right-of-way is made within 180 days after the existing nonconforming sign is removed.
8. If a nonconforming billboard remains blank for a continuous period of twelve (12) months, that billboard shall be deemed abandoned and shall, within thirty (30) days after such abandonment, be altered to comply with this Article or be removed by the sign owner, owner of the property where the sign is located, or other person having control over such sign. For purposes of this Section, a sign is "blank" if:
- (a) it advertises a business, service, commodity, accommodation, attraction, or other enterprise or activity that is no longer operating or being offered or conducted; or,
  - (b) the advertising message it displays becomes illegal as whole or substantial part; or,
  - (c) the advertising copy, other than the rental of the sign, has been removed.
11. All legal, non-conforming billboards and off-premise signs are permitted to continue, provided such signs and billboards conform to the provisions found in this Article and shall not be reestablished after damage or destruction if such damage to the sign or billboard exceeds fifty (50) percent of the sign's current assessed tax value. The extent of damage shall be determined by the sign administrator or his designee.

12. If the message portion of an off-premises sign is removed, leaving only the supporting "shell" of a sign or the supporting braces, anchors, or similar components, the owner of the sign or the owner of the property where the sign is located or other person having control over such sign shall, within thirty (30) days of the removal of the message portion of the sign, either replace the entire message portion of the sign or remove the remaining components of the sign. This Subsection shall not be constructed to alter the effect of subsection 1715 (4). Nor shall this Subsection be constructed to prevent the changing of the message of a sign. (Amended 11/6/95)
13. The area within ten (10) feet in all directions of any part of an off-premises freestanding sign shall be kept clear of all debris and all wide undergrowth more than twelve (12) inches in height
14. Unlawful Cutting of Trees or Shrub
- (a) No person may, for the purpose of increasing or enhancing the visibility of any non-conforming billboards and off-premise signs, damage, trim, destroy, or remove any trees, shrubs, or other vegetation located:
- (b) Within the right-of-way of any public street or road, unless the work is done pursuant to the express written authorization of the North Carolina Department of Transportation;
- (c) On property that is not under the ownership or control of the person doing or responsible for such work, unless the work is done pursuant to the express authorization of the person owning the property where such trees or shrubs are located; and,
- (d) In any area where such trees or shrubs are required to remain under a permit issued under this Ordinance.
15. All off-premises signs and all components thereof, including without limitation supports, braces, and anchors, shall be kept in a state of good repair. With respect to off-premises freestanding signs, components (supporting structures, back, etc.) not bearing a message shall be constructed of materials that blend with the natural environment or shall be painted a neutral color to blend with the natural environment.

#### PART 2 OFF-PREMISE SIGNS

##### ~~Section 1711 Setback and Height Requirements for Off-Premise Signs.~~

1. No off-premises sign or any part thereof may be located closer than 15 feet to a street right-of-way. (Amended 11/6/95)
2. Off-premise signs shall not be located within the minimum side and rear yards required by Article 2.
3. No off-premise sign may extend above any parapet or be placed upon any roof surface, except that for purposes of this Section, roof surfaces constructed at an angle be regarded as wall space. This Subsection shall not apply to displays, including lighting, erected in connection with the observation of holidays on the roofs of residential structures.

- ~~4. No off-premises sign or supporting structure may be located in or over the traveled portion of any public right-of-way.~~
- ~~5. No part of a freestanding off-premises sign may exceed a height, measured from ground level, of twenty (20) feet, unless the sign is placed lower than the road bed, under which circumstances the sign may have a height equal to twenty (20) feet above the road bed, not to exceed twenty-five (25) feet from ground level.~~

~~Section 1712 Size, Spacing, and Other Requirements for Off-Premises Signs.~~

- ~~16. An off-premises sign may not exceed 300 square feet in surface area.~~
- ~~17. An off-premises sign attached to the wall of a structure may not exceed thirty (30) percent of the total surface area of the wall on which the sign is located.~~
- ~~18. No off-premises sign may be located on the same wall as any other off-premises sign.~~
- ~~19. No off-premises sign or any part thereof may be located within 1,500 feet on the same side of the road of any part of another off-premises sign (other than temporary signs regulated under Subsection 1702(1) or exempt signs on same side of road or highway). For purposes of determining the permissible location of an off-premises sign:
  - ~~(a) — a sign for which a permit authorizing initial construction was issued prior to the permit for the off-premises sign in question shall be regarded as existing from the date the permit for such other sign was issued (unless such permit has expired or been revoked); and,~~
  - ~~(b) — a nonconforming sign that has been removed for the purpose of being replaced in accordance with Section 1715(4) shall be regarded as existing, provided that the sign has not been removed for more than 180 days without application for its replacement having been made as required by Section 1715(4)(b).~~~~
- ~~20. The size and height of off-premise directional signs shall be determined by the Currituck County Board of Commissioners but in general, shall be similar in dimensions to street name signs. Off-premise directional signs shall be located in accordance with NCDOT standards or may be located on private property with a zero setback. (Amended 11/6/95)~~

~~Section 1713 Sign Illumination.~~

- ~~1. Unless otherwise prohibited by this Article, off-premises signs may be illuminated if such illumination is in accordance with this section.~~
- ~~2. No off-premises sign within 250 feet of a pre-existing residence not owned by the owner of the sign may be illuminated between the hours of 12:00 midnight and 6:00 a.m., unless the impact of such lighting beyond the boundaries of the lot where the sign is located is entirely inconsequential. A residence shall be deemed "pre-existing" for the purposes of this Subsection if it existed (or construction of the residence had begun) before a permit was issued under the NC State Electrical Code authorizing the installation of the lighting.~~
- ~~3. Lighting directed toward an off-premises sign shall be shielded so that it illuminates only the face of the sign and does not shine directly into a public right-of-way or residential premises.~~

- ~~4. No off-premises sign may contain or be illuminated by flashing or intermittent lights or lights of changing degrees of intensity, except signs indicating the time, date, weather conditions, or similar information.~~

Section 1714 Maintenance of Signs.

- ~~1. All off-premises signs and all components thereof, including without limitation supports, braces, and anchors, shall be kept in a state of good repair. With respect to off-premises freestanding signs, components (supporting structures, back, etc.) not bearing a message shall be constructed of materials that blend with the natural environment or shall be painted a neutral color to blend with the natural environment.~~
- ~~2. If an off-premises sign other than a billboard advertises a business, service, commodity, accommodation attraction or other enterprises or activity that is no longer operating or being offered or conducted that sign shall be considered abandoned and shall, within thirty (30) days after such abandonment, be removed by the sign owner, owner of the property where the sign is located, or other party having control over such sign.~~
- ~~3. If the message portion of an off-premises sign is removed, leaving only the supporting "shell" of a sign or the supporting braces, anchors, or similar components, the owner of the sign or the owner of the property where the sign is located or other person having control over such sign shall, within thirty (30) days of the removal of the message portion of the sign, either replace the entire message portion of the sign or remove the remaining components of the sign. This Subsection shall not be constructed to alter the effect of subsection 1715 (4). Nor shall this Subsection be constructed to prevent the changing of the message of a sign. (Amended 11/6/95)~~
- ~~4. The area within ten (10) feet in all directions of any part of an off-premises freestanding sign shall be kept clear of all debris and all wide undergrowth more than twelve (12) inches in height.~~

Section 1715 Unlawful Cutting of Trees or Shrubs.

- ~~1. No person may, for the purpose of increasing or enhancing the visibility of any off-premises sign, damage, trim, destroy, or remove any trees, shrubs, or other vegetation located:
  - ~~(c) Within the right-of-way of any public street or road, unless the work is done pursuant to the express written authorization of the North Carolina Department of Transportation;~~
  - ~~(d) On property that is not under the ownership or control of the person doing or responsible for such work, unless the work is done pursuant to the express authorization of the person owning the property where such trees or shrubs are located; and,~~
  - ~~(e) In any area where such trees or shrubs are required to remain under a permit issued under this Ordinance.~~~~

**Section 1310 Table of Permissible Uses.** (Z-Zoning Permit; C-Conditional Use Permit; S - Special Use Permit)

<b>E #DESCRIPTION</b>	<b>A</b>	<b>RA</b>	<b>R</b>	<b>RO1</b>	<b>RO2</b>	<b>RR</b>	<b>GB</b>	<b>C</b>	<b>LBH</b>	<b>LM</b>	<b>HM</b>
29.000 Off-premises signs								<del>Z</del>	<del>Z</del>		

Chairman Martin opened the public hearing.

David Palmer, representing Mr. Kaufman, opposes the amendment.

John Cooper, stated that billboards are a valuable service and income for landowners and opposes the amendment.

Ronnie Cooper, opposes the amendment and presented for the record his statement.

Ronnie Cooper, Jr. opposes the amendment.

Harvey Roberts, Shawboro, opposes ban on new billboards.

Mabel Cooper, opposes ordinance.

Bob Henley, Coinjock, supports commercial.

Roger Ambrose, opposes ordinance.

John Snowden, opposes ban on billboards.

Eddie Jo Powell, Shawboro, opposes ban.

Patty Morris, opposes ordinance.

Jenny Zak, opposes ordinance.

John Levinwood, opposes ordinance.

Robert Sykes, Rocky Mount, opposes ordinance.

Commissioner O'Neal stated he has had many calls from citizens complaining about billboards being located next to their homes.

Commissioner O'Neal moved to adopt the ordinance but delete the 50% rule. Commissioner Miller seconded the motion. Motion carried with Commissioner Bowden voting no.

**Action PB 03-43 ALBEMARLE ESTATES Preliminary Plat for 35 lots on the south side of Harbinger Ridge Rd. approximately**

**650' east of Owens Beach Rd. Tax Map 132, Lots 155, and Lots 179-184, Poplar Branch Township**

Gary Ferguson, Planning Director, reviewed the request.

Mr. Outten, attorney for developer, stated that he has done everything possible to locate a graveyard that is not there and would be glad to have anyone that could help locate graveyard to please call him.

Commissioner O'Neal and Commissioner Bowden stated that they both have received calls that there is a graveyard on the property.

After much discussion Commissioner Bowden moved to table to allow further information on graveyard. Commissioner O'Neal seconded the motion. Motion carried with Commissioner Etheridge voting no.

**Public Hearing and Action PB 04-64 Linda Kay Cole and Macon Brock Rezoning 1.1 acres from Residential Outer Banks Standard (RO1) to General Business (GB) on property located in Ocean Hill Section 1, lots 112 and 113 located at the intersection of Ocean Trail and Coral Lane. Tax Map 114C, Lots 112, 113 Poplar Branch Township.**

Gary Ferguson, Planning Director, reviewed the request.

**Zoning Staff Report: PB 04-64  
Cole & Brock - Rezoning**

**TYPE OF REQUEST:** Request for rezoning a two corner lots containing 27,145 square feet and 29,000 square feet (total of 1.28 acres) from residential to general business.

**LOCATION:** This site is located in Poplar Branch on the west side of Ocean Trail (SR 12) and North of the Corolla - General Business District. There is an unimproved right-of-way between these two lots (Coral Lane).

**TAX ID:** 114C-000-0113-0001 & 114C-000-0112-0001.

**PROPERTY OWNERS:** Linda Kay Cole and Macon Brock

**APPLICANTS:** Linda Kay Cole and Macon Brock

<b>ZONING:</b>	<b><u>Current Zoning</u></b> Residential (RO-1)	<b><u>Proposed Zoning</u></b> General Business (GB)
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**ZONING HISTORY:** Property has been zoned Residential since 1989.

***Restrictive Covenants of Ocean Hill Section 1 Subdivision restrict all lots for residential purposes only, including the two (2) proposed lots for rezoning (copy enclosed).***

**SURROUNDING**

**ZONING/LAND USE:**

	<u><b>Zoning</b></u>	<u><b>Land Use</b></u>
NORTH:	Commercial	Landscape Co.
SOUTH:	General Business (GB)	Retail
EAST:	Residential Hill	Res. - Ocean Hill
WEST:	Residential	Wastewater Lagoon - serving Ocean Hill

**EXISTING LAND USE:** Southern Lot - Single Family Residence (Cole Lot). Northern Lot - Vacant (Brock Lot).

**PROPOSED LAND USE:** The applicant has stated that the reason for the request is to conform to the surrounding property.

**LAND USE PLAN:** The 1990 Land Use Plan shows this property as Limited Transition. The purpose of this class is "to provide for development in areas that have some services, but are suitable for lower densities than those associated with the urban transition class, and/are geographically remote from existing towns and municipalities". This class is intended for residential developments with densities of three units per acre or less. This class also contains nonresidential areas along major transportation routes. This rezoning request is consistent with the Land Use designation.

**PUBLIC SERVICES AND UTILITIES:**

Poplar Branch Beach Volunteer Fire Department provides fire protection for this area. County water, sewer, electric, telephone and cable are currently available at this location.

**TRANSPORTATION:**

Property has 303 +/- feet of frontage on SR 12 - Ocean Trail, a Major Collector Road in the NCDOT Thoroughfare Plan for Currituck County dated June 1988. Average Daily Traffic Count per NCDOT in 2002 - was approximately 1400 vehicles per day.

**FLOOD ZONE:**

According to FEMA maps, the property is located within the 100 year floodplain.

**SOILS:** According to the Currituck County Soil Survey, the property consists of Osier (Os) fine sand which is a poorly drained soil found along the edge of freshwater marshes and is poorly suited to urban and recreational uses because of wetness, flooding and sandy material.

**STAFF COMMENTS:**

- Directly south of the site is General Business (GB) zoning owned by Corolla Classic and Corolla Real Estate and contains among others the Wink's Convenience Store and the Corolla Post Office. North is commercial land use (Corolla Landscape) and is part of the commercial area of the Villages of Ocean Hill PUD – Section 2. East across NC 12 there are approximately 110 residential lots in the Ocean Hill Subdivision, Section 1. The area to the west has the Wastewater Treatment Lagoon for the Villages of Ocean Hill and abuts the Cole Lot.
- Granting of this zoning request could allow continuation of general business development along the west side of NC 12 which is in accordance with the Land Use Plan of 1990.
- These two lots are the only lots that are now on the west side of Ocean Trail (NC 12) in the Subdivision of Ocean Hill, Section 1. New commercial lots may still be designated in the adjacent Villages at the Ocean Hill PUD.

**STAFF**

**RECOMMENDATION:** Staff recommends approval from RO1 to GB for the following reasons:

- Adjacent property to the South is zoned General Business (GB).
- Property to the west is a wastewater disposal site for wastewater created for the Villages at Ocean Hill.
- The lots front on a State Maintained Highway with more than adequate access and full services.
- This rezoning is consistent with the Land Use Plan.

Although staff recommends approval we do have reservations regarding the conflict between the rezoning and the Restrictive Covenants as provided in the Ocean Hill Property Owners Association documents. We also have concerns with the possibility of this proposed zoning district "leapfrogging" across Ocean Trail (NC-12) to capture other residential lots. In addition there is a strong opposition

to any new commercial districts being created in the community of Corolla.

**Planning Board Recommendation:**

On November 9, 2004 the Planning Board recommended approval 8 to 0.

Chairman Martin opened the public hearing.

Tom Nash, Attorney for Ocean Hill Property Owners, stated that the covenants say this is residential only, not commercial, and requested the board to deny the request.

Karen Ish, opposes request.

Earl Wemer, opposes request.

Ed McCarthy, opposes the request.

Ann Trainor, New Jersey, opposes request.

Ed Ish, opposes the request.

Nelson Ponton, expressed concerns with access road to NC 12.

John Schrote, opposes the request.

Bonny McCarthy, opposes request.

Keith Hill, opposes request.

Mary Lewis, opposes request.

Ray Lewis, opposes request.

Kay Cole, stated that her property is surrounded by commercial.

Chairman Martin closed the public hearing.

Commissioner Bowden moved to approve. Motion fails for lack of second.

Commissioner O'Neal moved to reconsider motion. Commissioner Etheridge seconded the motion. Motion carries with Commissioner Bowden voting no.

Commissioner Miller moved to continue until both parties get together and work something out that works for all. Commissioner O'Neal seconded the motion. Motion carried with Commissioner Bowden voting no.

**Public Hearing and Action PB 04-68 Heirs of RO Givens Sr. Rezoning 1.5 acres from Agriculture (A) to General Business**

(GB) on property located on the west side of Caratoke Hwy (US 158) at intersection with Danruth Ln. Tax Map 94, Lot 76. Poplar Branch Township.

Gary Ferguson, Planning Director, reviewed the request.

**Zoning Staff Report: PB 04-68  
Heirs of R.O. Givens, Sr. - Rezoning**

**TYPE OF REQUEST:** Request for rezoning a 1.5 acre lot from Agricultural (A) to General Business (GB).

**LOCATION:** This site is located in Poplar Branch along the west side of Caratoke Highway (US 158) on a corner lot adjacent to Danruth Lane – a private access drive.

**TAX ID:** 0094-000-0076-0000

**PROPERTY OWNER:** Heirs of R.O. Givens, Sr., c/o R.O. Givens, Jr.

**APPLICANT:** W. Brock Mitchell, Attorney

<b>ZONING:</b>	<b><u>Current Zoning</u></b>	<b><u>Proposed</u></b>
<b><u>Zoning</u></b>	Agricultural	General Business

**ZONING HISTORY:** Property has been zoned Agricultural since 1989.

<b>SURROUNDING ZONING/LAND USE:</b>	<b><u>Zoning</u></b>	<b><u>Land Use</u></b>
NORTH:	Agricultural Residential	
SOUTH:	Agricultural Residential	
EAST:	Agricultural Residential	
WEST:	Agricultural Residential	

**EXISTING LAND USE:** Woodland/Vacant

**PROPOSED LAND USE:** The applicant has stated that the reason for the request is to improve the value of the property.

**LAND USE PLAN:** The 1990 Land Use Plan shows this property as Limited Transition. The purpose of this class is

“to provide for development in areas that have some services, but are suitable for lower densities than those associated with the urban transition class, and/are geographically remote from existing towns and municipalities”. This class is intended for residential developments with densities of three units per acre or less. This class also contains nonresidential areas along major transportation routes. This rezoning request **is** consistent with the Land Use designation.

**PUBLIC SERVICES  
AND UTILITIES:**

Lower Currituck South Volunteer Fire Department provides fire protection for this area. County water, electric, telephone and cable are currently available at this location.

**TRANSPORTATION:**

Property has 350 +/- feet of frontage on Caratoke Highway, (US 158) classified as a Minor Arterial in the 1988 NCDOT Thoroughfare Plan. The Average Daily Traffic (ADT) Count according to NCDOT in 2002 along this section of Caratoke Highway was approximately 15,000 ADT.

**FLOOD ZONE:**

According to FEMA maps, the property is located outside of the 100 year floodplain (Flood Zone C).

**SOILS:**

According to the Currituck County Soil Survey, the property consists of Portsmouth fine sandy loam which consists of very poorly drained soils that are unfavorable for septic systems due to wetness.

**STAFF COMMENTS:**

- The lot is sandwiched on three sides (south, east & north) with residential development. Two recently approved private access subdivisions (Lubrecht Subdivision - 4 lots along Danruth Lane approved 8/12/99 and Everett Acres - 5 lots along Alfred Lane approved 7/14/03) are currently undergoing new home development.

- All the contiguous land is zoned as Agricultural including east, across Caratoke Highway.
- Property has direct access and frontage on Caratoke Highway (US 158) with approximately 350 feet of frontage.
- The proposed rezoning is consistent with the Land Use Plan, but is 3700 feet (.7 mile) from the closest GB Zone to the South and 4200 feet (.8 mile) from the closest GB Zone to the North.

**STAFF RECOMMENDATION:** Staff recommends denial of this application on the basis of spot zoning for the following reasons:

- Parcel to be rezoned has only 1.5 acres.
- Proposed rezoning is not compatible with surrounding land use.

**PLANNING BOARD RECOMMENDATION:**

On November 9, 2004 the Planning Board recommended denial 8 to 0.

Chairman Martin opened the public hearing.

Brad Mitchell, Attorney for the Heirs, requested the Board's approval and stated that in some cases this would not be an illegal spot zoning request.

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

Commissioner O'Neal moved to deny. Commissioner Miller seconded the motion. Motion carried.

**Public Hearing and Action PB 04-67 Frank and Maria Mashuda Rezoning 15.8 acres from Agriculture (A) to Residential (R) on property located at the end of Patriot Way Tax Map 60, Lot 99E, Crawford Township.**

Gary Ferguson, Planning Director, reviewed the request.

**Zoning Staff Report: PB 04-67  
Frank and Maria Mashuda - Rezoning**

**TYPE OF REQUEST:** Request for rezoning a 15.8 acre parcel from Agricultural (A) to Residential (R).

**LOCATION:** This site is located in Crawford Township at the end of Patriot Way which is off Short Cut Road (US 158) near the County Airport and the Central Elementary School.

**TAX ID:** 0060-000-0099E-0000.

**PROPERTY OWNER:** Frank and Maria Mashuda

**APPLICANT:** Same

<b>ZONING:</b>	<b><u>Current Zoning</u></b>	<b><u>Proposed Zoning</u></b>
	Agricultural	Residential

**ZONING HISTORY:** Property has been zoned Agricultural since 1989.

<b>SURROUNDING ZONING/LAND USE:</b>	<b><u>Zoning</u></b>	<b><u>Land Use</u></b>
NORTH:	Agricultural	Farmland & Airport
SOUTH:	Agricultural	Residential
EAST:	Agricultural	Farmland
WEST:	Agricultural	Farmland/School

**EXISTING LAND USE:** Woodland

**PROPOSED LAND USE:** The applicant has stated they would like to develop the property into a subdivision of approximately 15 lots.

**LAND USE PLAN:** The 1990 Land Use Plan shows this property as Rural with Services in the 1990 Land Use Plan. Low density residential uses with a gross density of approximately one unit per acre, where lot sizes are large, and where the provision of services will not disrupt the primary rural character of the landscape.

**PUBLIC SERVICES AND UTILITIES:** The Crawford Volunteer Fire Department provides fire protection for this area. County water, electric,

telephone and cable are currently available adjacent to this location.

**TRANSPORTATION:** Property has access on Shortcut Road (US 158) via Patriot Way. Patriot Way is a private access gravel road approved as a minor subdivision of four lots in April 2003 under the name of Freedom Forest. The road will be required to be upgraded to the standards contained in the New Subdivision Regulations if a 15 lot subdivision is approved. Average Daily Traffic Count per NCDOT in 2002 on US 158 near the entrance to Patriot Way was approximately 7500 vehicles per day.

**FLOOD ZONE:** According to FEMA maps, the property is located within the 100 year floodplain.

**SOILS:** According to the Currituck County Soil Survey, the property consists of Portsmouth (Pt), Statefine (Sta), and Dragston (Ds) Soils. The majority of the soils are acceptable conventional septic systems. The remaining portions of the site are unfavorable and unacceptable for septic systems.

**STAFF COMMENTS:**

- The proposed rezoning is consistent with the Land Use Plan.
- Residential uses have been approved directly to the South of the parcel along Patriot Way, 2500 feet to the West and 1500 feet to the East of the site along Shortcut Road.
- This 15.8 acre is the residual tract of a four (4) lot private access subdivision approved on April 13, 2003. All four (4) of these lots have homes being developed on them at the present time.
- To the East, West North and South the contiguous properties are zoned Agricultural.
- Property has access to Shortcut Road (US 158) via Patriot Way.
- The property is adjacent to the Central Elementary School site and approximately 500' south from the airport property.
- The parcel if developed as a residential subdivision will not interfere with take-off and approach zones of the County Airport Operations as they are approximately 4000 feet East of the runway and below the Horizontal Conical Zone.

**STAFF**

**RECOMMENDATION:** Staff recommends approval from Agricultural to Residential zoning for the following reasons:

- Property is consistent with the Land Use Plan.
- The parcel has good access to Shortcut Road (US 158).
- There have been residential developments approved directly to the south along Patriot Way, 2,000 feet (0.4 miles) to the east and 3,700 feet (0.7 miles) to the west.

**PLANNING BOARD RECOMMENDATION:**

On November 9, 2004 the Planning Board recommended approval of this rezoning with a vote of 8 to 0.

Chairman Martin opened the public hearing. There being no comment, he closed the public hearing.

Commissioner Etheridge moved to deny. Commissioner Miller seconded the motion. Motion carried with Commissioner Bowden voting no.

**Public Hearing and Action PB 04-63 Currituck County amendment to UDO section 811 and Article 25 to allow family and church cemeteries in all zoning districts.**

**Deleted**

**Discussion on Tipping Fees**

County Manager Scanlon, stated that we have been receiving trash from other counties and this has increased over the past few months.

Commissioner Miller moved to increase the fees 25% until budget discussions. Commissioner O'Neal seconded the motion. Motion carried.

**Appointment of Commissioner to Albemarle Hospital Board.**

**Deleted**

**Appointment of Commissioner to Regional Health Board.**

**Deleted**

**Appointment to Board of Adjustment**

Commissioner Etheridge appointed Paul Beaumont, Commissioner Martin appointed Aubrey Dowdy, Commissioner O'Neal appointed Earl Wemer. Commissioner Miller requested to table his appointment.

**Appointment to Whalehead Drainage District.**

Commissioner O'Neal moved to appoint Dan Clements.  
 Commissioner Miller seconded the motion. Motion carried.

**Consideration to purchase Dunston property.**

Commissioner Etheridge was not in office when property was acquired and did not vote.

Commissioner Miller moved to ratify purchase of Dunston property in the amount of \$590,000 and refund taxes in the amount of \$3,199. Commissioner Bowden seconded the motion and requested clarification of tax law that stated we can only refund up to 5 years by law. Motion carried.

**Appointment to Albemarle Commission.**

Commissioner O'Neal moved to appoint Chairman Martin.  
 Commissioner Etheridge seconded the motion. Motion carried.

**Consent Agenda:**

**Budget Amendments**

**Resolution WUND-TV License**

**Waive tipping fees for Moyock Baptist Church**

Commissioner O'Neal moved to approve. Commissioner Miller seconded the motion. Motion carried.

<u>ACCOUNT NUMBER</u>	<u>ACCOUNT DESCRIPTION</u>	<u>DEBIT</u>	<u>CREDIT</u>
10960-539000	Unemployment Comp	\$ 9,381	\$
10390-499900	Fund Balance Appropriated		9,381
		\$ 9,381	\$ 9,381

**EXPLANATION:** Central Services (960) – Appropriate fund balance pay additional unemployment compensation charges incurred for the year ending July 31, 2004.

**NET BUDGET EFFECT:** Operating fund (10) – Increased by \$9,381.

The Board moved to adjourn and continue rest of agenda at the December 20 meeting.

**Commissioner's Report**

**County Manager's Report**

**Closed Session to discuss legal issues**

**Adjourn**

