

CURRITUCK COUNTY  
NORTH CAROLINA  
January 22, 2008

The Board of Commissioners met on January 22, 2008, at 7:00 p.m. for its regularly scheduled meeting at the Historic Courthouse in the Commissioners Meeting Room with the following members present: Chairman Nelms, Commissioners Bowden, Gregory, Taylor and Etheridge.

### **Invocation**

#### **Pledge of Allegiance**

The Reverend Bill Ralph, was present to give the invocation.

#### **Approval of Agenda**

Commissioner Bowden moved to approve the agenda by adding a discussion on Carolina Water Service and to delete Item 3. Commissioner Gregory seconded the motion. Motion carried.

- Item 2            **Public Comment**  
*Please limit comments to items not appearing on the regular agenda, please limit comments to 3 minutes.*
- Item 3            **Phil Donahue, Albemarle Hospital, update**
- Item 4            **Public Hearing and Action** PB 07-68 East Coast Windpower Text Amendment: Request to amend the Currituck County Unified Development Ordinance to allow wind turbines as a permitted use.
- Item 5            **Public Hearing and Action** PB 07-71 Bay Disposal Text Amendment: Request to amend the Currituck County Unified Development Ordinance to allow Recycling Transfer Facilities with a Special Use Permit in a Heavy Manufacturing (HM) zoning district.
- Item 6            **Public Hearing and Action** PB 07-67 Albemarle & Associates Text Amendment: Request to amend the Currituck County Unified Development Ordinance to allow zoning permits to be issued on lots for which the only means of access is through public trust waters (island lots).
- Item 7            **Award Bid for 150,000 Gallon Raw Water Reservoir**
- Item 8            **Appointment of Alternate to Board of Adjustment**
- Item 9            **Consent Agenda:**  
1. Prison Kitchen Addition Change Orders #2 and #3  
2. Approval of January 7, 2008 Minutes  
3. Change Order for Jarvisburg School  
4. Mainland Water System Updated Rate and Fee Schedule  
5. Budget amendments  
6. Reimbursement resolution for Mainland Water construction
- Item 10           **Commissioner's Report**
- Item 11           **County Manager's Report**
- Item 12           **Closed Session:**

1. According to GS 143-318.11(3) to consult with attorney in order to preserve the attorney client privilege

#### **Public Comment**

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

Chairman Nelms opened the public comment period.

Commissioner Etheridge commented on calls he received with concerns why school was not delayed due to inclement weather.

Commissioner Gregory also received calls from county staff.

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

#### **Phil Donahue, Albemarle Hospital, update**

deleted

#### **Public Hearing and Action PB 07-68 East Coast Windpower Text Amendment: Request to amend the Currituck County Unified Development Ordinance to allow wind turbines as a permitted use.**

Ben Woody, Planning Director, reviewed the request.

East Coast Windpower is requesting a text amendment to the UDO to allow wind turbines as a permitted use in all zoning districts. In response to this request, and with direction from the Planning Board, staff has developed a revised text amendment for consideration. Attached please find both text amendments, of which the revised staff version is labeled as "Option 1", and the East Coast Windpower version is labeled as "Option 2".

Upon receipt of the text amendment submitted by East Coast Windpower, staff felt the proposed ordinance language was too vague and open-ended. As a result, a staff member attended a wind energy workshop sponsored by the North Carolina Solar Center and began a comprehensive benchmarking effort comparing ordinances from other jurisdictions. There was also a great deal of discussion and input given at the November 13 Planning Board meeting. This research and subsequent guidance from industry professionals and general citizens resulted in the attached wind energy ordinance proposed by staff. In drafting this ordinance, it was the intent of staff to balance a progressive approach toward alternate forms of energy with sensible regulatory requirements.

An additional consideration for the Board of Commissioners is the determination for when a wind turbine is permitted with a Zoning Permit (by right) versus with a Special Use Permit. The original applicant, East Coast Windpower, has requested that small scale wind turbines be allowed in more zoning districts by right. Staff has yet to make this change, as it is more appropriate for a public Board to consider.

What follows are the minutes from both the November 13 and December 11 Planning Board meetings, a draft of the text amendment developed by staff and recommended by the Planning Board (Option 1), as well as a draft of the text amendment submitted by the applicant (Option 2).

Should you have any questions, please contact Ben Woody at 232-6029.

### **Planning Board Meeting - November 13, 2007**

#### **DISCUSSION**

Maureen O'Shea presented a power point presentation on Wind Energy Basics.

Mr. Woody pointed out that the setbacks are measured from the center of the wind turbine base to the property line, right-of-way, or nearest point on the foundation of an occupied building. The setbacks are calculated by multiplying the required setback number by the wind turbine height.

Mr. Kovacs stated that wind turbines create Shadow Flicker and this would have to be taken into consideration where the turbine is located.

Mr. Woody stated that as part of the application process the applicant would be required to demonstrate what shadow path the wind turbine would take.

Ms. Robbins suggested a study showing the sun and shadows effects be measured for a year.

Mr. Keel asked what impact a wind turbine would have on birds.

Ms. O'Shea stated that studies show that birds do fly around the wind turbines, but occasionally do fly into them and die. The studies also show that more birds are killed by the utility and radio guidelines than wind turbines.

Mr. Kovacs asked how much benefit are wind turbines to energy.

Ms. O'Shea stated that the homeowner should check to see what size turbine would benefit them the best.

Mr. Kovacs asked if clean energy is having an effect in saving energy. The planning staff will investigate more.

Ms. Robbins asked the life span of a wind turbine.

Ms. O'Shea stated 25-30 years.

Dean Carraco, East Coast Windpower talked about the following:

- Small system turbines be permitted by right in residential areas, but adhere to all proposed UDO's ordinances
- Having property owners apply for a Special Use Permit (SUP) would be cumbersome
- The minimum setbacks are restrictive
- Wind speeds
- Shadow Flicker Effect
- Wildlife vs. wind turbines
- Tourism
- Different between small and large systems
- Units are manufactured in AZ

The Planning Board discussed the setbacks, setbacks vs. wavier for homeowner, height, shadow flicker effect, common area in subdivisions, and the visual effect for wind turbines.

Ms. Turner asked if a wavier could be signed by a homeowner to have the wind turbine placed closer to their home vs. the setbacks suggested.

Mr. Woody stated that during their research, Kill Devil Hills does not have any setbacks for structures on homeowners own property.

Ron Cooper, Popular Branch stated that he was approached by East Coast and is interested in them, but the setbacks proposed by staff are not going to work. Mr. Cooper would like to put larger units on his farm land and he would still be able to farm his property. Mr. Cooper would like to see the wind turbines succeed in Currituck County.

Ted Vogel, Alternative Energy Officer for Blackwater Proprietary provided a power point presentation on Distributed Scale Wind Energy Systems. Blackwater is looking into putting a wind turbine to offset the energy used at their manufacturing building. Listed below are some comments on the proposed ordinance: (1) Be in front of public demand with sensible, appropriate legislation; (2) Height of 170 feet is within current heights available for systems less than 100 kw; (3) Planned installation of

interconnected systems should be analyzed by the power company for appropriate application; and (4) Commercial scale systems greater 101 kw per turbine should be subject to additional review at the discretion of the County.

Herb Robbins, Corolla supports the proposed ordinance with staff suggested setbacks. Mr. Robbins was concerned with the drainage impacts; have a 1 acre minimum lot size; and migratory of bird route.

Scott Hannon, local nursery owner supports wind energy.

Paul Wendellglass Competitive Wind Ventures, Inc. sells wind turbines. In Currituck County there may be a market for large scale wind turbines. 250' height restriction is too low for utility scale; it needs to be 400-410'. Distinguish underground requirement between castling and transmission lines. He thanked the Planning Board for being proactive towards wind turbines.

Anne Waling, Acciona Energy NA talked about the following:

- Increase height of wind turbine to 400' or remove height restrictions
- Use setbacks to assure compatibility
- Setback waiver
- Computer modeling programs to indicate shadow flicker
- Setbacks do not apply to off-site newly constructed buildings.

Eddie Younts is in support of wind turbines and likes tax breaks they provide.

Ray Griggs concerned with heights, setbacks, and how it will affect county wide home insurance rate increase.

Paul Quinlan, NC Sustainable Energy Association stated that the tax credit is 35% in North Carolina. The Planning Board should have a discussion on the setbacks, setback waiver, and heights of wind turbines. Mr. Quinlan thanked Mr. Woody and his staff for a great job.

Greg Wilson stated that the height of a small system is too restrictive and consider on an individual basis instead of putting one limit on everyone.

Phil Kratzer supports wind turbines and shadow flicker is not an issue.

Eric Wilson supports the wind energy ordinance.

#### **ACTION**

Mr. Kovacs motioned to table the Wind Energy text amendment until the next Planning Board meeting on December 11, 2007

so staff can obtain more information on maximum heights, setbacks, and homeowners insurance. Ms. Turner seconded the motion. Motion passed unanimously.

**Planning Board Meeting - December 11, 2007**

**DISCUSSION**

Ms. O'Shea provides an overview of the changes that were made to the Wind Energy UDO Amendment. Staff is asking for a recommendation from the board on Option 1, Item 1 that a SUP be required for wind energy facilities, small system for RA, RO2, and GB.

The board discussed Special Use Permits and heights.

Mr. Carraco stated he has a concern about the SUP requirement.

Mr. Vogel, Blackwater Proprietary stated that this is one of the most agreeable amendments. In the special use process if you have a lot less than 5 acres and you want to put in a large system would you have to put in for an exemption?

Mr. Woody stated you would have to put in for a variance.

Mr. Vogel suggested a change in the definition in a small system should be 100 kW instead of 25kW.

Mr. Good stated that the zoning permit vs. a SUP would be the way to go for small system wind turbine because a lot of businesses shy away because the process takes so long.

Mr. Mauney stated this is one of most agreeable amendment that he has seen.

Ms. Pierce asked how high are the power lines in portion to the wind turbines.

Mr. West asked what the cost of a residential unit installed.

Mr. Carraco stated approximately \$15,000.

**ACTION**

Mr. Keel motion to recommend approval of the Wind Energy UDO Amendment and making the question marks all SUP on Option 1 as presented. Mr. Winter seconded the motion. Motion passed unanimously.

An amendment to Chapter 2: Zoning Districts, Chapter 3: Special Requirements, and Chapter 17: Definitions to allow wind turbines as a permitted or special use.

BE IT ORDAINED by the Board of Commissioners of the County of Currituck, North Carolina that the Unified Development Ordinance of the County of Currituck be amended as follows:

**Item 1:** That Section 2.5 Permitted Uses Table is amended by adding the following underlined language:

Use	LUC	Zoning Districts											Special Requirements
		A	RA	R	RO1	RO2	RR	GB	C	LBH	LM	HM	
<u>Wind Energy Facilities, Small System</u>	<u>III</u>	<u>Z</u>	<u>S</u>	<u>Z</u>	<u>Z</u>	<u>3.10.9</u>							
<u>Wind Energy Facilities, Large Scale</u>	<u>III</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>3.10.9</u>
<u>Wind Energy Facilities, Utility Scale</u>	<u>III</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>3.10.9</u>

**Item 2:** That Section 3.10 Other Uses is amended by adding the following underlined language:

**Section 3.10 Other Uses**

**3.10.9 Wind Energy Facilities**

A. An anemometer(s) may be installed with the issuance of a zoning permit and must be setback from all property lines a distance equal to one linear foot for every foot of height. The zoning permit is valid for a period of one year and is renewable.

B. Zoning Permit Application

1. The application shall demonstrate that the proposed Wind Energy Facility will comply with this Ordinance and shall contain at a minimum the following:

- a. A narrative describing the proposed Wind Energy Facility, including an overview of the project;
- b. The approximate generating capacity of the Wind Energy Facility;
- c. The specific number, representative types and height or range of heights of wind turbines to be constructed, including their generating capacity, dimensions and respective manufacturers, and a description of ancillary facilities;

- d. Identification and location of the properties on which the proposed Wind Energy Facility will be located;
  - e. A site plan showing the planned location of each wind turbine, property lines, setback lines, access road and turnout locations, substation(s), electrical cabling from the Wind Energy Facility to the substation(s), ancillary equipment, buildings, and structures, including permanent meteorological towers, associated transmission lines, and location of all structures and properties within the geographical boundaries of any applicable setback;
  - f. Evidence of compliance with applicable Federal Aviation Administration regulations;
  - g. Signed and approved copies of any negotiated power purchase agreement and the utility company's approved schematics;
  - h. An Environmental Impact Study (EIS) for Utility Scale Wind Energy Facilities, which shall include review and comments from applicable state and federal agencies, including, but not limited to, NC Department of Environment and Natural Resources, US Army Corps of Engineers, US Fish and Wildlife Service, and the NC Wildlife Resources Commission;
  - i. Other relevant studies, reports, certifications and approvals as may be reasonably requested by Currituck County to ensure compliance with this Ordinance;
  - j. Decommissioning plans that describe the anticipated life of the wind power project, the estimated decommissioning costs in current dollars, the method for ensuring that funds will be available for decommissioning and restoration, and the anticipated manner in which the wind power project will be decommissioned and the site restored; and,
  - k. Signature of the property owner(s) and the facility owner/operator of the Wind Energy Facility.
2. Throughout the permit process, the applicant shall promptly notify Currituck County of any changes to the information contained in the permit application.
  3. Changes to the pending application that do not materially alter the initial site plan may be adopted administratively.

### C. Setbacks

1. The following dimensional requirements shall apply to the installation of wind turbines and/or wind energy facilities:

<u>Wind Energy Facility Type</u>	<u>Minimum Lot Size</u>	<u>Minimum Setback Requirements <sup>1</sup></u>					<u>Maximum Height from grade</u>
		<u>Occupied Buildings (Subject Property) <sub>2</sub></u>	<u>Occupied Buildings (Adjacent Property) <sub>2</sub></u>	<u>Property Lines <sub>2</sub></u>	<u>Public/Private Right-of-Way <sub>2</sub></u>	<u>HWY 158, HWY 168, and NC 12 <sub>2</sub></u>	
<u>Small System</u>	<u>20,000 sq. ft.</u>	<u>0.0</u>	<u>1.5</u>	<u>1.0</u>	<u>1.5</u>	<u>2.5</u>	<u>120 ft.</u>
<u>Large System</u>	<u>5 Acres</u>	<u>1.0</u>	<u>2.0</u>	<u>1.0</u>	<u>1.5</u>	<u>2.5</u>	<u>250 ft.</u>
<u>Utility Scale</u>	<u>25 Acres</u>	<u>1.5</u>	<u>2.5</u>	<u>1.5</u>	<u>1.5</u>	<u>2.5</u>	<u>500 ft.</u>

1. Measured from the center of the wind turbine base to the property line, right-of-way, or nearest point on the foundation of an occupied building.
2. Calculated by multiplying the required setback number by the wind turbine height.
3. This setback proposes to reduce noise and shadow flicker impacts to any previously existing occupied buildings on adjacent properties.

2. As part of the Special Use Permit or Zoning Permit approval process, property owners may waive the setback requirements for Occupied Buildings on both the Subject Property and/or Adjacent Properties by signing a waiver that sets forth the applicable setback provisions and proposed changes. The written waiver shall notify applicable property owners of the setback required by this ordinance, describe how the proposed wind turbine and/or wind energy facility is not in compliance, and state that consent is granted for the wind turbine and/or wind energy facility to not be setback as required by this ordinance. Any such waiver shall be signed by all affected property owners and be recorded in the Currituck County Registrar of Deeds Office. The waiver shall describe the properties benefited and/or burdened, and advise all subsequent purchasers of any burdened property that waiver of setback shall run with the land and may forever burden the subject property.

D. Installation and Design

1. The installation and design of the Wind Energy Facility shall conform to applicable industry standards, including those of the American National Standards Institute.
2. All electrical and mechanical components of the Wind Energy Facility shall conform to relevant and applicable local, state and national codes.

3. Any on-site transmission or power lines shall, to the maximum extent possible, be placed underground.
4. The visual appearance of Wind Energy Facilities shall at a minimum:
  - a. Maintain a galvanized finish and be a non-obtrusive color such as white, off-white or gray;
  - b. Not be artificially lighted, except to the extent required by the Federal Aviation Administration or other applicable authority that regulates air safety; and,
  - c. Not display advertising (including flags, streamers or decorative items), except for identification of the turbine manufacturer, facility owner and operator.
5. Wind Energy Facilities are subject to the noise ordinance provisions of the Currituck County Code of Ordinances.

E. Decommissioning or Abandonment

1. The Wind Energy Facility owner, and/or operator and/or property owner shall have 3 months to complete decommissioning of the Facility if no electricity is generated for a continuous period of 12 months.
2. Decommissioning shall include removal of wind turbines, buildings, cabling, electrical components, roads, and any other associated facilities.
3. Disturbed earth shall be graded and re-seeded, unless the landowner requests in writing that the access roads or other land surface areas not be restored.

**Item 3:** That Section 17.1 Acronyms and Section 17.2 Definitions are amended by adding in alphabetical order the following underlined language:

**Section 17.1 Acronyms**

Below is a list of acronyms (other than zoning districts) and their meanings found throughout the Ordinance:

- kW: Kilowatt
- MW: Megawatt

## **Section 17.2 Definitions**

### **Anemometer**

Measures the wind speed and transmits wind speed data to the controller.

### **Wind Energy Facility**

An electric generating facility, whose main purpose is to supply electricity, consisting of one or more Wind Turbines and other accessory structures and buildings, including substations, meteorological towers, electrical infrastructure, transmission lines and other appurtenant structures & facilities.

### **Wind Energy Facility, Large System**

A wind energy conversion system consisting of one or more wind turbine(s), a tower(s), and associated control or conversion electronics, which has a rated capacity of not more than 999 kW.

### **Wind Energy Facility, Small System**

A single system designed to supplement other electricity sources as an accessory use to existing buildings or facilities, wherein the power generated is used primarily for on-site consumption. A small wind energy conversion system consisting of a single wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 25 kW.

### **Wind Energy Facility, Utility Scale**

A wind energy conversion system consisting of more than one wind turbine(s), a tower(s), and associated control or conversion electronics, which has a rated capacity of more than 1 MW or greater.

### **Wind Farm**

See "Wind Energy Facility, Utility Scale".

### **Wind Power**

Power is generated in the form of electricity by converting the rotation of turbine blades into electrical current by means of an electrical generator.

### **Wind Pump**

A type of windmill used for pumping water from a well or draining land.

### **Wind Turbine**

A wind energy conversion system that converts wind energy into electricity through the use of a wind turbine generator, and may include a nacelle, rotor, tower, and pad transformer.

**Wind Turbine Height**

The distance measured from grade to the highest point of the turbine rotor or tip of the turbine blade when it reaches its highest elevation.

**Windmill**

A machine designed to convert the energy of the wind into more useful forms using rotating blades to turn mechanical machinery to do physical work, such as crushing grain or pumping water.

**Item 4:** The provisions of this Ordinance are severable and if any of its provisions or any sentence, clause, or paragraph or the application thereof to any person or circumstance shall be held unconstitutional or violative of the Laws of the State of North Carolina by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions which can be given effect without the invalid provision or application.

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Chairman Nelms opened the public hearing.

Maureen O'Shea, Planner, presented a power point on wind energy basics.

Ted Vogel, Blackwater Alternative Energy Officer, reviewed wind energy system turbines and advantages for renewal energy.

Steve with East Coast Windpower, reviewed small system turbines and supports approval of admendment.

Dean Carraco, East Coast Windpower, expressed concerns with sup process for homeowners.

Paul Quinlan, NC Sustainable Energy Association, stated that tax credit is 35% in North Carolina.

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

Commissioner Taylor moved to recuse Commissioner Etheridge. Chairman Nelms seconded the motion. Commissioner Etheridge left the room.

Chairman Nelms moved to approve option 1 with approval by staff up to 120 feet and delete D-5 noise ordinance. Commissioner Bowden seconded the motion. Motion carried.

**Public Hearing and Action PB 07-71 Bay Disposal Text Amendment: Request to amend the Currituck County Unified Development Ordinance to allow Recycling Transfer Facilities with a Special Use Permit in a Heavy Manufacturing (HM) zoning district.**

Ben Woody, Planning Director, reviewed the request.

Bay Disposal is requesting a text amendment to the UDO to permit recycling centers or materials recovery facility as a special use permit within the light manufacturing (LM) zoning district. Although, the current UDO, table of permissible uses, does not address or define a recycling center or a materials recovery facility, the proposed use does not appear to have similar impacts as another use listed within the table which is the reason for the proposed amendment.

The proposed text amendment presented by Bay Disposal does not contain special requirements and would permit the use as a special use permit. However, after considering the impacts to neighboring property staff proposes a second option with special requirements such as setbacks, definitions, buffers and roadway improvements.

At the request of the Planning Board, staff has changed the name of the use to a recycling transfer facility and added definitions to address type of materials accepted at the facility. In addition, option two proposes recycling transfer facilities in the heavy manufacturing (HM) district with a special use permit.

What follows are the minutes from both the November 13 and December 11 Planning Board meetings, a draft of the text amendment submitted by the applicant (Option 1), as well as a draft of the text amendment developed by staff (Option 2).

Should you have any questions, do not hesitate to contact Donna Voliva at 232-6032.

**Planning Board Meeting – November 13, 2007**

**DISCUSSION**

Sean Boyle with Quible and Associates represented Bay Disposal and they don't have any objection to what is being suggested by the County of Currituck. Mr. Boyle stated that recyclables, cans, bottles will be brought from other facilities, sorted at this site, then transported to Virginia. The building will be three sided to enter and he did not know if there would be outside items.

David Webb stated that he met with Bay Disposal and this facility would be a transfer station. Some trucks would be stored outside.

Mr. Kovacs stated that a recycle center and a transfer station are two separate things. Clarification between the terms of recycle center and transfer station was needed.

Ray Griggs is an adjacent property owner and opposes the request to permit recycling centers within the light manufacturing zoning district. Mr. Griggs stated that there is a difference between recycle centers and transfer stations. He also thought the current language of the amendment would allow solid waste to be brought to a transfer facility.

The Planning Board discussed recycle centers vs. transfer stations.

Harry Hayden stated that any activity on this site with Bay Disposal raises concerns. He is concerned whether it will be a recycle center or a trash site.

Dave Holton asked if the text amendment is for heavy or light manufacturing. Staff recommendation is for heavy manufacturing.

## **ACTION**

Mr. Kovacs motion to table the Bay Disposal text amendment until the Planning Board meeting on December 11, 2007 for clarification on language, hours of operation, recycle center vs. transfer station, what materials will be processed and with heavy manufacturing. Ms. Turner seconded this motion. Motion passed unanimously.

## **Planning Board Meeting – December 11, 2007**

### **DISCUSSION**

Mr. Woody provided an overview of the Bay Disposal UDO Text Amendment. Clarification between the terms of a recycle center and a transfer station were provided.

Mr. West asked if building materials would fall in this category.

Mr. Woody stated yes.

Mr. Norris, Bay Disposal stated that the site would be a transfer station. Recyclable items would be brought to the site, sorted and loaded in containers, then transferred to a location in Virginia for processing. No municipal solids would be at this site.

The board discussed the building to be enclosed and all operations to be done in an enclosed building.

Mr. Norris stated that they are mandated by state regulations. If a container was half full then they would cover it or bring it inside the building at the close of the day.

Mr. Holton stated he was representing several property owners in the southern part of Currituck County. Mr. Holton had been to the site located at East Indian River Road and shared pictures he had taken. Mr. Holton is not against recycle centers, but feels it should be heavy manufacturing and not light manufacturing.

Ms. Turner stated she is concerned with the traffic pattern, noise, odor, litter, rats and seagulls because Currituck is in an environmentally sensitive area.

## **ACTION**

Ms. Turner motion to recommend approval of the Bay Disposal UDO Text Amendment under Option 2 as presented with the conditions that the facility be completely enclosed and no outdoor storage other than a container that is covered. Mr. West seconded the motion. Motion passed unanimously.

**BAY DISPOSAL  
PB 07-71  
UDO AMENDMENT REQUEST  
OPTION 1 – Bay Disposal Proposed Language**

An amendment to Chapter 2, Permitted Uses Table, to allow recycling centers as a special use permit within the light manufacturing (LM) zoning district. (Currently Article 13, Section 1310 of the UDO)

BE IT ORDAINED by the Board of Commissioners of the County of Currituck, North Carolina that the Unified Development Ordinance of the County

of Currituck be amended as follows:

**Item 1:** That Chapter 2, Permitted Use Table, be amended by adding the following language:

Use	LUC	Zoning Districts											Special
<i>Industrial, Manufacturing, Warehousing, Wholesaling, &amp; Solid Waste Uses</i>		A	RA	R	RO1	RO2	R R	G B	C	LB H	L M	HM	Requirements
<u>Recycling Centers</u>	<u>IV</u>										<u>S</u>		

**BAY DISPOSAL  
PB 07-71  
UDO AMENDMENT REQUEST  
OPTION 2 – Currituck County Proposal**

An amendment to Chapter 2, Permitted Uses Table, and Chapter 3, Special Requirements, and Chapter 17, Definitions, to allow recycling transfer facilities as a special use permit within the heavy manufacturing (HM) zoning district. (Currently Article 13, Section 1310)

BE IT ORDAINED by the Board of Commissioners of the County of Currituck, North Carolina that the Unified Development Ordinance of the County of Currituck be amended as follows:

**Item 1:** That Chapter 2, Permitted Use Table, be amended by adding the following language:

Use	LUC	Zoning Districts											Special Requirements	
		A	RA	R	RO1	RO2	RR	GB	C	LBH	LM	HM		
<i>Industrial, Manufacturing, Warehousing, Wholesaling, &amp; Solid Waste Uses</i>														
<b><u>Recycling Transfer Facilities</u></b>	<b><u>IV</u></b>												<b><u>S</u></b>	<b><u>3.8</u></b>

**Item 2:** That Chapter 3, Section 3.8 Special Requirements, be amended by adding the following language:

**Section 3.8.- Industrial, Manufacturing, Warehousing, Wholesale, Distribution, & Solid Waste Uses**

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**3.8.- Recycling Transfer Facilities**

- A. The vehicular access road to the recycling transfer facility and all onsite vehicular areas shall be paved with asphalt or concrete.**
- B. The Board of Commissioners may impose hours of operation.**
- C. Facilities shall maintain the following setbacks:**
  - 1. Operations within an enclosed structure shall be setback a minimum of 100 feet from any property line or street right-of-way.**
  - 2. Operations outside an enclosed structure shall be setback a minimum of 200 feet from any property line or street right-of-way.**

**3. Operations shall setback a minimum of 300 feet from any abutting property that is developed for residential purposes.**

**Item 3:** That Chapter 17, Section 17.2 Definitions, be amended by adding the following language:

**Recyclable Material**

**Residential and commercial material that is collected, presorted from garbage, and used as raw materials for products. Recyclable material shall include but is not limited to metal, glass, plastic, paper, wood and concrete that is intended for reuse. The term recyclable material does not include refuse, solid waste, junk, rubbish or hazardous materials.**

**Recycling Transfer Facility**

**A facility that receives only recyclable material from collection facilities and commercial vehicles. Recyclable material can be sorted and/or temporarily stored prior to delivery or shipment to others for processing and/or reuse.**

Chairman Nelms opened the public hearing.

Sean Boyle, Engineer, was present to answer questions.

Bay Disposal, answered questions on transfer station.

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

Commissioner Bowden moved to deny the request. Commissioner Gregory seconded the motion. Motion carried.

**Public Hearing and Action PB 07-67 Albemarle & Associates  
Text Amendment: Request to amend the Currituck County  
Unified Development Ordinance to allow zoning permits to be  
issued on lots for which the only means of access is through  
public trust waters (island lots).**

Ben Woody, Planning Director, reviewed the request.

Albemarle and Associates is requesting a text amendment to the UDO to allow a permit for construction to be issued on lots for which the only means of access is through public trust waters. In other words, this would allow construction to occur on a tract of land that does not abut a public or private street, and is only accessible by water.

Previously in June of 2005 a similar text amendment request was submitted for consideration. At that time, the Planning Board recommended approval. The amendment request was subsequently withdrawn and no action was taken by the Board of Commissioners.

Planning Staff did recommend denial of the previous request and pointed out that if approved, the amendment would apply countywide and create increased pressure for the provision of County services (there are 21 privately owned islands off the Currituck Mainland). The following reasons were specifically given for denial at that time:

- County services will not be available for lots only accessible through public trust waters. This includes Fire, EMS, Law Enforcement, Public School Transportation, etc.
- Non-availability of public utilities such as water, power, telephone, cable television, etc.
- There is no efficient means to provide solid waste disposal.

At the November 13 Planning Board meeting, Staff was directed to meet with other County departments regarding the provision of services. Subsequently, a meeting was held and attended by the applicant, Planning Staff, and representatives of the Sheriff's Office, Emergency Management, and Emergency Medical Services. Several concerns were raised at the meeting, during which it was decided to expand upon the existing draft while relying on the legal guidance of the County Attorney.

It was later determined by the County Attorney that the County is not legally liable if there is an inability to provide timely services. However, it was also recommended that the text amendment include a provision requiring a notification or waiver related to the possible inadequate provision of services. Along those lines, Staff would recommend the following language be included with the draft text amendment:

“Additionally, a notification shall be placed on the final plat and/or issued with any permit for construction indicating that county services are limited and may not be available in a timely manner.”

What follows are the minutes from both the November 13 and December 11 Planning Board meetings and a draft of the text amendment as submitted by the applicant.

### **Planning Board Meeting – November 13, 2007**

#### **DISCUSSION**

John Delucia, Albermarle Associates is asking for a permit for construction to be issued on lots for which the only means of access is through public trust waters. Mr. Delucia understands that the job of the County is to look out for the public services of people who live in Currituck County, but he also thinks that there are property rights that need to be considered in a case like this. Mr. Delucia stated that it is the choice of the people to live there on the island and they understand that public services will not be available to them because they cannot be reached.

Mr. Woody stated that he is trying to set-up a meeting with the other public service officials to discuss this matter, but no date has been set.

Mr. Keel asks since you pay taxes and don't receive public services provided by the county, what are the liabilities of the county. Mr. Woody will check with the county attorney.

Mr. Woody stated that some people don't understand that these services are not readily available in the area which they are staying or living.

Eddie Younts lives in Powells Point NC and supports the text amendment.

**ACTION**

Mr. Kovacs motioned to table the Island Lots text amendment until the Planning Board meeting on December 11, 2007 so staff could meet with appropriate staff to discuss the issues and come up with a solution. Mr. Bell seconded the motion. Motion passed unanimously.

**Planning Board Meeting – December 11, 2007****DISCUSSION**

Mr. Woody stated that he had an initial meeting that was attended by the applicant, Planning Staff, representatives of the Sheriff's Office, Emergency Management Department, and Emergency Medical Services Department. Several concerns were raised at the meeting, after which it was decided to expand upon the existing draft while relying on the legal guidance of the County Attorney. The question is, "Does the county have any liability to provide services and are we legally responsible to provide services?" The County Attorney stated that the County does not have a legal liability to provide services, but he did suggest if a minor or major subdivision were to be developed, a statement be placed on the plat that the County is not required to provide these services. The County Attorney also suggested that when someone applies for building permits that we provide them with a statement that county services may be limited.

Mr. Delucia stated that out of the meeting he came away with yes the County will get there, but it may take some time to get there and there are some concerns about it. Mr. Delucia stated they are asking for a text amendment which would allow building on island lots.

Mr. West asked if a single family or a subdivision was going too be built on the island.

Mr. Delucia said a single family home.

Mr. West stated that the county should provide a formal statement that the county does not have a legal responsibility to provide county services as suggested by the County Attorney.

Mr. Woody stated that he, Mr. Delucia and the County Attorney will meet and come up with an agreeable wavier form.

John Snowden stated that by paying taxes and denying a homeowner to build on the island, the county would be taking the homeowner's property rights away under the constitution.

**ACTION**

Mr. West motion to recommend approval of the Island Lots UDO Text Amendment as presented. Mr. Etheridge seconded the motion. Motion passed unanimously.

An amendment to Chapter 2: Zoning Districts, Section 2.6.1 Street Access, to allow zoning permits to be issued on lots for which the only means of access is through public trust waters.

BE IT ORDAINED by the Board of Commissioners of the County of Currituck, North Carolina that the Unified Development Ordinance of the County of Currituck be amended as follows:

**Item 1:** That Section 2.6.1 Street Access is amended by adding the following underlined language:

**2.6.1 Street Access**

No building, structure, or use of land for other than agricultural purposes shall be established on a lot which does not abut a State maintained street or road or private street as permitted in these regulations, other than lots in the RO2 zoning district, except as provided below:

- D. A permit for construction may be allowed on a lot that does not abut a State maintained street or road or private street provided the lot is on an island completely surrounded by water and its only means of access is through public trust waters.

**Item 2:** The provisions of this Ordinance are severable and if any of its provisions or any sentence, clause, or paragraph or the application thereof to any person or circumstance shall be held unconstitutional or violative of the Laws of the State of North Carolina by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions which can be given effect without the invalid provision or application.

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John Delucia, Engineer, was present to answer questions.

Ike McRee, County Attorney, stated that services would be limited and put to record on the plat and permit.

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

Commissioner Gregory moved to approve with county waiver. Commissioner Taylor seconded the motion. Motion failed with Chairman Nelms, Commissioners Bowden and Etheridge voting no.

**Award Bid for 150,000 Gallon Raw Water Reservoir**

Commissioner Etheridge moved to award bid to Crom Corp for \$512,000. Commissioner Taylor seconded the motion. Motion carried.

**Appointment of Alternate to Board of Adjustment**

Chairman Nelms moved to appoint Lewis Babb, Sr. Commissioner Gregory seconded the motion. Motion carried.

**Discussion on Carolina Water Service**

Commissioner Bowden stated that the contract will expire on January 31 and negotiations to purchase have been unsuccessful and he opposes meeting with them.

Commissioner Bowden moved to not meet with Carolina Water Service. Commissioner Gregory seconded the motion. Motion carried with Commissioner Etheridge voting no.

**Consent Agenda:**

1. Prison Kitchen Addition Change Orders #2 and #3
2. Approval of January 7, 2008 Minutes
3. Change Order for Jarvisburg School
4. Mainland Water System Updated Rate and Fee Schedule
5. Budget amendments
6. Reimbursement resolution for Mainland Water construction

Commissioner Etheridge moved to approve with exception of Change order for Jail kitchen. Commissioner Gregory seconded the motion. Motion carried.

<u>Account Number</u>	<u>Account Description</u>	<b>Debit</b> Decrease Revenue or Increase Expense	<b>Credit</b> Increase Revenue or Decrease Expense
55818-593004	12' Guinea Rd Waterline T F - Mainland Water	\$ 1,760	
55390-495061	Operations T T - Mainland Water		\$ 1,760
61818-587055	Construction	\$ 1,760	
61390-499900	Fund Balance Appropriated		\$ 1,760
		\$ 3,520	\$ 3,520

**Explanation:** Mainland Water (55818) - Transfer funds for Change order #1 to add 12" Gate Valve on Empire contract.

**Net Budget Effect:** Mainland Water Construction (55) - Increased by \$1,760.  
Mainland Water Operating Fund (61) - Increased by \$1,760.

<b>Debit</b>	<b>Credit</b>
Decrease Revenue or	Increase Revenue or

<u>Account Number</u>	<u>Account Description</u>	<u>Increase Expense</u>	<u>Decrease Expense</u>
15446-526200	Promotional Efforts	\$ 10,350	
15446-532000	Supplies	\$ 27,600	
15446-545000	Contract Services	\$ 1,300	
15446-590000	Capital Outlay	\$ 138,000	
15446-590441	Technology > \$1,000	\$ 39,000	
15320-415000	Occupancy Tax		\$ 216,250
		<u>\$ 216,250</u>	<u>\$ 216,250</u>

**Explanation:** Occupancy Tax - Promotion (15446) - Increase appropriations for advertising and set-up of the Moyock Visitor's Center as follows:

Promotional Efforts:	
Billboard rental	\$ 10,000
Outdoor brochure stand	\$ 350
	<u>\$ 10,350</u>
Supplies:	
Office furnishings	\$ 20,000
Benches/Outdoor trashcans	\$ 7,100
Initial set-up office supplies	\$ 500
	<u>\$ 27,600</u>
Contracted Services:	
Adjust handicapped ramp	\$ 300
Stormwater engineering	\$ 1,000
	<u>\$ 1,300</u>
Capital Outlay:	
Interior signage and art	\$ 8,000
Exterior signage	\$ 7,000
Addition of offices in lobby	\$ 23,000
Street Sign	\$ 67,013
Sign Pedestal/Installation	\$ 32,987
	<u>\$ 138,000</u>
Technology > \$1,000:	
Information kiosk	\$ 19,000
Technology for staff	\$ 20,000
	<u>\$ 39,000</u>
	<u>\$ 216,250</u>

**Net Budget Effect:**

Occupancy Tax Fund (15) - Increased by \$216,250.

<u>Account Number</u>	<u>Account Description</u>	<b>Debit</b> Decrease Revenue or Increase Expense	<b>Credit</b> Increase Revenue or Decrease Expense
66868-532000	Supplies	\$ 5,000	

66868-533200	Lab Tests		\$ 5,000
		\$ 5,000	\$ 5,000

**Explanation:** Southern Outer Banks Water System (66868) - To transfer budgeted funds for additional supplies associated with the automatic meter read system.

**Net Budget Effect:** Southern Outer Banks Water Fund (66) - No change.

<u>Account Number</u>	<u>Account Description</u>	<b>Debit</b>	<b>Credit</b>
		Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
10535-503500	Salaries - Temporary	\$ 10,000	
10535-553000	Dues & Subscriptions	\$ 1,500	
10535-545000	Contract Services		\$ 1,500
10535-502000	Salaries - Regular		\$ 10,000
		\$ 11,500	\$ 11,500

**Explanation:** Communications (10535) - To transfer budgeted funds for temporary personnel to cover vacancies and for assistance on Q & A for EMD and for to increases in NENA and APCO dues.

**Net Budget Effect:** Operating Fund (10) - No change.

<u>Account Number</u>	<u>Account Description</u>	<b>Debit</b>	<b>Credit</b>
		Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
10660-532000	Supplies	\$ 1,200	
10660-514800	Fees Paid to Officials		\$ 1,200
		\$ 1,200	\$ 1,200

**Explanation:** Planning (10660) - To transfer budget funds for printing of reformatted Unified Development Ordinance.

**Net Budget Effect:** Operating Fund (10) - No change.

**Effect:**

**Commissioner's Report**

Commissioner Bowden complimented the Recreation Department on Carova Park. He also questioned the Ocean Sands water and report from Arcadis.

Commissioner Etheridge would like for tax office to consider island property marsh land for tax purposes.

Chairman Nelms commended Mr. Woody and Maureen O'Shea on turbine presentation.

**County Manager's Report**

Dan Scanlon, reported that Jason Weeks has ordered the fish to stock ponds at horse farm.

He also commented on the announcement by the Navy on OLF sites.

**Closed Session: According to GS 143-318.11(3) to consult with attorney in order to preserve the attorney client privilege**

Commissioner Gregory moved to go into closed session regarding litigation with Perry Construction. Commissioner Taylor seconded the motion. Motion carried.

**Adjourn**

After reconvening from closed session, no action was taken.

There being no further business, the meeting adjourned.