

CURRITUCK COUNTY
NORTH CAROLINA
October 18, 2010

The Board of Commissioners met 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 O'Neal, Commissioners Etheridge, Gregory, Rorer, Nelms, Aydlett and Taylor.

Invocation and Pledge of Allegiance

Reverend David Coxson, Powells Point Christian Church, was present for the invocation.

Approval of Agenda

Commissioner Rorer moved to approve. Commissioner Taylor seconded the motion. Motion carried.

Public Comment

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

Chairman O'Neal opened the public comment period.

Teresa MacPherson, Walnut Island, reminded citizens about Community Pride Days, Thursday thru Saturday, in the Walnut Island community.

Troy Breathwaite, Moyock, thanked the Board for their support in opposing OLF and to continue their efforts opposing OLF in Camden and Currituck.

Commissioner Taylor thanked Mr. Breathwaite and Ms. Krause for their efforts on OLF.

Commissioner Gregory would like a letter sent to Bob Kohler thanking him for his work bringing "The Moving Wall" to Currituck County.

Commissioner Rorer reminded citizens to vote and to support October as "Breast Cancer Awareness Month."

Chairman O'Neal requested staff to have "Bear Crossing" signs placed from the Coinjock Bridge to Grandy.

Public Hearing and Action: PB 00-06 Robert F. London, Inc.: Pursuant to Order of Currituck County Superior Court rehearing of the application of Robert F. London, Inc. for

special use permit for an adult oriented night club at 9098 Caratoke Highway, Point Harbor, Poplar Branch Township, Parcel Identification Number 0132-000-133A-0000.

Ike McRee, County Attorney, reviewed the process for a Special Use Permit (SUP).

Sworn Testimony was taken prior to making comments.

Ben Woody, Planning Director, reviewed the case analysis.

**CASE ANALYSIS FOR THE
BOARD OF COMMISSIONERS
DATE: October 18, 2010
PB 00-06 R.F. London, Inc.**

Request : To operate an adult and sexually oriented business consisting of a "Nightclub offering comedy, pool tables, video games, musicians, dancing, topless dancing, organized parties for businesses or groups." The property is located on US 158, Point Harbor, in the building now occupied by Mermaids Nightclub, Tax Map 132, Lot 133A, Poplar Branch Township.

I. SPECIAL USE PERMIT CRITERIA AND STAFF FINDINGS

1. Completeness of application. (formerly Section 1402(1)(b))

Suggested Findings:

- a. The completed application was submitted on February 7, 2000.
2. The proposed use is among those listed in the Table of Permissible Uses as a special use indicated with an "S". (formerly Section 1402(1)(a))

Suggested Findings:

- a. The requested permit, an adult oriented business (presently adult establishment), is within the jurisdiction of the Planning Board/Board of Commissioners according to Section 1310, use number 37.000 (presently Section 2.5 Permitted Uses Table).
- b. An adult oriented business (presently adult establishment) is allowed in the Heavy Manufacturing (HM) zoning district, not in the General Business

(GB) zoning district. The subject property is zoned General Business (GB) and the applicant has not applied for a zoning map amendment.

3. The conditions proposed meet or exceed the minimum requirements of this ordinance. (formerly Section 1402(1)(c))

Suggested Findings: The application is not in compliance with the following requirements of the Unified Development Ordinance:

- a. R. F. London, Inc. was granted a conditional use permit on January 26, 1994 to operate a nightclub and billiards/gameroom on US 158, Point Harbor Township, Tax Map 132, Lot 133A, by the Board of Adjustment based on hearings held August 25, 1993 and January 26, 1994. During hearings, Mr. London testifies that the nightclub will not feature topless dancing.
- b. On May 20, 1994, Mr. John W. Halstead, Jr., attorney for R.F. London, Inc., sends a letter to County Attorney William H. Romm advising the county that topless dancing will be offered on a regular basis unless the county believes topless dancing would be grounds for revoking the conditional use permit.
- c. On May 25, 1994 Mr. William H. Romm, Currituck County Attorney, sends a letter to Mr. John W. Halstead advising him that topless dancing would be grounds for the county revoking R.F. London, Inc.'s conditional use permit. That determination was not appealed to the Board of Adjustment by Robert F. London, Inc.
- d. On August 13, 1994, an inspection by the county of Mermaids Nightclub verifies that topless dancing was occurring on the premises.
- e. August 31, 1994 The Currituck County Board of Adjustment revokes R.F. London, Inc.'s conditional use permit.
- f. September 19, 1994 Currituck County adopts an adult and sexually oriented business regulation (formerly Section 808 and 1310 of the UDO) which, among other conditions, requires such uses to locate in an "Heavy Manufacturing" zoning district with a special use permit granted by the Planning Board and Board of Commissioners and be located 1,000 feet from any dwelling and any R and RA zoning district.
- g. Robert F. London appeals the Board of Adjustment decision to revoke the conditional use permit on September 28, 1994.

- h. On December 29, 1994, Superior Court Judge Gary E. Traywick ruled: 1) the public hearing held on Mr. London's conditional use permit was invalid; 2) the Board hold a new hearing to determine if the petitioner's proposed use complies with the ordinances of Currituck County; and 3) that a new hearing be duly advertised as prescribed by ordinance.
- i. Robert F. London appeals the Superior Court Judge's ruling to the North Carolina Court of Appeals on January 24, 1995.
- j. North Carolina Court of Appeals dismisses Robert F. London's appeal on January 16, 1996. The Superior Court Judge's ruling of December 29, 1994 stands.
- k. In letters dated February 12, 1996 and March 11, 1996, Currituck County informs Mr. Robert F. London and Mr. John Halstead, attorney for Mr. London, respectively, that a new application is needed stating the intended use in order to hold a new public hearing in accordance with the December 29, 1994 Superior Court Judge's ruling.
- l. In a letter dated April 1, 1996, Mr. Robert F. London submits a written statement indicating the type of entertainment being offered at Mermaids Nightclub, including "...music bands and acts, GoGo dancers, topless dancers, televised sporting events, oil wrestling, male revue shows, comedians, karaoki, pool tournaments and other entertainment acts typically associated with nightclubs.". This is the first time Mr. Robert F. London submitted any type of request for topless dancing and adult oriented activities. Prior to April 1, 1996, the county never received a request to operate an adult oriented business.
- m. In a letter dated May 6, 1996, Currituck County acknowledges acceptance of Mr. Robert F. London's April 1, 1996 letter as an amendment to his original conditional use permit application.
- n. On May 29, 1996, the Board of Adjustment holds a public hearing and denies R. F. London Inc.'s conditional use permit application for an adult and sexually oriented business based on the reasons stated in the June 4, 1996 order signed by the Chairman of the Board of Adjustment.
- o. On July 8, 1996 Robert F. London, Inc. appeals the Board of Adjustment decision to Superior Court.
- p. On September 28, 1999, Superior Court Judge Jerry R. Tillett ruled the Board of Adjustment shall rehear Robert F. London, Inc.'s conditional use permit pursuant to Sections 1304 and 808 of the UDO

- (presently Sections 2.5 and 3.7.1) AND the Board of Commissioners shall consider the applicant's proposal pursuant to Section 808 (presently Section 3.7.1) of the UDO and make specific findings of fact and conclusions of law to address the following:
1. The Petitioner's initial intended use;
 2. The secondary effects of the Petitioner's initial use;
 3. The Petitioner's amended use;
 4. The secondary effects of the Petitioner's amended use
 5. How the secondary effects are affected by the different intended uses.
- q. Section 2201 (presently Section 11.8) of the Unified Development Ordinance requires a public hearing prior to granting a conditional use permit.
- r. Since the public hearing for Robert F. London, Inc.'s conditional use permit was revoked, Mermaids Nightclub does not have a conditional use permit to operate an adult business nightclub. Further, Mermaids Nightclub is not considered a nonconforming use under Article 15 of the Unified Development Ordinance because it has no permit to operate under.
- s. Robert F. London, Inc. does not have a vested right to operate Mermaids Nightclub because Section 2019 (1) and (2) (presently Section 11.12 (A) and (B)) requires a conditional use permit to obtain a vested right "...following notice and public hearing."
- t. Mermaids Nightclub has continued to operate an adult business by allowing topless dancing. Mr. London was convicted in District Court for operating Mermaids nightclub without a conditional use permit, paid the fine, and was ordered by the court to not operate until he had a valid permit (96CRS532).
- u. Sections 808 and 1310 (presently Sections 3.7.1 and 2.5) of the Unified Development Ordinance, adopted September 19, 1994, classifies topless nightclubs as "Adult Businesses" which requires such businesses to locate in a Heavy Manufacturing zoning district with a special use permit and 1,000 feet from any dwelling or R and RA zoning district, among other things.
- v. The property on which Mermaids is located, US Highway 158, Point Harbor, Tax Map 132, Lot 133A, Poplar Branch Township, is zoned General Business. Further, the building in which Mermaids is located is within 1,000 feet of 24 residential dwellings (17 in the year 2000) and immediately adjacent to an R zoning district.

- w. Because Mr. London did not submit a completed special use permit request for a nightclub offering topless dancing until February 7, 2000, and Currituck County adopted an ordinance on September 19, 1994 classifying such uses as adult businesses, then the provisions of the September 19, 1994 ordinance contained in Sections 808 and 1310 (presently Sections 3.7.1 and 2.5) apply.
 - x The adult business nightclub application of Robert F. London, Inc. does not comply with the former or present applicable requirements of the Unified Development Ordinance since the property is in a General Business zoning district (former Section 808(5)(a) requires HM zoning district), is immediately adjacent to a residential zoning district (former Section 808(5)(b)(1) requires 1,000 feet spacing) is located within 1,000 feet of 24 buildings (17 in the year 2000) being used as residential dwellings (former Section 808(5)(b)(1) requires 1,000 feet spacing).
4. The special use will not endanger the public health or safety. (formerly Section 1402(2)(a))

Suggested Findings: The proposed use will materially endanger the public health or safety for the following reasons:

- a. Mermaids Nightclub is immediately adjacent to a 29 lot residential subdivision known as Old Oak Estates, which contains 21 dwellings (14 in the year 2000). Old Oak Estates is zoned R "Residential". Mermaids is within 1,000 feet of 24 residential dwellings (17 in the year 2000).
 - b. Mermaids Nightclub does not meet the locational (within a GB zone and needs a Heavy Manufacturing zone) nor the spacing requirements (must be 1,000 feet from any dwelling and R district; there are 24 dwellings (17 in the year 2000) within 1,000 of Mermaids) of Section 808 (presently Section 3.7.1) established for adult businesses.
5. The special use will not injure the value of adjoining or abutting property and will be in harmony with the area in which it is located. (formerly Section 1402(2)(b) and (c))

Suggested Findings: The proposed use will substantially injure the value of adjoining or

abutting property and will not be in harmony with the particular neighborhood or area in which it is to be located for the following reasons:

- a. Mermaids Nightclub is immediately adjacent to a 29 lot residential subdivision known as Old Oak Estates, which contains 21 dwellings (14 in the year 2000). Old Oak Estates is zoned R "Residential". Mermaids is within 1,000 feet of 24 residential dwellings (17 in the year 2000).
 - b. Mermaids Nightclub does not meet the locational (within a GB zone and needs a Heavy Manufacturing zone) nor the spacing requirements (must be 1,000 feet from any dwelling and R district; there are 24 dwellings (17 in the year 2000) within 1,000 of Mermaids) of Section 808 (presently Section 3.7.1) established for adult businesses.
 - c. A review of county tax office property valuations histories between 1990 and 2000 for 27 lots in Old Oak Estates shows 24 properties decreased in value a total of \$88,895.00 and 3 properties increased in value a total of \$5,321.00. The net decrease in tax base for Old Oak Estates between 1990 and 2000 is \$83,574.00. Mermaids Nightclub began offering topless dancing in the summer of 1994.
6. The special use will be in conformity with the Land Use Plan or other officially adopted plan. (formerly Section 1402(2)(d))

Suggested Findings:

- a. The proposed use does conflict with the County's Unified Development Ordinance but does not conflict with other plans.
7. The special use will not exceed the county's ability to provide adequate public facilities, including, but not limited to, schools, fire and rescue, and law enforcement, and other county facilities. Applicable state standards and guidelines shall be followed for determining when public facilities are adequate. Such facilities must be in place or programmed to be in place within two years after the initial approval of the plan (sketch plan in the case of major subdivision).

Suggested Findings:

- a. The proposed use is commercial and will not generate additional school children.

II. STAFF RECOMMENDATION

Staff recommends denial based on the following:

1. The proposed use does not meet the requirements of the Unified Development Ordinance, a required finding under Section 1402(1)(c) (presently Section 11.7.1(F)(12)(c)), because the zoning is improper (property currently zoned GB, former Section 1310 and 808(5)(a) requires HM zoning); and the adult business building is within 1,000 feet of a residential zoning district and within 1,000 feet of 24 buildings (17 in the year 2000) used as residential dwellings (former Section 808(5)(b)(1)).
2. In accordance with the directive of Judge Tillett, the following findings are provided:
 - a. The applicant's initial intended use was a nightclub and billiards/gameroom. A conditional use permit application to appear before the Board of Adjustments for the initial use was submitted on 8/4/93 .
 - b. The secondary impacts of the initial intended use were encompassed in the findings of fact adopted by the Board of Adjustments on January 26, 1994 and included in the attached exhibit.
 - c. On February 7, 2000, Robert F. London, Inc. submitted a special use permit application to operate an adult and sexually oriented business consisting of a "Nightclub offering comedy, pool tables, video games, musicians, dancing, topless dancing, organized parties for businesses or groups." The property is located on US 158, Point Harbor, in the building now occupied by Mermaids Nightclub, Tax Map 132, Lot 133A, Poplar Branch Township.
 - d. Secondary affects of the amended use are considered under the special use permit criteria of Section 1402(2) (presently Section 11.7.1(F)(12)). However, the secondary affects do not apply because the controlling statues, former Sections 808 and 1310 (referred to in former Section 1402(1)(c)), requires adult oriented businesses to locate in a Heavy Manufacturing zoning district (presently required in Section 2.5 Permitted Uses Table). Further, Section 808 (presently Section 3.7.1) requires a minimum 1,000 feet spacing between any building housing an adult oriented business and an R zoning district and any building used as a dwelling. The proposed adult use building is located within a GB (General Business) zoning district, is immediately adjacent to an R zoning district, and is within 1000 of 24 buildings (17 in the year 2000) used as residential dwellings.

III. PLANNING BOARD RECOMMENDATION

On April 11, 2000 the Planning Board recommended denial (9-0) of this request subject to the following:

1. The proposed use does not comply with the requirements of the Unified Development Ordinance (formerly Section 808 and Section 1310) because the zoning district, GB, does not allow adult and sexually oriented businesses with a special use permit and because the building in which the nightclub is in is within 1,000 feet of 17 residential dwelling units and immediately adjacent to an R zoning district.
2. The proposed use will not be in general conformity with the Unified Development Ordinance, which is officially adopted by the Board of Commissioners, due to violation of former Sections 808 and 1310.

Mr. Plumlee, Attorney for applicant, stated his objections for the record:

County UDO is un-constitutional and violates rights and free speech; establishment has been in business for 17 years; HM Zone unconstitutional; Board of Commissioners dismissed lawsuit in December 2006; Board's failure to comply with court order and use of tax records.

Objections noted for the record.

Mr. Plumlee, Attorney for applicant, presented his case ordered by Judge Tillett. He submitted exhibit 1, 3, 4 and 11, along with a petition from residents within 1,000 feet from business in support. Ike McRee, County Attorney objected to petition.

Mr. Plumlee presented his first witness Lauren Berry.

Lauren Berry, Bells Island, reviewed her market analysis and use of method. The market analysis was prepared with the emphasis in finding and change in the market area surrounding 9098 Caratoke Highway, Point Harbor. The researched time frames were 1993,1994,1995,2008,2009 and 2010. After a complete market analysis, the data indicates the subject property has had no negative effects on the surrounding market.

Robert Brown, Applicant, 1428 N. George Washington Hwy, Portsmouth, VA, presented a survey that was sent to community stating that there were no secondary effects.

Ike McRee, County Attorney, opened the public hearing.

Bob Studman, First Flight Storage, supports permit.

Ann Armstrong, adjacent property owner, supports permit.

Gwenn Cruickshanks, 110 Acorn Lane, opposes permit, does not approve of business.

Michele Boutilier, opposes the permit and presented police reports from this type of business in Elizabeth City.

Mr. Plumlee, Attorney, objects to hearsay.

Teresa MacPherson, Grandy, opposes this permit and questioned why this has been going on for 17 years.

Mr. Plumlee, Attorney, presented his closing statements: Secondary impacts did not go to Planning Board and permit should be issued. Board dismissed this case December, 2006.

There being no further comments, public hearing was closed.

Commissioner Nelms moved to deny the SUP, with findings of facts and staff recommendations. Commissioner Gregory seconded the motion. Motion carried.

Consent Agenda:

1. Budget Amendments
2. Approval of October 4, 2010, Minutes
3. Proclamation declaring October as Community Pride Month
4. Firefighter's Relief Fund Officers - Moyock VFD
5. Firefighter's Relief Fund Officers - Knotts Island VFD

Commissioner Etheridge moved to approve. Commissioner Aydlett seconded the motion. Motion carried.

Debit

Credit

Decrease Revenue

Increase Revenue

<u>Account Number</u>	<u>Account Description</u>	or <u>Increase Expense</u>	or <u>Decrease Expense</u>
10750-557700	Crisis Intervention	\$ 26,345	
10330-431000	DSS Admin		\$ 26,345
		<u>\$ 26,345</u>	<u>\$ 26,345</u>

Explanation: *Social Services Administration (10750)* - Increase appropriations due to additional federal funding.

Net Budget Effect: Operating Fund (10) - Increased by \$26,345.

<u>Account Number</u>	<u>Account Description</u>	Debit Decrease Revenue or Increase Expense	Credit Increase Revenue or Decrease Expense
10531-545000	Contracted Services	\$ 7,485	
10531-532000	Supplies		\$ 7,485
		<u>\$ 7,485</u>	<u>\$ 7,485</u>

Explanation: Emergency Management (10531) - Transfer of Emergency Management Planning Grant (EMPG) funds to contracted services for a fence to protect the Communications Tower behind the Communication building, WebEOC training and an update to the ID system.

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

<u>Account Number</u>	<u>Account Description</u>	Debit Decrease Revenue or Increase Expense	Credit Increase Revenue or Decrease Expense
18609-545000	Contracted Services	\$ 2,000	
18390-499900	Appropriated Fund Balance	\$ -	\$ 2,000
		<u>\$ 2,000</u>	<u>\$ 2,000</u>

Explanation: Hog Bridge Ditch Watershed Improvement District (18609) - To appropriate funds for drainage improvements in the Hog Bridge Ditch Watershed Improvement Service District.

Net Budget Effect: Hog Bridge Ditch Watershed Improvement District Fund (18) - Increased by \$2,000.

Debit

Credit

<u>Account Number</u>	<u>Account Description</u>	Decrease Revenue or <u>Increase Expense</u>	Increase Revenue or <u>Decrease Expense</u>
10640-532004	Supplies - Home Economics	\$ 4,332	
10330-449900	Miscellaneous Grants	\$ -	\$ 4,332
		<u>\$ 4,332</u>	<u>\$ 4,332</u>

Explanation: Cooperative Extension (10640) - To record Senior Health Insurance Information Program (SHIIP) grant funding by the NC Department of Insurance.

Net Budget Effect: Operating Fund (10) - Increased by \$4,332.

<u>Account Number</u>	<u>Account Description</u>	Debit Decrease Revenue or <u>Increase Expense</u>	Credit Increase Revenue or <u>Decrease Expense</u>
10480-557303	Archives & Records Mgmt Fee	\$ 6,000	
10540-557002	Permit Incentive Plan	\$ 15,000	
10380-488400	ABC Profits		\$ 21,000
		<u>\$ 21,000</u>	<u>\$ 21,000</u>

Explanation: *Register of Deeds (10480); Inspections (10540)* - To appropriate funds for the Archives & Records Management Fee require by the NC Department of Cultural Resources to fund archiving of deeds and for the permit incentive plan implemented by the County during FY 2010.

Net Budget Effect: Operating Fund (10) - Increased by \$21,000.

<u>Account Number</u>	<u>Account Description</u>	Debit Decrease Revenue or <u>Increase Expense</u>	Credit Increase Revenue or <u>Decrease Expense</u>
61818-590441	Capital Outlay	\$ 60	
61818-590003	Fire Hydrants		\$ 60
65858-532000	Supplies	\$ 8,000	
65858-516000	Repairs and Maintenance		\$ 8,000
62828-532000	Supplies	\$ 600	
62828-516000	Repairs and Maintenance		\$ 600
		<u>\$ 8,660</u>	<u>\$ 8,660</u>

Explanation: *Mainland Water Water (61818); Moyock Commons Sewer (65858); Newtown Road Sewer (62828)* - Transfer to reclassify budgeted funds.

Net Budget Effect: Mainland Water Fund (61) - No change.
Moyock Commons Sewer Fund (65) - No change.
Newtown Road Sewer Fund (62) - No change.

PROCLAMATION
CURRITUCK COUNTY
COMMUNITY PRIDE

WHEREAS, Currituck County is fortunate to be rich in natural resources and beauty; and

WHEREAS, many of us have been blessed with the privilege of living in this beautiful coastal county and;

WHEREAS, the awareness of protecting our environment and keeping our county clean are vital; and

WHEREAS, Currituck County has the auspicious honor of being home to a multitude of caring individuals who give unselfishly of their time and talents to benefit our County; and

WHEREAS, the reduction of litter along with augmented beautification will not only benefit the health and well being of Currituck County but will also enhance the aesthetics of our surroundings.

NOW, THEREFORE, BE IT RESOLVED, the Currituck County Board of Commissioners proclaims the month of October as Community Pride Month and the Board applauds the efforts of the citizens of Currituck County and the many volunteers who work to protect our environment and keep our County free of litter.

Commissioner's Report

Commissioner Taylor reminded citizens of OLF meeting.

Commissioner Nelms, commented on the efforts of the Walnut Island clean up.

Commissioner Rorer, Etheridge and Gregory, commended Dennis Anderson for his contributions to Make a Wish Foundation.

County Manager's Report

County Manager, discussed the CAMA flooding in County and where to get information from FEMA.

Adjourn

There being no further business, the meeting adjourned.