

CURRITUCK COUNTY  
NORTH CAROLINA  
May 7, 2012

The Board of Commissioners met as the Board of Equalization and Review at 6:00 p.m.

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 Rorer, Commissioners Gilbert, O'Neal, Aydlett, Etheridge, Martin and Petrey.

**A) Invocation**

Kimberly Ferebee, New Bethlehem Church of Christ, was present to give the invocation.

**B) Pledge of Allegiance**

Boy Scout Troop 169, Moyock, NC, presented the Pledge of Allegiance

**C) Approval of Agenda**

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

**D) Public Comment**

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

Chairman Rorer opened the public comment period.

Barbara Snowden, Historical Society, updated the Board on the Civil War Events that will be celebrated on May 14<sup>th</sup>. There will also be an event in June on the War of 1812.

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

**Administrative Reports**

**A) Hunter Forehand, to accept proclamation for Asthma Awareness Month**

The Board presented the proclamation to Hunter Forehand.

**PROCLAMATION  
SUPPORTING  
ASTHMA AWARENESS MONTH  
MAY 2012**

**WHEREAS**, there is an epidemic of asthma in the United States, affecting 33 million people; and

**WHEREAS**, asthma is the leading cause of childhood long term illness, hospitalization and school absenteeism; and

**WHEREAS**, asthma affects up to 11% of children in the Currituck County Schools; and

**WHEREAS**, asthma is a treatable and controllable disease; and

**WHEREAS**, there are simple steps people can take to monitor and prevent asthma attacks and effective treatments to control asthma;

**NOW, THEREFORE**, the Currituck County Board of Commissioners hereby proclaims May 2012 as "***Asthma Awareness Month***" for the County of Currituck.

**B) Recognition of Eagle Scouts, Joshua and Jeremiah Fulford**

The Board recognized Joshua and Jeremiah Fulford.

**RESOLUTION  
RECOGNIZING  
EAGLE SCOUT, JOSHUA FULFORD**

**WHEREAS**, the Currituck County Board of Commissioners would like to take this opportunity to congratulate Joshua Fulford for having attained the coveted rank of Eagle Scout, and

**WHEREAS**, Joshua Fulford is one of only 4% of overall Scout membership who have claimed the rank of Eagle Scout; and

**WHEREAS**, Joshua is a member of Scout Troop 169 sponsored by the Moyock Ruritan Club; and

**WHEREAS**, this is also the culmination of the patriotic concern and devoted efforts of numerous adult Scout leaders and caring parents who have worked with Joshua to this end.

**NOW, THEREFORE BE IT RESOLVED**, the Currituck County Board of Commissioners joins with others in the recognition of Joshua Fulford for his outstanding accomplishment and wishes him continued success in his life's endeavors.

**RESOLUTION  
RECOGNIZING  
EAGLE SCOUT, JEREMIAH FULFORD**

**WHEREAS**, the Currituck County Board of Commissioners would like to take this opportunity to congratulate Jeremiah Fulford for having attained the coveted rank of Eagle Scout, and

**WHEREAS**, Jeremiah Fulford is one of only 4% of overall Scout membership who have claimed the rank of Eagle Scout; and

**WHEREAS**, Jeremiah is a member of Scout Troop 169 sponsored by the Moyock Ruritan Club; and

**WHEREAS**, this is also the culmination of the patriotic concern and devoted efforts of numerous adult Scout leaders and caring parents who have worked with Jeremiah to this end.

**NOW, THEREFORE BE IT RESOLVED**, the Currituck County Board of Commissioners joins with others in the recognition of Jeremiah Fulford for his outstanding accomplishment and wishes him continued success in his life's endeavors.

**Old Business**

- A) **Consideration and Action: PB 07-33 Shingle Landing, Phase 2: Request for a preliminary plat/special use permit for 25 additional lots within the Shingle Landing subdivision located in Moyock along Moyock Landing Drive, Tax Map 9, Parcels 29R and 29T, Moyock Township.**

Sworn Testimony was given prior to making comments.

Ben Woody, Planning Director, reviewed the request.

**CASE ANALYSIS FOR THE  
Board of Commissioners  
DATE: May 7, 2012**

**PB 07-33 Shingle Landing, Phase 2**

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**ITEM:** PB 07-33 Shingle Landing, Phase 2, preliminary plat/special use permit for 25 additional lots including 24 residential lots and 1 nonresidential lot.

**LOCATION:** Moyock, along Moyock Landing Drive, Moyock Township

**TAX ID:** 0009-000-029T-0000  
0009-000-029R-0000

**ZONING DISTRICT:** General Business (GB)

**PRESENT USE:** Undeveloped

**OWNER:** CTX, Inc.  
378 Caratoke Hwy  
Moyock, NC 27958

**APPLICANT:** Hyman and Robey  
PO Box 339  
Camden, NC 27921

**LAND USE/ZONING OF SURROUNDING PROPERTY:**

	<b>Land Use</b>	<b>Zoning</b>
<b>NORTH:</b>	Undeveloped	LM
<b>SOUTH</b>	Low Density Residential	CD-R/R
<b>EAST:</b>	Low Density Residential	R
<b>WEST:</b>	Undeveloped	GB

**LAND USE PLAN**

**CLASSIFICATION:** The 2006 Land Use Plan classifies the site as Full Service within the Moyock subarea.

**SIZE OF SITE:** 36.93 acres

**NUMBER OF UNITS:** 25 lots (24 Residential Lots and 1 Nonresidential Lot)  
82 existing residential lots in Phase 1

**PROJECT DENSITY:** 1.7 residential units/acre in Shingle Landing  
1.54 residential units/acre proposed in Phase 2  
1.76 residential units/acre in Phase 1

**UTILITIES:** The development is served by an existing 8" water line along Moyock Landing Drive. Wastewater will be treated by individual on-site septic systems. The estimated water

consumption is 8,640 to 11,520 GPD based on 3 to 4 bedrooms per dwelling.

**I. NARRATIVE OF REQUEST:**

- o The applicant is requesting preliminary plat/special use permit approval of Shingle Landing, Phase 2. The proposed development consists of 24 residential lots and 1 nonresidential lot.
- o The proposed development is served by existing infrastructure.
- o According to the preliminary plat, interconnectivity will be provided from Moyock Landing Drive to the proposed Tulls Creek Landing subdivision by way of Gees Drive. The applicant is not proposing to construct the connection at this time due to the potential maintenance liability for the association. A funding source should be identified to install the connection should the board allow bonding of Gees Drive.
- o The proposed open space (12.37 acres within this phase) will consist of areas reforested with pines planted in accordance with NC Forestry specifications.
- o The proposed development provides 1.5 acres of reserve utility open space.
- o According to the Soil Survey for Currituck County, the soils within the development are considered marginal and unsuitable for conventional septic systems.
- o The active recreation is provided in Phase 1. The recreational areas include:
  - o 3.75 acres dedicated to Currituck County and contain the WRC boat ramp and parking;
  - o 25.55 acres dedicated to Currituck County

**II. QUESTION(S) BEFORE THE BOARD:**

**Special Use Permit Criteria and Staff Findings:**

Special use permits (SUP) are intended to allow the Board of Commissioners flexibility in the administration of the UDO. Through the SUP procedure, property uses which would otherwise be considered undesirable in certain districts can be developed subject to conditions of approval to minimize any negative effects they might have on surrounding properties.

In order to approve a SUP, certain criteria must be satisfied. The criteria and suggested findings of fact are outlined as follows:

1. Completeness of application.

**Suggested Findings:**

- a. The application is complete.

2. The proposed use is among those listed in the Table of Permissible Uses as a special use indicated with an "S".

**Suggested Findings:**

- a. Chapter 10 of the Unified Development Ordinance indicates a special use permit is required for preliminary plats in all major subdivisions.
- 3. The conditions proposed meet or exceed the minimum requirements of this ordinance.  
**Suggested Findings:**
  - a. Provided the Technical Review Committee conditions are adequately addressed the request will meet the minimum requirements of the ordinance.
- 4. The special use will not endanger the public health or safety:  
**Suggested Findings:**
  - a. The proposed development should have little to no negative impact on public health or safety.
- 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  
**Suggested Findings:**
  - a. The proposed development will predominately consist of single family residential lots that are being developed at a size compatible with the existing residential lots within the area.
- 6. The special use will be in conformity with the Land Use Plan or other officially adopted plan.  
**Suggested Findings:**

The 2006 Land Use Plan classifies this site as Full Service within the Moyock subarea. The Full Service area contemplates a residential base development density to be two units per acre and increases can be achieved through overlay zoning. The Moyock subarea policy emphasis suggests residential densities should be medium to high depending on available services. The proposed use is in keeping with the policies of the plan, some of which are:

POLICY HN1: Currituck County shall encourage development to occur at densities appropriate for the location.

POLICY AG3: County ACTIONS CONCERNING INFRASTRUCTURE (e.g. schools, parks, and utilities) and regulations shall serve to direct new development first to targeted growth areas near existing settlements indicated as Full Service Areas on the Future Land Use Map, rather than "leapfrogging" to locations in the midst of farmland and greenspace identified as Rural and Conservation areas on the Future land Use Map.

POLICY ML1: Currituck County recognizes the particular interest of residents and property owners in the Mainland Area in PRESERVING FARMLAND AND OPEN SPACE. The County shall exercise diligence in applying policies, plans, and

actions that will encourage compact growth and the preservation of farmland and open space in the Mainland Area.

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, 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 subdivisions).

**Suggested Findings:**

- a. The proposed development will not exceed the county's ability to provide adequate public facilities.

**III. TECHNICAL REVIEW COMMITTEE/PLANNING STAFF RECOMMENDATION:**

Pursuant to the Unified Development Ordinance, the Technical Review Committee, including planning staff, recommends conditional approval subject to the following:

Planning Department (Donna Voliva 252-232-6032)

1. Please provide an update regarding the plan of action for the stormwater maintenance of the subdivision (see letter dated October 11, 2011 to NCDENR). \*Staff can not recommend approval of the proposed development until such time as the site is in compliance of the NCDENR stormwater permit. *Staff commentary: As of the February 14, 2012 Planning Board meeting, the existing stormwater maintenance is not in compliance with the state permit.*
2. Please provide an update regarding the road maintenance of the streets in the subdivision. *Staff commentary: The developer contacted NCDOT to indicate areas of pavement that must be replaced or repaired. The developer is requesting the Board approve a performance bond to complete the necessary road improvements for NCDOT acceptance. The improvements will be completed when the weather is warmer and dryer. If the Board allows the performance bond, the staff suggests all work be complete by September 1, 2012. The bond must be reviewed and approved by the county attorney.*
3. Note #13 indicates Gees Drive will not be constructed at this time. Given the fact the road/sidewalk does not provide access to a parcel at this time staff will support the installation at a later date; however, a funding source shall be identified for the installation of the street. *(i.e. cash bond to be held until the future connection is installed)*
4. The existing drainage ditch (Winslow Ditch) located along the northern property line of lot 107 shall contain a 50 foot maintenance easement measured from the top of bank.
5. The 2011 property taxes must be paid prior to issuance of the special use permit.

**IV. TECHNICAL REVIEW COMMITTEE/PLANNING STAFF RECOMMENDATION  
(UPDATED 4/30/2012):**

Pursuant to the Unified Development Ordinance, the Technical Review Committee, including planning staff, recommends conditional approval subject to the following:

Planning Department (Donna Voliva 252-232-6032) UPDATED  
4/30/2012

1. Please provide an update regarding the road maintenance of the streets in the subdivision. *Staff commentary: The developer contacted NCDOT to indicate areas of pavement that must be replaced or repaired. A drainage as-built was prepared by Hyman and Robey and indicates required re-grading of the roadside swales. The developer is requesting the Board approve a performance bond to complete the necessary road improvements for NCDOT acceptance. If the Board allows the performance bond, the staff suggests all work commence immediately and be complete in a timely manner (Engineering is recommending all work be complete in 30-60 days see below). The bond must be reviewed and approved by the county attorney.*
2. Note #13 indicates Gees Drive will not be constructed at this time. Given the fact the road/sidewalk does not provide access to a parcel at this time staff will support the installation at a later date; however, a funding source shall be identified for the installation of the street. *(i.e. cash bond to be held until the future connection is installed)*
3. The existing drainage ditch (Winslow Ditch) located along the northern property line of lot 107 shall contain a 50 foot maintenance easement measured from the top of bank.

Engineering Department (Eric Weatherly 252-232-6035) UPDATED  
4/30/2012

1. Phase II of the improvements involves bonding the remaining road and drainage improvements in accordance to the DOT letter and plans prepared by Hyman and Robey dated 4-24-12.
2. I have received the Hyman and Robey plans dated 4-24-12 which require re-grading approximately 8000 feet of swales along the roadways in the development. The developer, DOT, DWQ, and Hyman and Robey should agree on the exact method and grass to stabilize all new work.
3. I have received a copy of the attached unexecuted proposal from C&L Concrete Works. A bond for the C&L work should be received by the Planning & Community Development Department. I recommend requiring 30-60 days to complete the work.
4. Provide an update on the remaining DOT items in the letter from last August. Of particular concern should be providing documentation that the subdivision has permission to cross the railroad right-of-way.

NCDENR, DWQ (Scott Vinson 252-948-3848) UPDATED 4/30/2012)

1. On April 17, 2012 Scott Vinson, NCDENR, inspected the stormwater infrastructure for compliance. The swales of the site are in compliance with the terms and conditions of the stormwater permit. A few minor eroded and bare areas need to be stabilized and reseeded with grassed vegetation.
2. The updated partial certification and ownership change must be submitted to the Division of Water Quality.

**V. PLANNING BOARD RECOMMENDATION:**

The Planning Board recommended denial of PB 07-33 due to the application is not complete. Motion carried unanimously.

Chairman Rorer opened the public hearing.

Eddie Hyman, Engineer, reviewed what has been done to date to correct some of the issues that were brought up at the last meeting. He also stated that he has a bond for the roads and sidewalks that have not been addressed.

Commissioner Martin stated that they have not completed Phase 1 and expressed concerns with moving to Phase II.

April Baer, Launch Landing, stated that the roads have not been repaved and the bond has expired. There is also a hazardous waste dump on the site.

Joanne Goumenis, stated that they have been waiting for the roads to be repaired and time is running out.

Tommy Hardison, stated that the grass in the ditches has not been mowed.

Terry Wadleigh, stated that Mr. Old does not want to finish what he has started.

Roxanne Crocker, stated that some progress has been made.

Commissioner Gilbert questioned the amount of the Bond.

Kirk Berkhimer, stated that the bond was not being tracked and this is a compliance issue with staff along with code violations.

Commissioner Etheridge questioned the bonds on Phase I and this being turned over to the HOA.

Commissioner Martin moved to deny. Commissioner Aydlett seconded the motion.

Commissioner O'Neal stated that the County had no recourse to have developer to fix the roads in Phase I without placing these conditions for approval on Phase II.

Commissioner Martin withdrew his motion to deny and moved to continue for 60 days. Commissioner O'Neal seconded the motion. Motion carried.

**New Business**

**A) Board Appointments:**

**1. Reappointment of Bobby Hanig to the Northeastern Workforce Development Board.**

Commissioner O'Neal moved to appoint Bobby Hanig. Commissioner Etheridge seconded the motion. Motion carried.

**2. Appointments to Game Commission**

Commissioner O'Neal moved to approve appointments; Richard Williams, Jeremy Midgette and Andy Newbern. Commissioner Gilbert seconded the motion. Motion carried.

**3. Appointments to Land Transfer Tax Appeals Board**

Commissioner Petrey moved to appoint Manly West and reappointment Ronnie Cooper, Wade Morgan and John Whitehurst, Jr. Commissioner Gilbert seconded the motion. Motion carried.

**4. Appointment to College of the Albemarle Board of Trustees**

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

**B) Consent Agenda:**

1. Approval of Currituck Regional Airport Transportation Improvement Program (TIP) 2013-2017 Project Listing
2. Approval of April 16, 2012 Minutes

3. SBA Towers II LLC lease agreement for the Jarvisburg tower
4. Change Order #3, Community Center, deduction in contract amount
5. Change Orders #1 Sheriff's Evidence building for \$1,529; CO#2, \$3,135; CO#3, \$1,500; CO#4, \$7,073.
6. A Resolution that there exists significant public interest in the nature and extent of public trust rights under NC Law and the nature and extent of local government regulations of ocean beaches within their jurisdictions

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

**A RESOLUTION THAT THERE EXISTS SIGNIFICANT PUBLIC INTEREST IN THE NATURE AND EXTENT OF PUBLIC TRUST RIGHTS UNDER NORTH CAROLINA LAW AND THE NATURE AND EXTENT OF LOCAL GOVERNMENT REGULATION OF OCEAN BEACHES WITHIN THEIR JURISDICTIONS**

**WHEREAS**, the County of Currituck, North Carolina has areas of ocean beach or other public trust land and waters located within or adjacent to its jurisdiction; and

**WHEREAS**, a large segment of the economy of the County of Currituck is driven by tourism; and

**WHEREAS**, a safe, clean, unobstructed ocean beach is essential to attract tourists and others to the beaches within the County of Currituck; and

**WHEREAS**, historically the citizens and visitors of the County of Currituck have used the full breadth of the ocean beach from the dune/vegetation line to the ocean waters for access to, travel along and general use of the beach for recreational and commercial endeavors; and

**WHEREAS**, the County of Currituck has historically taken action and spends public funds to maintain a safe, clean and unobstructed ocean beach within its jurisdiction; and

**WHEREAS**, the County of Currituck has historically used the full breadth of the ocean beach within its jurisdiction for the purposes of providing life saving, emergency and other public works services and for approximately 13 miles the ocean beach is the only motor vehicle access to approximately 3,000 lots platted and existing on the Currituck Outer Banks; and

**WHEREAS**, the County of Currituck has taken these actions of its own accord often without the assistance of North Carolina state agencies that have historically not had the budget, manpower or interest in taking these actions; and

**WHEREAS**, the County of Currituck agrees with the following findings of the North Carolina General Assembly, regarding the importance of the State's ocean beaches and the uses thereof:

- (1) North Carolina has 320 miles of ocean beach, including some of the most pristine and attractive beaches in the country.
- (2) The balance between economic development and quality of life in North Carolina has made North Carolina's coast one of the most desirable along the Atlantic Seaboard.
- (3) North Carolina's beaches are vital to the State's tourism industry.
- (4) North Carolina's beaches belong to all the State's citizens and provide recreational and economic benefits to our residents statewide.
- (5) Beach erosion can threaten the economic viability of coastal communities and can significantly affect State tax revenues.
- (6) The Atlantic Seaboard is vulnerable to hurricanes and other storms, and it is prudent to take precautions such as beach nourishment that protect and conserve the State's beaches and reduce property damage and flooding.
- (7) Federal policy previously favored and assisted voluntary movement of structures threatened by erosion, but this assistance is no longer available.
- (9) Relocation of structures threatened by erosion is sometimes the best available remedy for the property owner and is in the public interest.
- (10) Because local beach communities derive the primary benefits from the presence of adequate beaches, a program of beach management and restoration should not be accomplished without a commitment of local funds to combat the problem of beach erosion.
- (11) The State of North Carolina prohibits seawalls and hardening the shoreline to prevent destroying the public's beaches.
- (12) It is declared to be a necessary governmental responsibility to properly manage and protect North Carolina's beaches from erosion and that good planning is needed to assure a cost-effective and equitable approach to beach management and restoration, and that as part of a comprehensive response to beach erosion, sound policies are needed to facilitate the ability of landowners to move threatened structures and to allow public acquisition of appropriate parcels of land for public beach access.

**WHEREAS**, over time inconsistency has developed between the actual use of the ocean beach for public trust purposes and the terms often used to describe various areas of the ocean beach; and

**WHEREAS**, in 1998 the General Assembly enacted N.C.G.S. § 77-20(d) and (e) which clarified that the geographical extent of the ocean beaches which are subject to public trust rights reaches landward to the first line of stable, natural vegetation; the toe of the frontal dune; and the storm trash line; and

**WHEREAS**, N.C. Const., Art. XIV, Sec. 5 provides that “it shall be a proper function of the State of North Carolina and its political subdivisions to . . . to preserve as a part of the common heritage of this State its forests, wetlands, estuaries, beaches, historical sites, openlands, and places of beauty;” and

**WHEREAS**, N.C.G.S. § 160A-174 and 153A-121(a) have delegated broad authority to local legislative bodies to enact local ordinances to define and abate nuisances within their jurisdictions; and

**WHEREAS**, the recent North Carolina Court of Appeals decision in *Town of Nags Head v. Cherry, Inc.* is inconsistent with the authority granted to local governments under the North Carolina Constitution, the North Carolina General Statutes, and existing State agency regulations and is also inconsistent with the historical use and management of the ocean beaches by the general public and local governments; and

**WHEREAS**, the public has a significant interest in having the Supreme Court address the issues raised in the *Town of Nags Head v. Cherry, Inc.* action and providing local governments, the general public and private landowners with definitive legal analysis regarding the scope and existence of public trust rights in the State’s ocean beaches and local government authority to regulate, protect and manage the State’s ocean beaches within their jurisdiction.

**NOW THEREFORE BE IT RESOLVED** that the Board of Commissioners for the County of Currituck, North Carolina supports the North Carolina Supreme Court’s review and consideration of the *Town of Nags Head v. Cherry, Inc.* action because of the significant public interest in the Supreme Court providing definitive legal analysis regarding the scope and existence of public trust rights in the State’s ocean beaches and local government authority to regulate, protect and manage the State’s ocean beaches within their jurisdiction.

### **C) Commissioner’s Report**

Commissioner Petrey wanted to recognize Deputy Jeff Walker.

Commissioner Martin reminded everyone to vote tomorrow.

Commissioner O'Neal requested staff to look at non profits for guidelines on their signs.

**D) County Manager's Report**

Dan Scanlon, County Manager, stated that the Parks & Recreation will have sign-ups for the winter sports beginning today and ending on July 20<sup>th</sup>.

**Adjourn**

There being no further business, the meeting adjourned.