

CURRITUCK COUNTY
NORTH CAROLINA
August 5, 2013

The Board of Commissioners met at 6:00 p.m. in the Historic Courthouse Conference Room for a presentation by Eric Weatherly, County Engineer, giving an update of Moyock Sewer and Walnut Island/Waterside Villages Sewer.

The Board of Commissioners met at 7:00 p.m. for its regularly scheduled meeting at the Historic Courthouse in the Board Meeting Room with the following members present: Chairman Paul O'Neal, Vice-Chair Paul Martin, Commissioners Aydlett, Griggs, McCord, and Petrey. Commissioner Gilbert was absent.

A) Invocation

B) Pledge of Allegiance

Reverend Daniel Bergey, New Life Church, was present to give the invocation and lead the Pledge of Allegiance.

C) Approval of Agenda

Commissioner Petrey moved to approve the Agenda. Commissioner Martin seconded the motion. Motion carried unanimously..

APPROVED AGENDA

Work Sessions

6:00 PM - Update on Moyock Sewer and Walnut Island/Waterside Villages Sewer

7:00 pm Call to Order

- A) Invocation – Reverend Daniel Bergey, New Life Church
- B) Pledge of Allegiance
- C) Approval of Agenda
- D) Public Comment

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

Public Hearings

- A) **Consideration and Action:** PB 13-13 Green Acres Land Development Sand Mine: Request for a Use Permit to operate an extractive industry (mining) at 7177 Caratoke Highway in Jarvisburg, Tax Map 109, Parcel 61 and 61A, Poplar Branch Township.

Administrative Reports

- A) **Presentation and Consideration** of Design/Build Contract for New Animal Shelter

New Business

- A) **Consent Agenda:**
 - 1. Approval of July 15, 2013 Minutes
 - 2. Budget Amendments

3. George Raper CO#1 - Southern Outer Banks Water Plant Expansion
 4. 2012-2013 Settlement for Delinquent Taxes
 5. CDBG Monthly Status Report
 6. ITS Surplus Resolution
 7. Approval of Right of Way Agreement with Dominion for Soccer Complex
 8. Approval of Whalehead Subdivision Drainage Improvements Phase I Change Order #4
 9. Approval of Job Descriptions
 10. Resolution to surplus vehicles
- B) Commissioner's Report
- C) County Manager's Report

Closed Session

Closed Session pursuant to G.S. 143-318.11(a)(4) to discuss matters relating to the location or expansion of industry or businesses within the county

Adjourn

D) Public Comment

Chairman O'Neal opened the public comment period. Since several people had signed up to comment on the animal shelter, Chairman O'Neal planned to have them speak after the animal shelter presentation.

Mary Etheridge, Shawboro, stated she had been involved in litigation with the County for two years concerning illegal spot zoning. Although the courts had ruled in her favor, the County did not pay her legal fees. She wanted to prevent this same thing from happening to anyone else. She commented on the concern for quality expressed for projects in other neighborhoods.

James Butz, Grandy, spoke about an effort to obtain a Highway Historical Marker to honor Benjamin Bowser of the US Lifesaving Service and asked for a letter of support from the Board of Commissioners. The County Manager was authorized to prepare the letter.

Wes Liverman, Lower Currituck Volunteer Fire Department, requested funding for capital projects. He stated public safety is the #1 consideration and the volunteers need funding. He noted they had not had an increase in 10 years.

There being no further comments, Chairman O'Neal closed the public hearing.

Public Hearings

A) Consideration and Action: PB 13-13 Green Acres Land Development Sand Mine: Request for a Use Permit to operate an extractive industry (mining) at 7177 Caratoke Highway in Jarvisburg, Tax Map 109, Parcel 61 and 61A, Poplar Branch Township.

Sworn testimony was given prior to making comments.

Ben Woody, Planning and Community Development Director, reviewed the request, comments from the Technical Review Committee, and Planning Board recommendation.

**CASE ANALYSIS FOR THE
Board of Commissioners
DATE: August 5, 2013
PB 13-13 Green Acres Land Development**

ITEM: PB 13-13 Green Acres Land Development request for a Use Permit to operate a extractive industry (sand mine).

LOCATION: Jarvisburg: 7177 Caratoke Highway

TAX ID: 0109-000-0061-0000
0109-000-061A-0000

ZONING DISTRICT: Agricultural (AG)

PRESENT USE: Extractive Industry (sand mine)

OWNER: Green Acres Land Development
PO Box 332
Powells Point, NC 27966

APPLICANT: Jeffrey A. Newbern, Sr.
PO Box 67
Harbinger, NC 27941

LAND USE/ZONING OF SURROUNDING PROPERTY:

	Land Use	Zoning
NORTH:	Low Density Residential	SFM/AG/GB
SOUTH	Low Density Residential	GB/AG
EAST:	Woodland	SFM/AG
WEST:	Farmland	GB/AG

LAND USE PLAN

CLASSIFICATION: The 2006 Land Use Plan classifies the site as Limited Services within the Jarvisburg subarea.

SIZE OF SITE: 58.77 acres

COMMUNITY MEETING: A community meeting was held on April 18, 2013 at the Powells Point Senior Center. The concerns included water quantity and quality, hunting on the property, poor management, and reduction of Meadow Lake water level.

I. NARRATIVE OF REQUEST:

1. A special use permit was issued to Green Acres Land Development on August 19, 2002 to excavate a maximum 28.65% of the entire site. The permit was valid for ten years and

with the vesting suspension provided by the North Carolina General Assembly the special use permit expired January 1, 2013.

2. The applicant is requesting a use permit which is required for Mr. Newbern to continue operating an extractive industry for sand mining. The applicant is requesting the use permit be valid for five years.
3. The proposed excavation area is 30% of the total site or 17.39 acres.
4. The proposed maximum average depth of the excavation area is 25' with a maximum dewatering depth of 20'.
5. The application includes a request for a 50% setback reduction along the northern property line where an existing visual screen (see attachment) is between the mining activity and the adjoining use/property line. The 2002 special use permit required a 100 foot setback from property lines. However, the operator excavated materials within this setback. Reclamation of a portion of the excavated area (0.07 acre) is required and a portion of the access/haul road will be moved south to the new reclaimed area to maintain the 50 foot setback.
6. An updated hydrogeologic model was prepared by Edwin Andrews, III, P.G., N.C.L.S.S. on May 21, 2013 indicating that with the installation of the new dewatering/mitigation system the mining operation should have little impact on the adjoining property to the south.
7. As recommended by Edwin Andrews, III, an additional hydration ditch along the southern boundary (Meadow Lake Subdivision) will be provided.
8. The dewatering operations of the excavation area includes pumping water from the main pond to the 0.70 acre sediment pond located 50 feet from the southeastern corner of the existing excavation area. Dewatering will occur as needed, which will not be full time. Once the water is pumped to the sediment pond, water will overflow the controlled outlet located on the east side of the pond, and flow through the ditches leaving the site. Hydration ditches, to recharge the groundwater, will connect directly with the sediment pond outfall.
9. Any person owning or operating a mining site in a manner that adversely affects an in use well through contamination or diminution of groundwater shall provide the well owner with a replacement water supply of equal quantity and quality. A rebuttal is permitted that contamination or diminution of water has not been caused by the mining activity. Since the mining operation began in 2002, Mr. Newbern has installed or compensated five property owners for new wells. The Board may impose a surety to guarantee the well owner a replacement water supply of equal quantity and quality in the event of contamination or diminution of groundwater.
10. The UDO allows the Planning Director, upon receiving a written request for an extension, grant an extension not to exceed ten years provided the mine has maintained compliance with all applicable state and local regulations. Staff is recommending extensions or expansions be processed in accordance with Chapter 2, Section 2.4.6.

II. USE PERMIT REVIEW STANDARDS:

Use Permit Criteria and Staff Findings:

Use permits (UP) are intended to allow the Board of Commissioners flexibility in the administration of the UDO. Through the UP 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 UP, certain criteria must be satisfied. The criteria and staff findings are outlined as follows:

1. The use will not endanger the public health or safety.

Staff Findings:

- a. The mine site will be posted with No Trespassing signs 250 feet apart.
- b. A hydrogeologic model prepared by Edwin Andrews, III, P.G., N.C.L.S.S. on May 21, 2013 indicates the "Green Acres Sand Pit can be operated with little impact on adjoining property to the south."
- c. Two groundwater monitoring wells are in place north and south of the excavation area. Groundwater levels are monitored and recorded monthly, and water samples are taken from the wells annually and tested for coliform and other quality specifications by a State certified laboratory.
- d. All trucks hauling mined materials shall be covered with a tarpaulin.
- e. During periods of dewatering the excavation area, water samples are taken quarterly from the sediment pond outfall and tested for pH, turbidity, and suspended solids by a State certified laboratory.

2. The use will not injure the value of adjoining or abutting lands and will be in harmony with the area in which it is located.

Staff Findings:

- a. A special use permit was issued for the mining operation on August 19, 2002 and the mine operated for ten years.
- b. No bulk waste, hazardous waste, commercial waste, garbage, construction or demolition waste shall be placed on the site.

3. The use will be in conformity with the Land Use Plan or other officially adopted plan.

Staff Findings:

The 2006 Land Use Plan classifies this site as Limited Services within the Jarvisburg subarea. With respects to nonresidential uses, it is essential that the existing community character be preserved in the Limited Services area. The proposed use is in keeping with the policies of the plan, which include:

POLICY ID8: MINING ACTIVITIES, or secondary impacts of mining activities not subject to permit approval by the State of North Carolina, may be subject to review and management by Currituck County. Activities to be addressed may include, but not be limited to, the adequacy of roads serving the mine site, visual impacts during operation and after closing of the mine site, noise and dust considerations, etc.

4. The 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).

Staff Findings:

- a. The proposed use will not produce additional burdens on schools, fire and rescue, or other public facilities.

III. TECHNICAL REVIEW COMMITTEE RECOMMENDATION:

Pursuant to the Unified Development Ordinance, the Technical Review Committee recommends approval subject to the following permit conditions:

1. A fifty foot wide vegetative buffer shall be placed along the south property line from Caratoke Highway to lot 11 in Meadow Lake subdivision. (2002 SUP Condition)
2. The N/F Chappell property shall be screened on the north, west, and south property lines. (2002 SUP Condition)
3. All dead vegetation located along Caratoke Highway shall be replaced with an equivalent plant species.
4. All existing vegetation located along the northern property line (N/F Stephens and N/F Landron) shall be retained for setback reduction.
5. The maximum average depth of the excavation area shall be 25' with a maximum dewatering depth of 20'
6. Discharge water samples that test for settleable solids, turbidity, and pH shall be collected and tested quarterly. Two monitoring wells shall be maintained and tested quarterly. The testing reports shall be submitted to the county within thirty days of the reporting date.

Items requiring discussion and action by the Board:

7. The 2002 special use permit established hours of operation from 7:00 am – 5:00 pm Monday – Friday. Maintenance of the site was permitted 8:00 am – 12:00 pm on Saturday. The UDO allows operations activities from dawn to dusk Monday – Saturday. To reduce the traffic concerns, the board may include a condition that would not allow hauling on Saturday from Memorial Day to Labor Day.
8. The use permit shall be valid for five years and reclamation of the mine site shall occur simultaneously with the excavation activities. Any extension or expansion will require approval by the Board of Commissioners and follow the use permit process established in Chapter 2, Section 2.4.6.
9. The person owning or operating a mining site that operates in a manner that adversely affects an in use well through contamination or diminution of groundwater is responsible for a replacement water supply of equal quantity and quality. In accordance with Section 4.2.5 of the UDO, the Board may impose a surety to guarantee the well owner a replacement water supply of equal quantity and quality in the event of contamination or diminution of groundwater.

IV. PLANNING BOARD RECOMMENDATION:

The Planning Board **recommended approval** of the use permit to operate an extractive industry (mining) as presented and the following conditions:

- Hours of operation are from dawn to dusk Monday – Friday, no hauling on Saturday from Memorial Day to Labor Day.
- The use permit is valid for five years.

Motion carried unanimously.

PLANNING BOARD DISCUSSION *(July 9, 2013)*

Mr. Elliott provided an update of the mining operation.

The Planning Board discussed salinity levels, hydration ditches, monitoring well results, hours of operation, days of operation, and surety guarantee.

Mr. Newbern stated he has installed or compensated five property owners for new wells.

Ms. Thompson asked how deep and wide will the ditch be.

Ms. Smith stated 8 ft. deep by 30 ft. wide.

PLANNING BOARD ACTION

Mr. Cartwright moved to approve PB 13-13 with Technical Committee Review recommendations included in the case analysis and the following conditions:

- Hours of operation are from dawn to dusk Monday – Friday, no hauling on Saturday from Memorial Day to Labor Day.
- The use permit is valid for five years.

Ms. Newbern seconded the motion. Motion carried unanimously.

Commissioner Aydlett suggested sunrise to sunset would be preferable to dawn to dusk for hours of operation. He confirmed setback reclamation was addressed in Staff Findings and there would be no Sunday operations.

Commissioner Griggs questioned the eight year gap in providing monitoring reports. He stated the County should be more diligent with follow-up. He felt that, with a special use permit, a higher level of investigation should be required.

Commissioner Martin questioned water sampling practices.

Ken Elliott, Consultant for Jeffrey Newbern, Owner, stated a full analysis was required annually by the State laboratory. If problems are found, samples are taken monthly.

Commissioner Aydlett suggested semi-annual sampling to provide safety. The owner agreed.

Jeffrey Newbern, Sr., related that water level monitoring was measured monthly.

Commissioner Griggs moved for approval of PB 13-13 with the staff findings and recommendations included in the case analysis with the additional requirements of quality monitoring semi-annually and quantity monitoring monthly. Commissioner McCord seconded the motion. Motion carried unanimously.

Commissioner Griggs moved to direct the County Manager to provide a written response to the staff investigation question. Commissioner Aydlett seconded the motion. Motion carried unanimously.

Administrative Reports

A) Presentation and Consideration of Design/Build Contract for New Animal Shelter

Dan Scanlon, County Manager, thanked the citizens for their interest in the project and their attendance. He gave an explanation of how the committee arrived at the size and estimated cost in order to write the Request for Proposals (RFP) for a design/build team. He related that, as there was yet no design, it was erroneous to state that the building had been downsized, as had been rumored. He compared the present site and facilities with the proposed project.

Seven proposals had been received, one of which was non-responsive. Each committee member individually scored the remaining six. After combining scores, the design/build team of Virtexco/Waller, Todd, and Sadler was recommended. Mr. Scanlon requested approval in order to move forward with executing a contract.

Don Adams with Virtexco, and Howard Collins and Dan Costello with Waller, Todd and Sadler were present. Each shared facts about their companies and showed projects they had designed and/or built. They reviewed their preliminary sketch and elevation drawings for the animal shelter. Mr. Scanlon pointed out that this was not necessarily how the building would look when brought to the commissioners for final approval. Much review and comments by the staff and public would be considered during the design process – the same process followed for all recent building projects.

Commissioner Petrey asked about proposed materials. Concrete panels were planned instead of blocks. He asked if a standing seam metal roof was a county requirement. Mr. Scanlon related it was planned to conform to other buildings in the complex.

Commissioner McCord asked about land coverage. The reply was the building would cover 1/6 of the 5 acre site.

Chairman O'Neal questioned length of stay (LOS). Mr. Scanlon related the county ordinance was 5 or 7 days.

Mr. Scanlon announced that part of the design process would include a charrette to invite public input.

Chairman O'Neal opened the Public Comment period for animal shelter comments.

Polly Gregory, Grandy, opposed spending \$2.5 million for an animal shelter. She related the need for funding for county citizens as evidenced by those utilizing the food pantry, backpack for kids, free dental clinic and the homeless living in the woods. The County should consider the health and welfare of its citizens.

Doris Flora, Moyock, recognized the need for a new animal shelter but opposed spending \$2.5 million. More funds are needed for delivery of meals to homebound.

Virginia Sikes, Currituck, related how she became affiliated with the Animal Lovers Assistance League. She quoted from the draft feasibility study regarding size of the shelter, and related the funding would come from transfer tax. She was there to speak for the animals as they cannot speak for themselves.

Jennifer Symonds, Aydlett, pointed out that a previous news article had projected a Moyock Park to be constructed in 2017, so the Park was not in competition with the animal shelter. She was in favor of building the shelter to sufficient size to accommodate future growth.

Sharon Martz, Currituck, related a story about her family dog and the shelter. If the 5 or 7 day LOS had been applied, her pet would not have been returned to the family. She requested the LOS be extended. She supported the proposal and urged moving forward.

Sybil O'Neal, Maple, understood the need for a new shelter, but opposed spending \$2.5 million. She questioned the ALAL contract, the operating budget for a new building and whether the Sheriff should take over shelter operations to save taxpayer dollars.

Joyce Waldie, Moyock, stated that the animals have no voice and no vote. People do. She felt that the commissioners should each spend one week independent of each other at the animal shelter and see how they'd like it.

Mike Hall, Moyock, had received a lot of information. It appeared the building was moving forward. He advised moving forward and seeing what happens.

Toni Tabb, Moyock, requested delaying moving forward with building a shelter. She opposed spending \$2.5 million due to unemployment and the need to keep taxes low. She felt private money was needed.

Delaine Spruill, Moyock, noted this will be a specialized building. There is a purpose for each room. She was speaking for the animals which have no voice and was in favor of spending \$2.5 million in order to not cut corners.

Chairman O'Neal closed the public comment period for animal shelter comments.

Chairman O'Neal stated there would be a methodical approach to the process.

Commissioner Aydlett moved to approve contracting with Virtexco/Waller, Todd and Sadler to begin the design/build process. Commissioner Martin seconded the motion and thanked everyone for sharing their views with the Board.

Commissioner Aydlett urged attendance of the charrette.

Commissioner McCord stated that personal attacks he had received were not appreciated, particularly since they were due to misinformation from ALAL.

Chairman O'Neal called for the vote. Motion carried unanimously.

New Business

(A) Consent Agenda:

1. Approval of July 15, 2013 Minutes
2. Budget Amendments
3. George Raper CO#1 - Southern Outer Banks Water Plant Expansion
4. 2012-2013 Settlement for Delinquent Taxes
5. CDBG Monthly Status Report
6. ITS Surplus Resolution
7. Approval of Right of Way Agreement with Dominion for Soccer Complex
8. Approval of Whalehead Subdivision Drainage Improvements Phase I Change Order #4
9. Approval of Job Descriptions
10. Resolution to surplus vehicles

Commissioner Aydlett moved to approve the Consent Agenda. Commissioner Martin seconded the motion. Motion carried unanimously.

<u>Account Number</u>	<u>Account Description</u>	Debit Decrease Revenue or Increase Expense	Credit Increase Revenue or Decrease Expense
10750 590000	Capital Outlay	\$ 30,000	
10320 410000	Deed Stamp Excise Tax		\$ 30,000
		\$ 30,000	\$ 30,000

Explanation: *Social Services Administration (10750)* - Increase appropriations to replace 2009 DSS Uplander Van that needs extensive repair. This was scheduled for replacement in the FY 2015 budget.

Net Budget Effect: Operating Fund (10) - Increased by \$30,000.

<u>Account Number</u>	<u>Account Description</u>	Debit	Credit
		Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
56868 590001	.75 MGD RO Treatment Plant	\$ 2,952	
56868 590003	1.5 MGD Water Storage		\$ 2,952
		<u>\$ 2,952</u>	<u>\$ 2,952</u>

Explanation: *Southern Outer Banks Water Construction (56868)* - Move funds to close out the 1.5 MG Water Storage project and to increase funding for change order #1 - George Raper & Son for the treatment plant.

Net Budget Effect: SOBWS Construction (56) - No change.

R E S O L U T I O N

WHEREAS, the Board of Commissioners of Currituck County, North Carolina during its regularly scheduled meeting held on August 5, 2013 authorized the following, pursuant to GS 160A and 270(b), that the property listed below, be sold at auction or given to another government entity

<u>Description</u>	<u>Service Tag/Serial No.</u>	<u>Asset Tag</u>	<u>Item No.</u>
Dell Optiplex GX620	4MST391	6077	J001
Dell Optiplex 745	CG5X4D1	6679	J002
Dell Optiplex 745	FG5X4D1	6677	J003
Dell Optiplex GX620	3MST391	6076	J004
Dell Optiplex GX620	FTRLK91	6152	J005
Dell Optiplex GX620	DTRLK91	6153	J006
Dell Optiplex 745	HH5X4D1	6672	J007
Dell Optiplex GX620	899FPB1	6279	J008
Dell Optiplex GX280	G2R8V71	6036	J009
Dell Latitude D810	2DD9L81	6050	J010
HP Compaq nx9010	CNF3431Z8C	5806	J011
HP Compaq nx9010	CNF3431Z98	5807	J012
Dell Latitude D810	H32NW71	6065	J013
Dell Dimension 2400	C9CS941	5811A	J014
Dell Optiplex 745	6G5X4D1	6673	J015
Dell Optiplex 745	4J5X4D1	6680	J016
Dell Optiplex 745	252NW71	6068	J017
Nortel ICS 0x32 Key Phone System (at Tourism)		NONE	J018
Nortel Call Pilot Voicemail System (at Tourism)		NONE	J019
Samsung 52" LCD TV (at Moyock WC)	ALXS3CFQ207550	6890	J020
Touch Screen Kiosk (at Moyock WC)	NA	6791	J021
QuickBooks 2006 software		6268	J022
Dell Optiplex GX620	H3Q02B1	6166	J023
Dell Optiplex 745	FH5X4D1	6682	J024
HP Laserjet 4350	USBXN20270	6062	J025
Dell Latitude D820	1Y18ZB1	6315	J026
Dell Optiplex 745	F7GPHC1	6402	J027

RESOLUTION

WHEREAS, the Board of Commissioners of Currituck County, North Carolina during its regularly scheduled meeting held on August 5, 2013 authorized the following, pursuant to GS 160A and 270(b) that the property listed below be disposed of as follows:

Asset#	Description	Serial#
TO BE SOLD ON GOV DEALS		
5506	2001 Ford Windstar	2FMZA52461BB17546
5847	2004 Jeep Cherokee	1J4GW48S64C232353
6741	2008 Chevy Uplander	1GNDV23W88D182847

NOW, THEREFORE, BE IT RESOLVED, that the Board of Commissioners of County of Currituck reserves the right to reject any and all bids.

(B) Commissioner's Report

Chairman O'Neal directed the County Manager to request that NC Department of Transportation representatives attend a CCA meeting in Corolla to discuss public safety issues; and to provide a status update on the OLF. He also commented on the new health care law going into effect January 1. Business has been excluded. Individuals will be subject to the mandate, and congressional staffers will receive a subsidy to pay for their health care.

(C) County Manager's Report

No report.

Closed Session

Commissioner Aydlett moved to go into Closed Session pursuant to G.S. 143-318.11(a)(4) to discuss matters relating to the location or expansion of industry or businesses within the county. Commissioner Martin seconded the motion. Motion carried unanimously.

Adjourn

Following the closed session, no action was taken.

There being no further business, Commissioner Martin moved to adjourn. Commissioner Petrey seconded the motion. The meeting was adjourned.