**TOWN OF BURGAW BOARD OF COMMISSIONERS**
**REGULAR MEETING**

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| **DATE:** | October 8, 2019 |
| **TIME:** | 4:00 PM |
| **PLACE:** | Burgaw Municipal Building |
| **BOARD MEMBERS PRESENT:** | Mayor Kenneth Cowan |
| | Mayor Pro-tem Wilfred Robbins |
| | Commissioners Jan Dawson, Bill George, Vernon Harrell, James Murphy |
| **STAFF PRESENT:** | James Gantt, Town Manager |
| | Kristin J. Wells, Town Clerk |
| | Zachary Rivenbark, Town Attorney |
| | Alan Moore, Public Works Director |
| | Louis Hesse, Building Code Administrator |
| | Jim Hock, Police Chief |
| | Clay Jasper, Deputy Fire Chief |
| | Wendy Pope, Finance Officer |
| | Tiffany Byrd, Deputy Finance Officer |
| | Cody Suggs, Parks & Recreation Director |
| | Andrea Correll, Planning Director |
| **MEDIA PRESENT:** | None |
| **INVOCATION:** | Reverend Will Davis |
| **PLEDGE OF ALLEGIANCE:** | All |

The meeting was called to order by Mayor Cowan at 4:00 PM and the invocation was led by Reverend Davis.

**Approval of Agenda**

Mayor Cowan asked for the following items to be added to the agenda prior to approval. *Amended agenda is attached.*

6a. Street Closure Request for the Pender High School Homecoming Parade
7a. Presentation of New Playground Equipment at Harrell Park
10a. Appointment of TDA Member
10b. Appointment of TDA Chairperson
19. Closed Session regarding Personnel

Commissioner George made a motion to approve the agenda as amended. The motion was seconded by Commissioner Robbins and carried by unanimous vote.

**Approval of Consent Agenda**

Commissioner Dawson made a motion to approve the consent agenda. The motion was seconded by Commissioner Robbins and carried by unanimous vote.

A. Approval of the September 10, 2019 regular meeting minutes
B. Approval of the September 10, 2019 closed session minutes
C. Approval of Ordinance 2019-19 Amending FY 19-20 budget to recognize funds received from the NC Blueberry Festival
D. Approval of Ordinance 2019-20 Amending FY 19-20 budget to recognize insurance proceeds from Enterprise Fleet Management

**ORDINANCE 2019-19**
***AMENDING FISCAL YEAR 2019-2020 ANNUAL BUDGET***
***Increasing Revenues and Expenditures***

**WHEREAS,** the Town of Burgaw Board of Commissioners passed an ordinance adopting a budget for FY 2019-2020 on June 11, 2019; and

**WHEREAS,** the Town of Burgaw approved a contract with Craig Brown to construct a blueberry statue; and

**WHEREAS,** the NC Blueberry Festival agreed to fund half of the project; and

**WHEREAS,** the Town has received a check from the Festival in the amount of $1,750 and has received a final invoice from Craig Brown for the same amount; and

**WHEREAS,** the Town of Burgaw would like to recognize $1,750 from the NC Blueberry Festival into the FY 19-20 budget, therefore, additional revenue and expenditure must be recognized.

**NOW THEREFORE, BE IT ORDAINED BY THE TOWN OF BURGAW BOARD OF COMMISSIONERS THAT:**

Section 1: The FY 2019-2020 budget be altered to reflect the following changes:

**INCREASE BUDGETED REVENUE**

| Account Number | Account Description | Amount |
|---|---|---|
| 10-3745-00-800 | P&R Sponsorships | $1,750 |

**INCREASE BUDGETED EXPENDITURE**

| Account Number | Account Description | Amount |
|---|---|---|
| 10-6200-80-150 | P&R Buildings & Grounds | $1,750 |

**Adopted** this the 8th day of October 2019.

**ORDINANCE 2019-20**
***AMENDING FISCAL YEAR 2019-2020 ANNUAL BUDGET***
***Increasing Revenues and Expenditures***

**WHEREAS,** the Town of Burgaw Board of Commissioners passed an ordinance adopting a budget for FY 2019-2020 on June 11, 2019; and

**WHEREAS,** the Town of Burgaw agreed to lease vehicles from Enterprise; and

**WHEREAS,** the Dodge Ram Police truck was involved in an accident on July 27, 2019 and deemed a total loss by insurance and Enterprise leasing; and

**WHEREAS,** the Town has received a check from Enterprise leasing in the amount of $14,394.35 for the difference of value over amount owed; and

**WHEREAS,** the Town of Burgaw would like to recognize $14,394.35 from Enterprise Fleet Management into the FY 19-20 budget, therefore, additional revenue and expenditure must be recognized.

**NOW THEREFORE, BE IT ORDAINED BY THE TOWN OF BURGAW BOARD OF COMMISSIONERS THAT:**

Section 1: The FY 2019-2020 budget be altered to reflect the following changes:

**INCREASE BUDGETED REVENUE**

| Account Number | Account Description | Amount |
|---|---|---|
| 10-3730-00-800 | Insurance Proceeds | $14,394.35 |

**INCREASE BUDGETED EXPENDITURE**

| Account Number | Account Description | Amount |
|---|---|---|
| 10-5100-10-740 | Capital Outlay | $14,394.35 |

**Adopted** this the 8th day of October 2019.

## SPECIAL PRESENTATION

Parks & Recreation Advisory Committee Updates

Olivia Dawson, Chairperson of the Parks & Recreation Advisory Committee, gave an update on the committee and asked for support to do further research and surveys on what the community would like to see in town, such as a revisit to the idea of a skate park, basketball courts, etc. Commissioner Robbins commented a survey was done two or three years ago and asked if we still have the results. Mr. Suggs advised he has previously been made aware of this and will look into pulling past information as well. Commissioner Harrell asked what type of method would be used to gather information. Mr. Suggs commented this has not yet been determined. Commissioner Robbins suggested doing a poll or survey within the school system. There was brief discussion regarding use of the local school gyms, etc.

**Parks & Recreation Advisory Committee Membership Discussion**

Mr. Suggs gave an overview of the attendance to the committee meetings. He commented he would like to replace two seats due to two current members not attending the meetings. Attorney Rivenbark and Mr. Gantt explained there are not two vacant seats, but the two members that Mr. Suggs wishes to replace, need to be removed from the committee prior to making a motion to approve accepting applications to fill the two seats. Commissioner Dawson would like the two current members be notified prior to advertising for two seats. It was the consensus by the board for Mr. Suggs to contact the two members and bring this item back to the board in November.

**Street Closure Request for the Pender High School Homecoming Parade**

Pender High School Principal Caroline Godwin spoke in regards to the upcoming Homecoming Parade for Pender High School. She advised it would be the same route as years past, held around 4:30 PM on Friday, October 25, 2019. Chief Hock advised there will be a few officers and the fire department present during the event. Commissioner Harrell made a motion to allow the street closures for the Homecoming Parade as requested. The motion was seconded by Commissioner George and carried by unanimous vote.

**DEPARTMENTAL ITEMS**

**Parks & Recreation – *Cody Suggs, Director***

**Presentation of New Playground Equipment at Harrell Park**

Mr. Suggs explained new playground equipment for Harrell Park was presented during the recent special meeting regarding capital projects and the board requested this item to be placed on the next regular board meeting. Mr. Suggs shared the packet of the final design, with the additional ADA equipment, and pricing with the board members. Attorney Rivenbark asked if the proposal includes the landing surface. Mr. Suggs advised the mulch, frame the area, installation, etc. There was clarification that if the company installs all of the equipment, the warranty will cover malfunctions, etc. Commissioner Harrell asked about the possibility of salvaging the current playground equipment and donating it to another community that doesn't have a playground. Mr. Suggs advised replacement parts can be purchased if the board wanted to donate the "bones" of it. Commissioner Robbins suggested to have the company install and remove everything. Commissioner Robbins made a motion to approve the request including everything plus the ADA equipment. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

Attorney Rivenbark advised a budget amendment for fund balance appropriation needs to be done. Commissioner Harrell made a motion to approve the budget amendment in the amount of $63,731.89. The motion was seconded by Commissioner Murphy and carried by unanimous vote. Commissioner Harrell requested to preserve the current equipment so someone could use it.

**ITEMS FROM THE ATTORNEY – *Zachary Rivenbark, Town Attorney***

Attorney Rivenbark stated he did not have any items to discuss, but may have a potential item to speak about in closed session.

**ITEMS FROM THE MANAGER – *James Gantt, Town Manager***

**Discussion regarding renovations at the former EMS Building**

Mr. Gantt advised staff is at the point to start moving forward with the preliminary stages of the renovation and asked the board to provide feedback on the draft conceptual plan presented (*on file in the Clerk's office*). Mr. Gantt explained the draft plan includes the addition of squaring off the front of the building, bathrooms and kitchen area in the front, open space in the middle, and two storage rooms in the back of the building. Mr. Gantt asked if this is the vision the board has for the future of the building. Commissioner Dawson believes there needs to be an office in the building since it will be for the Parks & Recreation Department. Commissioner Robbins suggested we look into possibly placing a storage building on the property. Mr. Gantt commented a second building would be additional costs and typically would not be climate controlled. Commissioner Robbins commented he thought it was the intention of the board to move the Parks & Recreation Department to the building, and with that, there needs to be an office. Mr. Gantt shared his thoughts on keeping the office in Town Hall regarding logistics, transactions of money for rentals, etc. Commissioners Robbins expressed his opinion not everyone has to be under the same roof. Commissioner Dawson stated she likes everything about the draft plan, but believes there needs to be an office space. Commissioner Harrell asked the lifespan on the building. Mr. Hesse advised metal buildings will last 50-60 years. Mr. Hesse advised there is also plan to put a brick façade. After some discussion, it was the consensus of the board for Mr. Gantt to bring back further ideas at the next meeting.

## ITEMS FROM MAYOR AND BOARD OF COMMISSIONERS

**Appointment of TDA Member**

Commissioner Robbins made a motion to nominate Myra McDuffie to fill the current vacant seat on the Tourism Development Authority (TDA). Attorney Rivenbark commented the term "greater Burgaw area" is very broad when referred to in the local act. It is his opinion this term does not mean the member has to be in the city limits of Burgaw. Commissioner Dawson asked about a business owner in the town. Attorney Rivenbark commented they could be considered if the board believes the operation of the business is engaged in the promotion of travel and tourism to the greater Burgaw area. Commissioner George seconded Commissioner Robbins' motion to nominate Ms. McDuffie, owner of Mema's Chicken 'N Ribs. Motion carried by unanimous vote.

**Appointment of TDA Chairperson**

Mayor Cowan stated the members of the TDA are Mukesh Shah, owner of the Burgaw Motel, Jennifer Hansen, and Myra McDuffie. Commissioner George made a motion to nominated Ms. Hansen to serve as the TDA Chairperson. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

**Other items from Mayor and Board of Commissioners**

**Commissioner Dawson** asked Mr. Hesse for an update on the dilapidated houses. Mr. Hesse gave an update and advised three houses have been purchased as contractor buy-outs, and one purchased by a contractor to own and renovate. Mr. Hesse stated overall there has been progress and is ongoing.

**Commissioner Dawson** asked the status of the Old Jail and commented she heard Pender County Tourism could not move back in due to some type of issue. Mr. Hesse advised there was a power issue in result of contractor work, but the issue has been resolved and Tourism has recently been moving back in.

**Commissioner Murphy** commented about the house next to the elementary school regarding the tall grass. Mr. Hesse and Ms. Correll stated multiple letters have been sent but have not received any response.

**Commissioner Robbins** commented about an individual that is wanting to host a bicycle fun ride in town before Halloween. He stated he referred them to Mr. Suggs.

**Commissioner Robbins** commented on an email he received about the closure of Highway 53 between Cowan Street and Walker Street to pave where a water leak was repaired. He requested to make sure the Police Department was aware and to have traffic control for the large trucks trying to turn, etc.

**Commissioner Robbins** stated he received a complaint regarding the right side of Clark Street having a lot of debris on the sidewalk and asked Public Works to look into getting this cleaned.

**Commissioner Robbins** asked why one end of the railroad right-of-way has been mowed, but the other end hasn't been done. Mr. Moore advised this is on their list to get done.

**Commissioner George** commented he has a problem with the town hall running out of space. He stated he knew the Fire Department has been running out of space for quite a while and the time has come that the department will need to have space for full-time firefighters. He commented the Fire Department may need to be moved so Town Hall can have more space. Commissioner Robbins asked about the possibility of adding additional space to the top of the Fire Department. Commissioner George commented he didn't know if that would work structural and foundation wise because there was a ditch between Town Hall and the fire bay when it was constructed.

**Commissioner Harrell** stated the tennis courts are looking bad due to leaves, sticks and weeds. He asked Mr. Suggs and Mr. Moore to see this area cleaned up.

**Commissioner Harrell** asked the status on the K-9 policy for the Police Department. Attorney Rivenbark commented he and staff have met and will further discuss this matter with the board during closed session.

**Commissioner Harrell** asked about the progress on the tax incentive program. Ms. Correll advised she has spoken with Professor Mulligan at the School of Government and we can do grants and explained the ways to allow redevelopment of different types of housing. Commissioner Harrell expressed his concern with the town spending money to get rid of the dilapidated houses. Commissioner Harrell requested Ms. Correll to continue to pursue this project. After a few comments from Commissioner Robbins, he agrees with Commissioner Harrell and thinks this type of program would be a good idea.

**Mayor Cowan** advised Fire Chief Taylor is back in town after being deployed for a year. Chief Taylor will be returning to work on October 15, 2019. Mayor Cowan stated Deputy Fire Chief Jasper has done an outstanding job during Chief Taylor's absence.

**Mayor Cowan** updated the board regarding discussions with Senator Rabon and the Department of Commerce to get assistance near I-40 with the drainage issues. He advised they should be coming down in the next couple of weeks. Mayor Cowan hopes he will have more information to bring back to the board at the next meeting because this is a serious issue and we don't want the industrial plants in that area to move somewhere else due to the drainage issues.

**Mayor Cowan** asked about the progress of the modular home on North Wright Street. Mr. Hesse advised there is progress and it is moving along.

**Mayor Cowan** commented about the upcoming event "Burgaw Autumn Harvest" to be held on Saturday, November 2, 2019. He stated there are a few tickets left and hopes for a great event to bring in people to town.

**CLOSED SESSION**

Commissioner Harrell made a motion at 5:08 PM to go into closed session pursuant to NCGS 143-318.11 (a) (6) Personnel. The motion was seconded by Commissioner Robbins and carried by unanimous vote.

Commissioner Dawson made a motion at 5:37 PM to go back into open session. The motion was seconded by Commissioner Harrell and carried by unanimous vote.

**BREAK 5:37 PM – 5:42 PM**

**PUBLIC FORUM**

*There was no one present to speak during public forum.*

**PUBLIC HEARING #1**

**Consideration of amending a conditional use permit case # 2018-05-15-3229-73-1647 for condition #3, " Applicant shall pave the area to the right of the building to the dumpster and it will be used for off-street loading and unloading" and amending to a gravel lot to enable the storm water to be absorbed. The applicant petitioned the town for a conditional use permit for a "Restaurant, Full Service" use in the B-2 Highway Business zoning district to be located at 211 US Highway 117 South (PIN 3229-73-1647-0000) within the Town of Burgaw corporate limits.**

Mayor Cowan opened the public hearing at 5:43 PM.

Ms. Correll presented background regarding this hearing including but not limited to the following. *The full document is on file in the clerk's office.*

The following witnesses submitted testimony to the board of Commissioners during the course of the hearing:
- Andrea Correll, Town of Burgaw Planning Director
- Joel Sanchez, son of the owners
- Gregorio Sanchez, owners

In making the findings of fact and reaching the conclusions of law below, the board has considered, in addition to arguments offered at the hearing, the following documents, exhibits, and reports:
- Original Application and Letter of Intent (Exhibit 1)
- Site Plan (Exhibit 2)
- Aerial Map (Exhibit 3)
- Zoning Map (Exhibit 4)
- Future Land Use Map (Exhibit 5)
- Site Photographs March 22, 2018 and September 2019 (Exhibit 6)
- Ordinance Requirements (Exhibit 7)
- Compliance with Town of Burgaw adopted Plans (Exhibit 8)
- Review comments from Town Departments (Exhibit 9)
- NCDEQ Letter of Exemption (Exhibit 10)
- Applicant's documentation on Gravel lot (Exhibit 11)

The applicant is applying to the town to revise condition #3 conditional use permit to allow a gravel parking lot instead of paved parking from the right of the building to the dumpster and it will be used for off-street loading and unloading.

- The property is zoned B-2, Highway Business, and the Town of Burgaw Unified Development Ordinance lists full service restaurant as a conditional use in this zoning district.
- In order for a permit to be issued, the Unified Development Ordinance requires that
    - The use will not materially endanger the public health, safety, or general welfare if located where proposed and developed according to the plan as submitted and approved;
    - The use meets all required conditions and specifications;
    - The use will not adversely affect the use of or any physical attribute of adjoining or abutting property or the use is a public necessity; and
    - The location and character of the use, if developed according to the plan as submitted and approved including condition #3 conditional use permit to allow a gravel parking lot instead of paved parking from the right of the building to the dumpster and it will be used for off-street loading and unloading, will be in harmony with the area in which it is to be located and in general conformity with the Town of Burgaw Unified Development Ordinance, Burgaw 2030 Comprehensive Land Use Plan.

Upon completion of the presentation and request by Ms. Correll, the applicant had the opportunity to speak.

Joel Sanchez, on behalf of the applicant, spoke regarding the Conditional Use Permit that was obtained in 2018 for the future El Mirasol restaurant. He stated the family thought they were allowed to maintain the gravel area in front of the dumpster. On behalf of the family/applicant, he requested the Board of Commissioners to amend condition #3 on the Conditional Use Permit to allow the gravel lot. He stated the paving of this area would result in a financial hardship for the family. Mr. Sanchez presented the board with copies of the quotes for having the lot paved.

Commissioner George asked Mr. Sanchez if the family is considering paving of the lot in the future. Mr. Sanchez commented “yes, in the future.”

Ms. Correll advised she reviewed the standards from the original Conditional Use Permit in 2018 and below are the amended standards to reflect the amendment requested.

**Standard 1: The use will not materially endanger the public health, safety, or general welfare if located where proposed and developed according to the plan as submitted and approved.**

a. Changing condition #3 to enable the gravel lot prepared under the review of the NCDEQ will not endanger public health, safety or general welfare as constructed.

**Standard 2: The use meets all required conditions and specifications.**

- In reviewing the request to revise condition #3, the Town of Burgaw Board of Commissioners finds as a specific finding of fact and reflect in their minutes the permit will comply with the standards required based on the evidence presented at the hearing.

**Standard 3: The use will not adversely affect the use of or any physical attribute of adjoining or abutting property, or the use is a public necessity.**

- The use is not a public necessity.
- The existing structure has been permitted and developed as a restaurant in the past and is located in B-2 Highway Business Zoning District. The site has ample ingress and egress to US Hwy 117 South.
- The rear of the property is adjacent to a residentially zoned district and has an existing natural buffer of trees and shrubs along the property line. The applicant preserved and is maintaining the buffer.

**Standard 4: The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with the Town of Burgaw Unified Development Ordinance, Burgaw 2030 Comprehensive Land Use Plan and Burgaw Pedestrian and Bicycle Plan.**

- The site for the proposed restaurant is zoned B-2, Highway Business, is surrounded by other properties zoned B-2, and is across the street from other commercial development. The request tis not to change the previous approved CUP but to request that the condition 3 requiring a paved lot to the right of the building toward the dumpster be allowed to be gravel.
- The property was permitted as a restaurant.
- Conformity with the Burgaw 2030 Comprehensive Land Use Plan and Burgaw Pedestrian and Bicycle Plan is outlined in the attached Compliance with Town of Burgaw Adopted Plans document.
- A bike rack has been installed.

As a result of this information, staff finds the following conditions which were met:

- The bicycle rack has been installed.
- The proposed project is located on US Hwy 117 South, a well-traveled highway for automobiles and trucks and is unlikely to be subject to heavy pedestrian traffic. Sidewalks should not be required at this location.

Based on the above Findings of Fact, the Town of Burgaw Board of Commissioners makes the following Conclusions of Law and Decision:

1. The proposed full service restaurant use enabling the gravel lot will not materially endanger the public health, safety, or general welfare if located where proposed and developed according to the plan as submitted and approved.

a. Changing condition #3 to enable the gravel lot prepared under the review of the NCDEQ will not endanger public health, safety or general welfare as constructed.

2. The proposed full service restaurant use enabling the gravel lot meets all required conditions and specifications.

   a. In reviewing the request to revise condition #3, the Town of Burgaw Board of Commissioners finds as a specific finding of fact and reflected in their minutes the permit will comply with the standards required based on the evidence presented at the hearing.

3. The proposed full service restaurant use enabling the gravel lot will not adversely affect the use of or any physical attribute of adjoining or abutting property, or the use is a public necessity.

   a. The existing structure has been permitted and developed as a restaurant in the past and is located in B-2 Highway Business Zoning District. The site has ample ingress and egress to US Hwy 117 South.
   b. The rear of the property is adjacent to a residentially zoned district and has an existing natural buffer of trees and shrubs along the property line. The applicant preserved and is maintaining the buffer.

4. The location and character of the full service restaurant use, enabling the gravel lot if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with the Town of Burgaw Unified Development Ordinance, Burgaw 2030 Comprehensive Land Use Plan and Burgaw Pedestrian and Bicycle Plan.
   a. The site for the proposed restaurant is zoned B-2, Highway Business, is surrounded by other properties zoned B-2, and is across the street from other commercial development. The request tis not to change the previous approved CUP but to request that the condition 3 requiring a paved lot to the right of the building toward the dumpster be allowed to be gravel.
   b. The property was permitted as a restaurant.
   c. Conformity with the Burgaw 2030 Comprehensive Land Use Plan and Burgaw Pedestrian and Bicycle Plan is outlined in the attached Compliance with Town of Burgaw Adopted Plans document.
   d. The bicycle rack has been installed.
   e. The proposed project is located on US Hwy 117 South, a well-traveled highway for automobiles and trucks and is unlikely to be subject to heavy pedestrian traffic. Sidewalks should not be required at this location.

**Based on the foregoing findings of fact and conclusions of law, it is hereby adjudged, decreed, and ordered as follows:**

That the applicant's petition to change condition #3 requesting a gravel lot allow a gravel parking lot instead of paved parking from the right of the building to the dumpster and it will be used for off-street loading and unloading for previously approved a conditional use permit for a "full service restaurant" use is approved.

After review of the standards, Commissioner Robbins asked if the applicant is going to put new gravel in the lot. Mr. Sanchez advised the current lot is new gravel.

Mayor Cowan closed the public hearing at 5:55 PM.

Ms. Correll stated the request to the board is to change condition #3 to enable the gravel lot prepared under the review of the NCDEQ will not endanger public health, safety or general welfare as constructed. Commissioner Dawson made a motion to approve the request as stated by Ms. Correll. The motion was seconded by Commissioner George and carried by unanimous vote.

**PUBLIC HEARING #2**

**Consideration of an amendment to the official Town of Burgaw Zoning Map rezoning a 19.12 and 11.09 acre tracts located along Hwy 117 N across from Ed Cowan Road from RA to R-12 – CZ1. The proposed R12-CZ district would cover 30.21 acres and further identified as parcel ID numbers 3320-5-3383-0000 and 3320-50-6183-0000.**

Mayor Cowan opened the public hearing at 5:57 PM.

Ms. Correll presented background regarding this hearing. *Documents on file in the clerk's office.*

After the presentation by Ms. Correll, the applicant had the opportunity to speak.

Jimmy Fentress, Stroud Engineering, spoke on behalf of the applicant. He advised they have reviewed in detail the staff conditions for the plan they have proposed for conditional rezoning. He commented they have no issues with any of the conditions except the condition that requires the second access driveway, Edgewood Drive, to be paved to DOT standards. Mr. Fentress stated Edgewood Drive was a road that was established in 1958 and is an unimproved right-of-way. He commented it immediately abuts to the WLS Property and they have not found any exclusive rights recorded anywhere. Mr. Fentress stated their proposal is to have a gravel, all-weather, fire road on Edgewood Drive. The applicant is agreeable to recording a road maintenance agreement for Edgewood Drive to be perpetually maintained by the HOA for the subdivision to the standard as established in appendix D of the fire code. Mr. Fentress commented the costs associated with the paving of the fire access road, in conjunction with an installation of a pump station and other expenses, would cost too much for the project.

Commissioner Dawson asked Mr. Fentress if they had the legal easement for Edgewood Drive. Mr. Fentress stated the drive abuts the property and is a right-of-way on record. Commissioner Dawson asked if the applicant had legal access to the road. Attorney Rivenbark commented it is the applicant's burden to prove they have legal access. Commissioner Dawson stated she would need to see a legal document that allows the applicant access during the preliminary plat stage of the project.

Commissioner Dawson asked about the all-weather surface. Ms. Correll stated her standards fall on the roads within the subdivision. The fire access road (Edgewood Drive) is not part of the subdivision. Attorney Rivenbark stated if the board does not have a problem with the applicant's request to gravel the road, as a conditional rezoning, if the applicant agrees, you can forego appendix D that requires it to be a harden surface. Attorney Rivenbark stated it does not have to be a harden surface road if the board and the applicant agrees. Commissioner Dawson asked about the fire code in relation to why we were originally requiring the paved road. Mr. Hesse commented over 30 lots requires a second lot, but does not say it has to be a DOT paved road, but rather it has to be a DOT all-surface road. Mr. Hesse stated as far as the fire code, staff is satisfied with the rock road proposed. He commented it seems the town ordinance is the grey area regarding a pre-existing road from 1958.

After some discussion, Mr. Fentress stated the applicant would agree to not paving the fire access road.

Commissioner Dawson asked Deputy Fire Chief Jasper if he had any concern regarding fire trucks going in and out of the road. Deputy Fire Chief Jasper commented the only concern he has is six to ten years from now when the road hasn't been maintained and the HOA has no money to fix it, as like the situation in the Teal Briar subdivision. Mr. Fentress stated the HOA would establish an escrow that would be earmarked for the maintenance of the gravel road. In the absence of the maintenance, the town would have recourse against the HOA in not maintaining the road.

There was further discussion regarding the maintenance of the road. The roads would be turned over to the town as soon as possible. Commissioner George asked if the applicant would be willing to pave the fire access road within two years. The applicant stated it would be financially unfeasible to pave the road and would be a deal breaker for the project.

There was discussion regarding the wetlands. Mr. Fentress stated they will be working through this process and obtaining a nationwide permit. This entire process would have to be completed prior to coming back to the town with a preliminary plat.

Commissioner Dawson asked Attorney Rivenbark for clarification on the road maintenance agreement. Attorney Rivenbark stated the board would need to verify the length of the road and could also place a condition the applicant to send the proposed road maintenance agreement to him for approval moving forward.

Commissioner Robbins commented about the road maintenance agreement later on in the project. Attorney Rivenbark stated there could be a road maintenance agreement between the applicant, if they agree, and its subsidiary and/or HOA, which means as soon as it's built. Mr. Fentress stated the developer would maintain the road until it is given to the HOA.

Mr. Fentress stated the covenant would have to be recorded when the final plat is presented. Mr. Owens spoke in regards to the HOA process.

Commissioner George would like to have the town's approval by the Public Works Director on the gravel road once it's constructed.

After some discussion regarding the maintenance of the road, Attorney Rivenbark clarified what he believed the board wanted. The board is asking the applicant to agree with the conditions of the maintenance of the road as follows: Edgewood Drive, the twenty foot wide fire apparatus second access, all-weather road will be maintained by the applicant and in the future by the established HOA. Mr. Fentress stated the applicant agrees.

There being no further questions, Mayor Cowan closed the public hearing at 6:45 PM.

**Ordinance 2019-21 Approving an amendment to the Town of Burgaw Zoning Map rezoning 19.12 acre and 11.09 acre tracts parcel ID: 3320-50-3383-0000 and 3320-50-6183-0000 located on US Hwy 117 N and across Hwy 117 from Ed Cowan Road from RA to R-12-CZ-1**

Commissioner Robbins made a motion to approve the applicant's request for rezoning with the conditions set forth by Attorney Rivenbark. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

**ORDINANCE 2019-21**
**APPROVING AN AMENDMENT TO THE TOWN OF BURGAW ZONING MAP REZONING 19.12 ACRE AND 11.09 ACRE TRACTS PARCEL ID: 3320-50-3383-0000 AND 3320-50-6183-0000 LOCATED ON US HWY 117 N AND ACROSS HWY 117 FROM ED COWAN ROAD FROM RA TO R-12 – CZ-1**

**WHEREAS**, North Carolina General Statute 160A- 383 requires that zoning regulations shall be made in accordance with a Comprehensive Plan; and

**WHEREAS**, NCGS 160A-383 also states that when adopting or rejecting any zoning amendment, the governing board shall approve a statement describing whether its action is consistent with an adopted Comprehensive Plan and any other officially adopted plan that is applicable, and briefly explain why the board considers the action taken to be reasonable and in the public interest; and

**WHEREAS,** the Board of Commissioners finds that the proposed condition re-zoning of a 19.12 and 11.09 acre tracts located of US Hwy 117 N across from Ed Cowan Road from RA to R-12 – CZ1.and further identified as tax reference PIN numbers 3320-50-3383-0000 and 3320-50-6183-0000, is reasonable and in the public interest because the conversion of approximately +/- 30.21 acres from RA (Residential) zoning designation to R-12 – C1(Residential) zoning designation is consistent with the Burgaw 2030 Comprehensive Land Use Plan, reasonable, and in the public interest;

**NOW THEREFORE BE IT ORDAINED BY THE TOWN OF BURGAW BOARD OF COMMISSIONERS THAT:**

**SECTION 1**: The Town of Burgaw Official Zoning Map be amended and the parcels, PIN reference numbers 3320-50-3383-0000 and 3320-50-6183-from RA (Residential) zoning designation to R-12 – CZ-1 (Residential) zoning designation with the following conditions:

- Wetlands should be established in additional common open space outside of the platted lots for conditional approval consideration meeting the standards of set asides of environmentally sensitive areas found in the land use plan.

- Drainage infrastructure shall be shown on the preliminary plat and should be removed from the deeded portions of lots and included in the open space to be owned by a Home Owners Association.
- 5' Sidewalks shall be required along both sides of all streets and extending to Hwy 117 and shall be dedicated to the public upon completion of the development.
- Streets shall meet NCDOT standards of construction shall be dedicated to the public upon completion of the development. All streets shall comply with all town ordinances and applicable fire codes throughout the construction process.
- Voluntary annexation shall be required for Town water and sewer utility service.
- All utilities should be located within the proposed street rights-of-way, not in easements along the front property lines.
- Approvals from Pender County Utilities shall be obtained prior to preliminary plat and a water master meter shall be located at the beginning of the development. The water system in the interior of the development shall be dedicated to the Town during the final plat stage and each lot shall be metered.
- Sewer infrastructure shall be dedicated to the Town during the final plat stage.
- The Applicant shall obtain all required permits and approvals from NCDOT and NCDEQ prior to approvals for preliminary plat.
- The pump station shall be dedicated to the Town upon completion of the development and shall meet NCDEQ standards, have SCADA System, generator, and proper fencing.
- Blow-offs shall be located at the end of the water lines or the water line shall be looped.
- All road ends shall meet Town Standards including the Fire code.
- Tree survey shall be completed at subdivision stage and proper tree removal permits shall be obtained prior to tree removal.
- Location of a mailbox kiosk must be identified during the preliminary plat stage unless waived by the US Postal Service.
- The subdivision shall not consist of the creation of a flag lot.
- All lots shall conform to the lot frontage and minimum square footage requirements for an R-12 zoning district
- Any conflict between the approved plan and federal, state, and local regulations will not require changes to the property zoning and will be resolved during the subdivision review process.

- All the comments provided by the TRC and shown above must be addressed.

- Recorded easements for a boardwalk walking trail are required from the street end into northern and southern common open space which will be maintained by the Homeowners' association.

- The proposed 2nd access road is acceptable if installed per DOT specifications as required by our ordinance.

- The paved road width at the hydrant locations will need to be increased to 26' for 20' before and 20' after the hydrant per figure D103.1.

**SECTION 2**: this amendment to the Unified development Ordinance (UDO) becomes effective immediately upon adoption of this ordinance on this, 8th day of October, 2019.

**Resolution 2019-22 Adopting a statement regarding the consistency of the Premium Partners, LLC conditional rezoning request with the Burgaw 2030 Comprehensive Land Use Plan**

Commissioner Dawson made a motion to approve Resolution 2019-22. The motion was seconded by Commissioner Robbins and carried by unanimous vote.

**RESOLUTION 2019-22**
**ADOPTING A STATEMENT REGARDING THE CONSISTENCY OF THE PREMIUM PARTNERS, LLC CONDITIONAL REZONING REQUEST WITH THE BURGAW 2030 COMPREHENSIVE LAND USE PLAN**

**WHEREAS,** applicant Premium Partners, LLC is requesting the rezoning of a 19.12 acre tract and a 11.09 acre tract (PIN 3320-50-6183-0000 and 3320-50-3383-0000) located off Highway 117 N and across Hwy 117 from Ed Cowan Road from RA to R-12 – C1; and

**WHEREAS,** Town of Burgaw planning staff have reviewed the proposed rezoning for consistency with the Burgaw 2030 Comprehensive Land Use Plan and presented their findings to the Town of Burgaw Planning Board and Town of Burgaw Board of Commissioners; and

**WHEREAS,** the Town of Burgaw Planning and Zoning Board voted at their September 19, 2019 meeting to recommend the adoption of a draft consistency statement to the Board of Commissioners; and conditions

**WHEREAS,** the Town of Burgaw Board of Commissioners reviewed the staff report and draft consistency statement at their October 8, 2019 meeting and find the requested rezoning to be consistent with the Burgaw 2030 Comprehensive Land Use Plan, reasonable, and in the public interest;

**NOW THEREFORE BE IT RESOLVED BY THE TOWN OF BURGAW BOARD OF COMMISSIONERS THAT** the proposed condition rezoning is consistent with the Burgaw 2030 Comprehensive Land Use Plan because it encourages quality and controlled growth that enhances and maintains the community's character. In addition, the proposed rezoning is reasonable and in the public interest because it contributes to the town's housing stock and attracts new residents who will support and attract local businesses.

**Adopted** this 8th day of October, 2019.

**Clerk Certification – Petition for Voluntary Annexation received from WLS Properties, Inc.**

Commissioner Dawson made a motion to approve the clerk's certification. The motion was seconded by Commissioner Murphy and carried by unanimous vote.

**PUBLIC HEARING #3**

**Consideration of voluntary annexation of property owned by WLS Properties, Inc. located adjacent to and east of US Hwy 117 at its intersection with Ed Cowan Road consisting of 30.21 acres, more or less, named tracts 1 and 2, further identified as parcel ID numbers 3320-50-3383-0000 and 3320-50-6183-0000.**

Mayor Cowan opened the public hearing at 6:48 PM.

Ms. Correll stated this annexation is voluntary under North Carolina law and applicant has provided all required documentation.

Commissioner Harrell asked Mr. Moore how close the town's water lines are to this property. Mr. Moore stated the county water lines are at the road frontage of the property. Mr. Fentress stated the project would be master metered at the right of way at Highway 117. Mr. Gantt stated the town plans to ask the county to be a bulk purchaser, the town pay the county for the water; the development would be master metered and the town would charge the customers for their usage. He stated this would be a better solution so the town could have full control of the water and sewer within the subdivision.

Mayor Cowan closed the public hearing at 6:52 PM.

**Ordinance 2019-22 Approving the amendment of the Town of Burgaw Zoning Map to reflect the annexation of parcel ID numbers 3320-50-3383-0000 and 3320-50-6183-0000.**

Commissioner Harrell made a motion to adopt Ordinance 2019-22. The motion was seconded by Commissioner Robbins and carried by unanimous vote.

**ORDINANCE 2019-22**
**APPROVING THE AMENDMENT OF THE TOWN OF BURGAW ZONING MAP**

**WHEREAS,** the Board of Commissioners has been petitioned under G.S. 160A-31 to voluntarily annex the area described below into the corporate limits of the Town of Burgaw; and

**WHEREAS,** WLS Properties, Inc. (Applicant) is petitioning for approximately 30.21 acres located adjacent to and east of US Hwy 117 at its intersection with Ed Cowan Road to be voluntarily annexed into the corporate limits of the Town of Burgaw. This request includes tracts 1 and 2, further identified as parcel ID numbers 3320-50-3383-0000 and 3320-50-6183-0000; and

**WHEREAS,** the Town Clerk has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at the Burgaw Municipal Building at approximately 5:30 PM on October 8, 2019, after due notice by publication on September 28, 2019 and October 3, 2019; and

**WHEREAS,** the Board of Commissioners finds that the petition meets the requirements of G.S. 160A-31; and

**WHEREAS,** the Board of Commissioners have adopted the Certificate of Sufficiency; and

**NOW THEREFORE BE IT ORDAINED BY THE TOWN OF BURGAW BOARD OF COMMISSIONERS THAT:**

**SECTION 1.** The Town of Burgaw municipal boundary is hereby amended and the following parcels are voluntarily annexed:

**SECTION 2.** Upon and after October 8, 2019 the above described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the Town of Burgaw and shall be entitled to the same privileges and benefits as other parts of the Town of Burgaw. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10.

**SECTION 3.** The Mayor of the Town of Burgaw shall cause to be recorded in the office of the Register of Deeds of Pender County within 6 months of the passage of this ordinance, and in the office of Secretary of State at Raleigh, North Carolina an accurate map of the annexed territory, described in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the Pender County Board of Elections, as required by G.S. 163-288.1.

**Adopted** this eighth day of October, 2019.

### Other items

Mr. Gantt advised the board that he and Mr. Moore have been talking to a company about doing a road treatment system called Liquid Road. He stated they have done several towns and communities. It is similar to a sealant that would be placed on top of a parking lot, but is more durable and thicker, that preserves the road from cracking, etc. Mr. Gantt stated they are coming to do a demonstration of this on South McRae Street between Satchwell Street and Hayes Street. He commented this would be done at no cost to the town.

Mr. Gantt also commented there will be an employee Family Fun Day this coming Sunday at Rotary Park.

### ADJOURNMENT

Commissioner Dawson made a motion to adjourn. The motion was seconded by Commissioner Harrell and carried by unanimous vote.

The meeting was adjourned at 6:55 PM.

____________________________
Kenneth T. Cowan, Mayor

Attest:____________________________
Kristin J. Wells, Town Clerk