

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

DATE: February 9, 2021
TIME: 4:30 PM
PLACE: Historic Train Depot, 115 S. Dickerson Street
BOARD MEMBERS PRESENT: Mayor Kenneth Cowan
Mayor Pro-tem Wilfred Robbins
Commissioners Jan Dawson, Bill George, James Murphy, Vernon Harrell
STAFF PRESENT: James Gantt, Town Manager
Kristin J. Wells, Town Clerk
Zachary Rivenbark, Town Attorney
Wendy Pope, Finance Officer
Andrea Correll, Planning Director
Kimberly Rivenbark, Deputy Town Clerk
Jim Hock, Police Chief
Alan Moore, Public Works Director
Clay Jasper, Deputy Fire Chief
Cody Suggs, Parks & Recreation Director
MEDIA PRESENT: Unknown
INVOCATION: Nick Smith
PLEDGE OF ALLEGIANCE: All

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

Approval of Agenda

Commissioner Harrell made a motion to approve the agenda as presented. The motion was seconded by Commissioner Murphy and carried by unanimous vote.

Approval of Consent Agenda

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

- A. Approval of the December 8, 2020 Regular Meeting Minutes
- B. Approval of the December 8, 2020 Closed Session Minutes

Introduction of Intern

Mr. Suggs introduced Jayna Donaldson, an intern from UNCW, who is currently acting as the town's Public Administration Fellow. He said she has been on board for about two weeks and will be with the town until the second week of April. Mr. Suggs said the internship is a twelve-week program and the internship is required prior to graduation. He also said one of the requirements in the program is to establish a lasting impression on the town. She is currently working on new landscaping at Hankins Park, installing wayfinding signs along the Osgood Canal, and placing an image by stencil along the trail.

SPECIAL PRESENTATIONS/REQUESTS

Courthouse Avenue Master Plan – Gary Warner, WithersRavenel

Gary Warner, Design & Planning Senior Director with WithersRavenel, gave a presentation and shared information from the recent open house event for the Courthouse Avenue Improvement Project. *Presentation documents on file in the Clerk's office.* Mr. Warner showed three concepts of the project, which were shown during the open house. He said "concept C" overwhelming received the most votes. Mr. Warner explained "concept C" includes a pedestrian and vehicle capable street, no curb and gutters, with Dees Park containing a green space, water feature and pavilion.

Commissioner Harrell asked for more details on the water feature. Mr. Warner said it is considered an interactive fountain. It would not contain dump buckets, water cannons, etc. like a traditional splash pad. Mr. Warner said it would be water that would come up from the ground where children can run through and play.

Commissioner George said the design really looks great. Commissioner Robbins also said it looks good and thanked Mr. Warner.

Mayor Cowan asked Mr. Warner if he had any estimates for the project. Mr. Warner said they are currently going through numbers and doing calculations, but is looking like \$1.75-\$2.25 million. He said there are a lot of variables, such as relocating or burying of the power lines, etc.

Commissioner Harrell asked if the design included water and electricity in the bollards. Mr. Warner confirmed the design does include the bollards with electricity and water would be available in a couple of different locations.

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

Attorney Rivenbark stated he only had an item for discussion in closed session.

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

Updates on current town projects

I&I Study: Mr. Gantt said the study McKim & Creed previous did showed significant I&I from a number of routes. The next step in the study to further identify the issues would be smoke testing. Mr. Gantt said the amount of the contract for the smoke testing is \$49,500. This would include smoke testing the entire town. Mr. Gantt said these funds are not budgeted in the water and sewer enterprise fund. Commissioner Dawson made a motion to appropriate these funds for the smoke testing. The motion was seconded by Commissioner Robbins and carried by unanimous vote.

US Highway 117 Sewer Project: Mr. Gantt said it is almost complete and the easements are about 95% complete. He said staff is planning to hold a meeting soon to go through the documents. Mr. Gantt said he hopes to have an official timeline on the project by the next board meeting.

Osgood Canal Project: Mr. Gantt said surveying is being done. Once the surveying data is back, they can do the design plans. Depending on the estimate cost of the design plan, will determine where the town goes from there. Mayor Cowan said time is of the essence for this project.

Old EMS Building Renovation: Mr. Gantt advised the bid ends on February 19, 2021, and said there has not been much communication with contractors. He said if we do not receive any bids, we will continue advertising for a period of time.

ITEMS FROM MAYOR AND BOARD OF COMMISSIONERS

Commissioner Robbins thanked everyone for their work for the New Year's Eve Blueberry Drop. There were brief comments made on the recent awards received for the event. The virtual event was recognized as 2021 Excellence Award Winners from the NC Association of Festivals & Events during the annual Virtual Show Fest 2021 Event Innovators Conference. WO Grubb Crane Rentals received Sponsor of the Year and event also won the category for Best Print Media/Poster.

Commissioner Robbins said the new landscaping at the pocket park on Wright Street looks nice.

Commissioner Dawson thanked Mr. Moore for repairing a patch she had previously mentioned.

Commissioner Murphy thanked Mr. Moore for his quick response for a collapsed pipe at the Mt. Pisgah Church parsonage.

Commissioner George said the town is always kept up and thanked staff for doing a good job.

Commissioner Harrell expressed his appreciation to the town staff for the job that has been done in coordinating with the TV show filming. He said the comments he has received have been very complimentary. He asked Mr. Gantt if there are any lingering situations that have not been dealt with or that need to be dealt with as far as with businesses or townspeople. Mr. Gantt said he didn't know of anything currently. He said we address any issues with Mike Hewett with the filming crew and it is taken care of quickly. Commissioner Harrell thanked Mr. Suggs for being the liaison for the filming crews reserving town facilities.

Mayor Cowan reminded everyone of the first responder lunch hosted by Smithfield Foods in front of the hospital.

CLOSED SESSION – 5:04 PM

Commissioner Robbins made a motion to go into closed session pursuant to NCGS 143-318.11(a)(3) Attorney/Client Privilege. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

OPEN SESSION – 5:31 PM

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

SPECIAL PRESENTATION

Burgaw Fire Department Annual Awards – Clay Jasper, Deputy Fire Chief

Due to the pandemic, the Burgaw Fire Department could not hold their annual banquet and awards ceremony as a special event. Deputy Fire Chief Jasper presented the following annual awards during the meeting:

- Tommy Garris- Service award for 35 years as a member of the department
- Shack Humphrey- Rookie of the Year
- Sam George- Officer of the Year
- Ned Roper- Firefighter of the Year

PUBLIC FORUM

John Westbrook, 410 E. Fremont Street, said the interaction with the filming has certainly improved and thanked Mr. Gantt for taking care of the issues. Mr. Westbrook also said if the town is interested in installing a charging location for electric cars, he is offering one of the parking spaces in front of his store, Burgaw Antiqueplace. He also commented on the nice design done by Mr. Warner for the Courthouse Avenue project. Mr. Westbrook said if the town will do it, people will come.

PUBLIC HEARINGS

Public Hearing #1 – Andrea Correll, Planning Director

Consideration of a Major Subdivision Preliminary Plat Application for Linda Lane Land Division, a 3.57-acre tract containing eight lots, having new streets off of Whrens Street and Linda Lane and further identified as parcel identification numbers 3229-61-8269-0000 & 3229-61-7439-0000. The Board of Commissioners will render a quasi-judicial decision whether to approve or deny the preliminary plat based on the requirements of the Town Unified Development Ordinance and evidence presented at the hearing.

This Public Hearing was tabled at the January 12, 2021 Board of Commissioners Meeting.

Mayor Cowan called upon Ms. Correll to continue the public hearing. Ms. Correll stated she had nothing to add to the staff report from what was presented at the last meeting.

Jimmy Fentress, Stroud Engineering, spoke on behalf of the Linda Lane Land Division proposal. He said he was present last month and the public hearing was tabled to review the drainage and traffic concerns in the neighborhood. Mr. Fentress stated in the course of this review, he presented a concept to the planning department to go back to their original plan that did not connect to Whrens Street. He said it is considered enough of a change that he feels the request needs to go back to the technical review committee (TRC) and the Planning Board. Mr. Fentress requested to be remanded back to TRC and the Planning Board to present a plan that no longer connects to Whrens Street except for the water and does not drain to Whrens Street, but will drain towards Linda Lane. Mr. Fentress advised the applicant is in control of the property towards Burgaw Creek that may improve the drainage for this development, as well as the properties surrounding it. Mr. Fentress said the changes to the plan were to no longer connect with Whrens Street, no longer connect to sewer at Whrens Street, and drainage would be directed down Linda Lane.

Ms. Correll said Mr. Fentress and herself spoke about the change, but she did not form an opinion. She said her concern is with the drainage lot on Linda Lane and wants it to be included in the subdivision and construction drawing. This would change the acreage for the project and she would need to readvertise. Attorney Rivenbark commented Ms. Correll has not seen anything in writing about the new design. Attorney Rivenbark said this request is up to the board. He said if there is a change to the plan, in Ms. Correll's discretion, we may need to readvertise. He said at this point, he does not know, but it is absolutely up to the board whether or not they want to allow the potential change to happen.

Commissioner Robbins said we asked the applicant to show where the water would be draining. He confirmed with Mr. Fentress that he is requesting to table the request. Mr. Fentress confirm this was correct. Commissioner Robbins said he did not see anything wrong with that. Mr. Fentress said he wants to keep the application active and go back before the TRC and Planning Board to present the changes he is proposing. He said the changes include reducing the right-of-way, reducing the pavement, taking the drainage in the direction that it naturally goes, and improving the drainage on Linda Lane to such a degree it can get to Burgaw Creek from our property. Attorney Rivenbark said, at this point, the staff isn't in a position, nor is he, to advise the applicant as to whether or not a change will take place requiring the applicant to start over. Commissioner Dawson asked if it was best for the board to table this request until Mr. Fentress can get the information to the Planning Board. Ms. Correll said she thinks it should be remanded back to the TRC and Planning Board because we all know the project is no longer going to connect to Whrens Street and the design will be different from what the Planning Board has already reviewed. Mayor Cowan asked about the timeline and expressed concerns on timing. Ms. Correll said the Planning Board can review the new plan at the March Planning Board meeting. Ms. Correll said the Planning Board meeting for February has been cancelled. Mr. Fentress said trying to make the February Planning Board would be challenging for him and March is as good as we can do.

Mayor Cowan declared the public hearing closed at 5:54 PM. Commissioner Harrell made a motion to remand the Linda Lane Land Division back to the TRC and Planning Board for review. The motion was seconded by Commissioner George and carried by unanimous vote.

Mayor Cowan advised several attendees had signed in to speak during Public Hearing #1, but after the above request by Mr. Fentress, only one attendee expressed they wanted to speak. Mickey Easterling said he owed the board an apology from when he spoke at the previous board meeting. He said he made a statement similar to "the developer has roots to the community, but the developer does not care about the community." Mr. Easterling said he misspoke and was wrong; he said he cannot speak to anyone's motive for doing anything. He wanted to be clear that was not his intention. Mr. Easterling said he is still opposed to the development and he said he should not speak to someone's motive or reasoning for doing so.

Public Hearing #2 – Andrea Correll, Planning Director

Consideration of a new Unified Development Ordinance mandated by the new North Carolina General Statute 160D. This legislation has changed Planning and Development law in North Carolina and mandated that local governments comply.

Mayor Cowan declared the public hearing open at 5:57 PM.

Ms. Correll advised there have been four (4) changes to the new Unified Development Ordinance (UDO) since it was presented at last month's meeting. The following changes were briefly explained by Ms. Correll:

1. Addition of mobile food vending in O&I (to enable the Hospital and County to use food trucks) on p. 92
2. Addition of Recording Studio as a permitted use in B-1 on page 95
3. Insertion of O&I in the standards for Mobile Food Service on page 113
4. Insertion of the existing architectural standards starting at Section 9.12 on page 174 through page 178

Ms. Correll continued to review the major changes to the new UDO. She said the new laws deal with evidentiary hearings, conditional rezoning and special use permits. She said the burden of proof is all on the applicant to provide, not the town. Ms. Correll said accessory apartments and dental labs have been defined as "minor special uses" and are the only items that will go to Board of Adjustment for review. She said everything else will go to the town board. The five (5) standards listed in the ordinance must be completed by the applicant before the application is accepted and reviewed by staff. Ms. Correll briefly explained the standards listed.

Commissioner Harrell thanked Ms. Correll for the explanation of the new law changes. He said it took him a while to understand why the state did such a steep change, but now it is crystal clear after Ms. Correll explained it.

Mayor Cowan closed the public hearing at 6:07 PM.

Resolution 2021-03 Adopting a statement of consistency regarding the adoption of the new Town of Burgaw Unified Development Ordinance mandated by North Carolina General Statute 160D

Commissioner George made a motion to approve Resolution 2021-03 as presented. The motion was seconded by Commissioner Harrell and carried by unanimous vote.

**RESOLUTION 2021-03
ADOPTING A STATEMENT OF CONSISTENCY REGARDING THE ADOPTION OF THE
NEW TOWN OF BURGAW UNIFIED DEVELOPMENT ORDINANCE MANDATED BY
NORTH CAROLINA GENERAL STATUTE 160D**

WHEREAS, the applicant, the Town of Burgaw Planning Department requests the Town adopt the new Unified Development Ordinance,

WHEREAS, Planning staff has reviewed the proposed new Unified Development Ordinance for consistency with the Town of Burgaw 2030 Comprehensive Land Use Plan and has presented those findings to the Town of Burgaw Planning Board and the Town of Burgaw Board of Commissioners; and

WHEREAS, the Town of Burgaw Planning and Zoning Board, at their 2020 meetings from July through December, recommended the adoption of proposed chapters of the new Unified Development Ordinance and the Draft Comprehensive Plan Consistency Statement to the Board of Commissioners; and

WHEREAS, the Town of Burgaw Board of Commissioners reviewed the staff report and Draft Comprehensive Plan Consistency Statement at their February 9, 2021 meeting and found the proposed new Burgaw Unified Development Ordinance to be consistent with the Town of Burgaw 2030 Comprehensive Land Use Plan, being reasonable, and in the public interest; and

NOW THEREFORE BE IT RESOLVED BY THE TOWN OF BURGAW BOARD OF COMMISSIONERS THAT the proposed Unified Development Ordinance is consistent with the Town of Burgaw 2030 Comprehensive Plan by specifically preserving and enhancing the livability of the Town, while keeping standards encouraging quality and controlled growth that enhances and maintains the community's character.

Adopted this 9th day of February 2021.

Ordinance 2021-03 Adoption of the Town of Burgaw Unified Development Ordinance mandated by North Carolina General Statute 160D

Commissioner Harrell made a motion to approve Ordinance 2021-03 as presented. The motion was seconded by Commissioner George and carried by unanimous vote.

**ORDINANCE 2021-03
ADOPTION OF THE TOWN OF BURGAW UNIFIED DEVELOPMENT ORDINANCE
MANDATED BY NORTH CAROLINA GENERAL STATUTE 160D**

WHEREAS, it is the intent of the Town of Burgaw North Carolina Board of Commissioners to continue the practice of planning and development regulations in the Town of Burgaw and ETJ; and

WHEREAS, the Town of Burgaw Planning Board, at their 2020 meetings from July through December, recommended the adoption of proposed chapters of the new Unified Development Ordinance and recommends approval of the Unified Development Ordinance to the Town of Burgaw Board of Commissioners; and

WHEREAS, the Board of Commissioners has held the required public hearing on the proposed new Unified Development Ordinance including the text required by the North Carolina General Statute 160D; and

BE IT RESOLVED that the Board of Commissioners does hereby repeals any previously adopted Unified Development Ordinance and hereby enacts all provision contained in the new **Unified Development Ordinance** as reviewed and recommended by the Planning Board; and

BE IT FURTHER RESOLVED that; the Board of Commissioners conclude that the new Unified Development Ordinance is reasonable and in the public interest because it brings the Unified Development Ordinance into compliance with applicable North Carolina law. Additionally, the new Unified Development Ordinance supports the policies and goals in the Town of Burgaw 2030 Comprehensive Plan; and

NOW THEREFORE BE IT ORDAINED BY THE TOWN OF BURGAW BOARD OF COMMISSIONERS THAT THE NEW UNIFIED DEVELOPMENT ORDINANCE IS ADOPTED THIS DAY AND EFFECTIVE IMMEDIATELY, THIS 9TH DAY OF FEBRUARY 2021.

Public Hearing #3 – James Gantt, Town Manager

Early Citizen Input on FY 2021-2022 Budget

Mayor Cowan declared the public hearing open at 6:08 PM.

Mr. Gantt said this public hearing is to allow citizens the opportunity to speak out about the budget prior to the board making decisions on the budget.

There being no speakers, Mayor Cowan closed the public hearing at 6:09 PM.

Other items

Attorney Rivenbark asked for a motion to do a budget amendment to allot \$500 to Dennis Murphy trust to pay him for his interest for the proposed drainage easement. Commissioner Dawson made a motion to allot the \$500. The motion was seconded by Commissioner Murphy and carried by unanimous vote.

Mayor Cowan made a comment on the appearance of the back of the building on the corner of Dickerson Street and Fremont Street across from the Depot. He said he has received calls every week about this matter and asked if staff has sent a letter in the past. Ms. Correll said she thought the Permitting Technician visited this location previously. Mayor Cowan asked Ms. Correll to reach out to the owners again.

Mayor Cowan commented he had previously spoken to Mr. Gantt about trash receptacles outside at the fast food establishments. Mr. Gantt said we can not require the business owners to place trash receptacles outside unless the board approves an ordinance to do so. He advised we were going to draft a letter and request the owners to put trash receptacles out. Mayor Cowan said trash is getting bad since people can not go inside to eat due to the pandemic. Mayor Cowan asked for the of board members' opinions and asked for recommendations from Attorney Rivenbark. Attorney Rivenbark said he feels there is no point in sending a letter unless the board is going to change the

ordinance to make it a requirement. He said if the board wants to pass an ordinance, he would be happy to draft a letter stating they are in violation of the ordinance. Commissioner Robbins asked if this would include all businesses that sell food. Attorney Rivenbark said the board would have to decide how to limit it, if they wanted to do anything at all. Commissioner Robbins said he has no problem in requiring trash receptacles; he said the trash is more of a problem now than he has ever seen around the county. Commissioner Harrell commented on raising the price of littering. Attorney Rivenbark said a littering ordinance will allow criminal enforcement; violating an ordinance is a class 3 misdemeanor. He said we could impose a town fine or criminal charge. Commissioner Robbins made a motion to allow Mr. Gantt to draft an ordinance requiring trash receptacles. The motion was seconded by Commissioner George and carried by unanimous vote.

ADJOURNMENT

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

The meeting was adjourned at 6:16 PM.

Kenneth T. Cowan, Mayor

Attest: _____
Kristin J. Wells, Town Clerk