

**TOWN OF EMERALD ISLE  
PLANNING BOARD MEETING  
MONDAY, MARCH 26, 2012**

Chairman Jim Craig called the meeting to order at 6:00 pm. Members present were: Jim Craig, Bill Keadey, Tom Kelly, Pete Wachter, Eddie Barber and Bob Smith. Also present was Kevin Reed, Director of Planning and Inspections.

A motion was made by Eddie Barber to excuse Ken Sullivan from the Planning Board meeting. The motion was seconded by Bill Keadey and passed unanimously (5 to 0).

A motion was made by Eddie Barber to approve the minutes of the Planning Board meeting held on January 23, 2012. The motion was seconded by Bob Smith and passed unanimously (5 to 0).

Mr. Reed advised that for the month of February 2012, the Planning and Inspections Department had issued 1 permit for a new home with a total estimated value for all permits in excess of \$2,171,100. This brings the fiscal year total to over \$9.5 million in construction value and the department has collected approximately \$95,849 in permit fees.

**Consider a request from Brother and Sister, LLC, for Commercial Review of the proposed Woodpecker Boat Storage Facility.**

Mr. Reed advised the Planning Board that a request had been submitted by Brother and Sisters, LLC for commercial review of a proposed boat storage facility located at 201 and 202 Woodpecker Lane. The property is currently zoned Business (B) and the proposed boat storage facility is a permitted use in the Business (B) Zoning District. The existing Woodpecker Lane is a private street that is maintained by the Town according to the Official Town Street Map. The proposed facility would accommodate approximately 53 boats.

The only development that will take place is the construction of two paved and lighted parking areas that will be fenced including the required stormwater retention areas. The lighting plan indicates that a total of 14 400-watt metal halide lights will be installed at a height of 25 feet. No other development will take place. The Town's Unified Development Ordinance (UDO) requires that the development be screened along its northern boundary from the adjacent residential property. The owners are proposing to use a six-foot opaque fence to meet the screening requirement. The Town's Technical Review Committee (TRC) reviewed the project at its meeting held on January 4, 2012. Following that meeting, Town staff requested several revisions to the plan and additional information.

Town staff is comfortable in concluding that the current plan and other submitted materials are consistent with the Town's zoning requirements for screening and natural area requirements. The property owners are required to obtain a State Erosion and Sediment Control Permit (E & SC) since the project will disturb more than one acre of land. Expected land disturbance is approximately four acres. To date, the owners have not provided the Town with a copy of the required State E&SC Permit. The Town's consulting engineer is currently reviewing the stormwater plan for the proposed development. In addition, the site plan indicates that the U.S. Army Corps of Engineers (U.S.A.C.E) had determined that there are no 404 jurisdictional wetlands on the property. The owner needs to provide documentation from the U.S.A.C.E. regarding this statement.

Mr. Reed advised the Board that Mr. Phil Collier was present on behalf Stroud Engineering and the property owners. There were several questions from Planning Board members regarding the screening and natural area requirements for the project. Following the Board's discussion of the request, a motion was made by Pete Wachter to recommend approval of the commercial review to the Board of Commissioners subject to the following conditions:

1. Approval from the Town's consulting engineer that the stormwater plan prepared for the project is consistent with the Town's stormwater regulations.
2. Copy of State Erosion and Sediment Control Permit.
3. Documentation from the U.S. Army Corps of Engineers that there are no 404 jurisdictional wetlands located in the project area.
4. Copy of letter from Carteret-Craven Electric Cooperative that they can serve the proposed development.
5. Exterior lighting shall be screened so that no offensive glare is cast upon adjacent streets or properties.

The motion was seconded by Bob Smith and passed unanimously, (5 to 0).

### **Discussion regarding possible amendments to the Town's Unified Development Ordinance (UDO) in order to regulate internet sweepstakes cafes.**

Mr. Reed advised the Planning Board that the Board of Commissioner had requested that the Planning Board work with Town staff to develop amendments to the Town's Unified Development Ordinance (UDO) in order to regulate internet sweepstakes cafes. As you may recall, the Planning Board began discussions regarding possible amendments to the UDO several years ago; however, these efforts were halted when in 2010, the North Carolina General Assembly passed HB80 which effectively banned internet sweepstakes cafes.

Following the passage of the law banning such cafes, several civil lawsuits were filed by the sweepstakes/internet/gaming industry which sought to declare the law a violation of the First Amendment. In one such lawsuit filed in Guilford County, Judge John Craig III struck down some portions of the law he found to be a violation of the First Amendment. In another lawsuit filed in Wake County, Judge Paul Ridgeway upheld the law and ruled that the First Amendment did not protect sweepstakes videogames. The State of North Carolina appealed both rulings and late last year asked the Court of Appeals to back the ruling of Judge Ridgeway and reverse the decision of Judge Craig. The N.C. Court of Appeals recently released its ruling on these two court cases. The Court of Appeals has found that the ban enacted by the General Assembly was unconstitutional. Mr. Reed advised that it is anticipated that the State will further appeal the ruling by the N.C. Court of Appeals.

The issue of internet sweepstakes cafes and the potential ruling by the N.C. Court of Appeals was discussed with the Board of Commissioners at its work session held on February 28, 2012. At that time, the Board asked Town staff to work with the Planning Board to develop amendments to the UDO that would either: (1) clarify that such uses are not permitted in the Town; or, (2) restrict the location, number and operation of such uses. Based on the recent ruling by the N.C. Court of Appeals, the Planning Board is asked to re-initiate its work on possible amendments to the UDO that would restrict the location, number and operation of internet sweepstakes cafes.

As previously mentioned, prior to the passage of HB80 in 2010, Town staff had been working with the Planning Board to develop potential amendments to the Town's Unified Development Ordinance (UDO) that would regulate internet sweepstakes cafes. These efforts with the

Planning Board followed the adoption of a moratorium by the Board of Commissioners on the establishment of internet sweepstakes cafes in the Town. In May of 2010, the Planning Board provided Town staff with some general direction on what to include in potential amendments to the UDO.

There was considerable discussion among the Board members on how these types of uses should be permitted and regulated in the Town. The general consensus of the Board was that they were not in keeping with the family beach atmosphere but that some reasonable accommodation should be made for them in the Town; provided they are subject to specific regulations. Concerns raised by the Board included the separation among such uses, a limitation on the number of machines, the hours of operation and some restriction on them locating in close proximity to a church, playground, park, theater or another internet sweepstakes café. Following further discussion, a motion was made by Eddie Barber to direct Town staff to develop amendments to the UDO that would regulate such uses and include the following criteria:

- Only allowing internet cafes in the Business District as a permitted use.
- The limit on the number of machines would be one for placement in an existing business and 6 as a stand alone operation.
- The hours of operation should be limited to 1:00 PM to 10:00 PM
- There should be a minimum distance of 2,500 feet between one such operation to the next whether it is an accessory use or stand alone operation..
- There should be a minimum distance of 2,500 feet from such uses to any church, public park, public parking area, playground, or movie theater.
- The parking requirement for a stand alone operation would be 1 space per machine and 1 for each employee.

The motion was seconded by Bob Smith and passed unanimously (5 to 0).

Chairman Jim Craig made some brief comments regarding the Emerald Isle Turtle Protection Program and that a stranded turtle had recently been found on the beach and that, regrettably, the turtle did not survive.

There being no further business to come before the Board, a motion was made by Bill Keadey to adjourn. The motion was seconded by Bob Smith and passed unanimously (5 to 0). The meeting was adjourned at 6:50 PM.

Respectfully submitted by:

Kevin B. Reed  
Director of Planning and Inspections