

MINUTES

The Town of Manteo Board of Commissioners held a Public Hearing meeting in the Manteo Town Hall meeting room, May 19, 2005 at 7:30 PM

The following members were present: Mayor John Wilson
Commissioner Lee Tugwell
Commissioner Dellerva Collins
Commissioner H.A. Creef, Jr.
Commissioner David Farrow
Commissioner Edward Etheridge

The following member(s) were absent: Commissioner Larry Belli

Also present at the meeting were: Town Attorney-Daniel Khoury
Town Manager-Kermit Skinner
Town Clerk –Becky Breiholz
Finance Officer-Shannon Twiddy
Planner –Erin Burke
Planning Chairman –Bill Parker
Zoning Administrator –Fred Featherstone

Mayor Wilson called the meeting to order at 7:30 pm. Mayor Wilson turned the meeting over to Town Attorney, Daniel Khoury to conduct the Public Hearing. Mr. Khoury swore in all those who wished to speak. Commissioner Etheridge asked why we swore in these people since it has never been done before at a Public Hearing. Mr. Khoury commented that in this hearing either side could appeal this decision to superior court and the court is looking for a record, and the record has certain requirements that have to be met and one of those is that the witnesses be sworn in and competent material evidence is given and we will probably observe more formalities than the Board normally does because of the interest expressed in this site plan.

SUBJECT: Discussion and consideration of site plan review Pirates Cove Harbor Place-II. Town Planner Erin Burke brought the Board of Commissioners up to date as how we got here. Before the Board tonight is a site plan for Harbor Place II Condominiums on Sailfish Drive in Pirates Cove. The Board of Commissioners has received these plans as a result of the approval with conditions from the Planning and Zoning Board.

To allow the Board to better understand how this plan has arrived at this public hearing staff offers the following timeline:

- **January 11, 2005** The Planning and Zoning Board recommended approval of a master plan amendment for Pirates Cove. This plan was to change 14 town homes to 30 condominium units, in two buildings of 15 units each, along Sailfish Drive.
- **February 2, 2005** The Board of Commissioners approved the amended master plan.
- **March 8, 2005** The Planning and Zoning Board reviews the site plan for the first of the two 15 unit condominium buildings. This plan was tabled following public comment and Board discussion with a request for an opinion from the attorney.

- **April 12, 2005** The Planning and Zoning Board tabled this topic, once again following a statement from the attorney that not all necessary parties had been notified.
- **May 3, 2005** The Planning and Zoning Board holds a special meeting at the recommendation of the Town Attorney. There are public comments and presentations. The Board reviewed the site plan; the Board and staff recommended approval with the following eight conditions:
 1. The building shall be redesigned not to exceed 20,000 square feet of total building area, including porches and decks;
 2. The building shall be redesigned so as to conform to the Town's latest guidelines for development, Manteo Way of Building;
 3. The building shall be re-sited so that this or any future development will not prevent adequate emergency fire access to the marina;
 4. Prior to the issuance of any permits the property line shall be moved to the location as shown on the site plans, so that setbacks are correct;
 5. No dumpsters on site;
 6. Provide storm water plan;
 7. Buffer the parking lot; and
 8. The third floor shall be nestled in the dormers and gables.
- **May 4, 2005** The Board of Commissioners set a Public Hearing for the 19th of May 2005.

The Planning and Zoning Board requested that staff meet with the developer to discuss their recommendations. The developer agreed; and staff met with the developer, Glen Futrell and his architect, Jeff Davis, on the 12th of May 2005 and discussed the conditions mentioned above. Ms. Burke asked that all the minutes from the above meetings be entered into the record, as well as all emails and letters received from homeowners; site plans dated 2-9-05 revised 3-16-05 project #04150 from J. Davis Architect; opinion and recommendation from the our attorney dated 4-12-05; opinion from Michael Brough 4-27-05. All emails received from homeowners and the site plans will be retained in a permanent file Pirates Cove Harbor Place II.

Mr. Glen Futrell-developer- commented he had a three part presentation; Michael Brough who is his attorney was unable to be here tonight so one of his colleagues Mr. Bob Hornik will speak to the Board and the architect Mr. Jeff Davis who has designed almost everything in Pirates Cove will also speak. He gave some opening comments and reminded the Board it has been zoned 2 zones; B2 around the marina and the rest of Pirates Cove is R5 and the PUD overlays those two zoning districts. He gave the Board again a brief history of Pirates Cove. He commented that most of the changes in Pirates Cove have reduced the density. He commented that everything around the marina has been designed as multi-family and or commercial and there has never been a zoning issue in Pirates Cove. He addressed some of the things that bothered him considerably which were the accusations about what he did and did not promise about this particular land at the marina; and he has never said to anyone that he does not plan to develop that part of Pirates Cove, it is part of the master plan and it has always shown something there. He commented that the approval from the PZ had a number of conditions; and he has no problem with the buffer condition; has no problem with the dumpster condition or access for emergency vehicles; it can be worked out; drainage is an issue and always will be and has no problem working with staff; and once he gets approval he will set the property lines; there are two conditions he has problem with are the 20,000 square feet requirement and the other condition of nestling the third floor in dormers and gables. He does not think the 20,000 square feet applies to them and thinks the PUD eliminates that and he thinks the 20,000 square feet limit was designed for commercial buildings and this is not a commercial building, multifamily construction is allowed which is referred to as R5. He gave the Board a study done of the Pirates Cove

condominiums of square footage and building height history which will be retained in the permanent Pirates Cove Harbor Place II file. Mr. Futrell showed the Board pictures of past condos built .

Mr. Jeff Davis-Architect for Mr. Futrell and has been involved with Pirates Cove for quite some time talked about his conception Manteo Way of Building and how it applies to Pirates Cove. What they have tried over the years is to apply aesthetics to this project at Pirates Cove. He thinks the Manteo Way of Building talks about compatibility with existing neighborhoods and some of the issues in the Manteo Way of Building that apply to the Town of Manteo. He commented that the building has the same height and aesthetics of Pirates Cove and extends the consistency of the way Pirates Cove has been built.

Mr. Bob Hornik-an Attorney, with Michael Brough law firm. He referenced the letter that Mr. Brough wrote after receiving Town Attorney Daniel Khoury's letter and opinion and has been made a part of the record. He commented that both attorneys's agreed on much of the letter and this Boards authority to approve this plan as presented under the PUD regulations. A couple of points he wanted to touch on is the 20,000 square foot requirement-and that the 20,000 square foot was adopted in 2002 in response to the Food Lion proposal which is clearly a commercial building and what they are proposing is not a commercial development by the Town's own ordinance doesn't consider multi family residential to be commercial. Two places in ordinance that discuss multi family dwellings residential uses Section 6.01 C and 7.04B5 talks about uses permitted.. He also referenced the B1 zoning section with retail/commercial and residential uses and multi family use is not the same as commercial use. The Gulf Stream Village was built after the 20,000 square foot was adopted and has 36,000 square feet and this Board did not apply the 20,000 commercial square footage to this building and as a matter of consistency the Board ought not apply this to Harbor Place II. Also, regarding the height limitation Board has allowed over 35 feet in the past and to do that now with the last 2 buildings would make it inconsistent with what has been done in the past.

Mr. Futrell wrapped up with commenting that they should be allowed to build these buildings and over the last month has listened to what has been said and as a result of that asked the architect what could be done to change it and has a new proposal and that is instead of two (2) 15 unit- substitute with three (3)-9 unit buildings which would be a total of 27 units. They showed the Board plans of this new proposal and the existing proposal. Mr. Davis the architect thinks 3 buildings goes a long way to mitigating mass and they are presenting this as an alternative. Mr. Futrell commented about the significant change this will cost him, revenue will go down and cost will go up and does not think he is required to do this but is offering it as an alternative. Hopes the Board will give approval so he can move on.

Mr. Khoury-commented they appreciate everyone's interest and encourages members of the audience to speak at the Public Hearing and asked that the audience be reasonable with there time.

PUBLIC HEARING

MOTION: Commissioner Tugwell seconded by Commissioner Farrow to enter into a Public Hearing for Pirates Cove Harbor Place II was approved by the following vote: Ayes:

Commissioner Creef, Etheridge, Farrow, Collins and Tugwell. Noes: None. Absent: Commissioner Belli

Mr. Robert Wells-12 Sailfish Point-hates to start with a negative and thinks the process is flawed and when he bought he looked at the master plan and on the master plan there were town homes not condos; no sense to rehash what has already been said and commented that Mr. Futrell's three building plan is better than the 2 building. He does not want to see these units using Sailfish dumpsters. A big issue to him is drainage and would like to see an effort made about drainage. He reminded the Board that it is a conditional use and they can place conditions. He has never disputed Mr. Futrell's right to develop the property.

Mr. Bob Newman 7 Sailfish Drive-he handed out letters that three of his neighbor asked him to bring that could not be here. He also gave the Board handouts of his presentation and this will be made a part of the permanent Pirates Cove record. Mr. Newman commented about the new proposal and it addresses their concerns in a positive way. Also in Mr. Newman's presentation was the concern by Pirates Cove residents that Commissioner Tugwell should voluntarily recuse himself in this matter due to his association with the applicant.

Bob Young-(Mr. Khoury swore in the witness) bought a condominium boat slip and owns slip 87 dock B and one of his concerns is parking and does not know how much it will impact the parking. He commented that the current parking for boat owners is marginal.

MOTION: Commissioner Tugwell seconded by Commissioner Collins to exit the Public Hearing was approved by the following vote: Ayes: Commissioner Creef, Etheridge, Farrow, Collins and Tugwell. Noes: None. Absent: Commissioner Belli

Recess for 5 minutes at 8:50-called back in session at 9:57.

Mayor Wilson commented: The Board has several options: It can: 1) approve the site plan as presented; 2) deny approval of the site plan, providing you state your findings of fact and reasons for denial; 3) approve the site plan with the conditions recommended by the Planning Board or whatever conditions the board finds reasonable and just; 4)table the matter to a future meeting; or 5) go into closed session to consult with town attorney if you have legal questions. Mayor Wilson commented he sees no reason why we should delay this matter any longer and at the request of the Planning Board, the buildings have been re-sited to provide adequate emergency access to the marina; and in his opinion while he would prefer that the third floor be nestled in the dormers and gables, the buildings comply with the 1982 Guide for Development in effect at the time the Pirate's Cove Planned Unit Development was originally permitted; therefore the Mayor is asking for a motion to approve the site plan with the following conditions: 1) that the site plan dated February 9, 2005 and revised on March 16, 2005, be amended to reflect the compromise proposal presented by the developer tonight, providing that pursuant to the Town Planner's discretionary authority to bring submissions to the Planning Board for review, the Planner shall review the site plan for full compliance with all terms and conditions of the Manteo Zoning Ordinance regarding parking, buffering, lighting; 2) there shall be sufficient emergency access to the docks; 3) there shall be no dumpsters on site; but that adequate dumpsters with appropriate capacity be provided elsewhere 4) the Town Planner be satisfied that storm-water runoff is adequately addressed on this site and request that the larger area be considered 5) the developer agrees to amend the original agreement dated June 15, 1988, between Roanoke

Properties and the Town of Manteo, to reduce the density from the originally agreed upon 627 dwelling units in Pirates Cove to the currently approved master plan total. (Which he believes to be 593); and acknowledge proposed density was 823 in 1988 when the project was located in the County) 6) in accordance with the town's zoning ordinance, Section 8.02 (g), titled "Expiration of Time Limit on PUD," that the aforementioned agreement further be amended to set an expiration date for the Pirates Cove PUD of June 15, 2008, after which date all properties remaining in Pirates Cove shall be regulated according to the zoning district in which it is located, just like every other property in the Town of Manteo. **MOTION:** Commissioner Farrow seconded by Commissioner Collins to approve Pirates Cove site plan as stated by the Mayor with the conditions above; Commissioner Tugwell asked the Town Attorney if he should recuse himself from discussion and voting, he has no financial gain or conflict of interest. Mr. Khoury commented that even though there is no direct conflict there is the appearance of a conflict and he suggested that he be recused from voting. Secondary **MOTION BY** Commissioner Farrow seconded by Commissioner Collins to recuse Commissioner Tugwell from his duty to vote was approved by the following vote: Ayes: Commissioner Creef, Etheridge, Farrow, Collins. Noes: None. Absent: Commissioner Belli; **MOTION:** by Commissioner Farrow seconded by Commissioner Collins to approve Pirates Cove site plan as stated by the Mayor with the conditions above was approved by the following vote: Ayes: Commissioner Creef, Etheridge, Farrow, and Collins Noes: None. Absent: Commissioner Belli; Recused: Commissioner Tugwell.

Motion by Commissioner Collins seconded by Commissioner Creef to re-instate Commissioner Tugwell duties was approved by the following vote: Commissioner Creef, Etheridge, Farrow, and Collins Noes: None. Absent: Commissioner Belli;

MOTION: Commissioner Tugwell seconded by Commissioner Collins the meeting was adjourned at 9:20 pm was approved by the following vote: Ayes: Commissioner Creef, Etheridge, Farrow, Collins and Tugwell. Noes: None. Absent: Commissioner Belli

This 19th day of May 2005

ATTEST:

Mayor John Wilson, IV

Town Clerk Becky Breiholz