



MINUTES
Board of Adjustment Meeting
Wednesday, November 17, 2021 Pender County Public Assembly Room
9:00 AM

MEMBERS PRESENT: Max Kipfer
Kyle Breuer
Samantha Nelson
Andrew Olsen
Jeffrey Snider

MEMBERS ABSENT:

OTHERS PRESENT: Travis Henley, Planning Director
Trey Thurman, County Attorney
Stephanie Jagoda, Administrative Assistant
Other Staff and Members of the Public.

1 CALL TO ORDER
Chairman called meeting to order at 9:03 AM

2 ROLL CALL

3 PLEDGE OF ALLEGIANCE

4 MOMENT OF SILENCE

5 ADOPTION OF AGENDA

- a) Adoption of the agenda with Item number 7 approval of meeting calendar being moved to after Item 10 is complete.

Moved by Kyle Breuer, seconded by Andrew Olsen

Motion Approved

	For	Against	Abstained	Absent
Max Kipfer	x			
Kyle Breuer	x			
Samantha Nelson	x			

Andrew Olsen	x			
Douglas Scott Rivenbark				x
Jeffrey Snider	x			
	5	0	0	1

CARRIED.

6 ADOPTION OF MINUTES

- a) Board of Adjustment meeting minutes for June 16, 2021 and Special Meeting June 25, 2021

Moved by Kyle Breuer, seconded by Jeffrey Snider

Motion to approve

	For	Against	Abstained	Absent
Max Kipfer	x			
Kyle Breuer	x			
Samantha Nelson	x			
Andrew Olsen	x			
Douglas Scott Rivenbark				x
Jeffrey Snider	x			
	5	0	0	1

CARRIED.

7 ADOPTION OF MEETING CALENDAR

- a) Board of Adjustment 2022 Meeting Calendar

Travis Henley, planning director, requested to know if the Board of Adjustment is still ok to meet on 3rd Wednesday of the month at 9AM? The Director states that other counties meet in the evening or later in the afternoon. The Chairman states that 9AM works for him and Vice Chairman Breuer agrees and states that for public participation 9AM may be a difficult time but that the cases they hear are very direct and because of that having it during normal business hours is appropriate. Board Member Andrew Olsen has more of a problem with day of the week not the time. Vice Chairman Kyle Breuer suggests that based on the case load could the meeting be held in a different location within the county. Board Member Samantha Nelson states that as long as we have a quorum we should stay with what we have.

The Chairman reiterates that if there is a known conflict let staff know immediately so they can go ahead and reschedule and move things, so that applicants are being told at the last minute of a cancellation.

Kyle Breuer, Vice Chairman, makes a motion to accept the 2022 Meeting schedule except for the December meeting. December 2022 meeting will move from December 21 to December 14. Second by Andrew Olsen.

Moved by Kyle Breuer, seconded by Andrew Olsen

*Vote to approve with the exception of December 21, 2022
Meeting date changed to December 14, 2022*

	For	Against	Abstained	Absent
Max Kipfer	x			
Kyle Breuer	x			
Samantha Nelson	x			
Andrew Olsen	x			
Douglas Scott Rivenbark				x
Jeffrey Snider	x			
	5	0	0	1

CARRIED.

8 PUBLIC COMMENT

9 VARIANCE

a) VAR 2021-05

Carlene Shaw, Planner I, presented on behalf of the applicant. Chris Jones, applicant, on behalf of Hampstead Self Storage, LLC, owner, is requesting a variance for relief from the Pender County Unified Development Ordinance standards outlined in Sections 8.1.3 Tree Survey Required. Specifically, the request is to seek relief from the mitigation requirements for the removal of significant trees. The subject property is located on the northern side of Williams Store Road, approximately 260 feet southeast from its intersection with US HWY 17 in the Topsail Township. The subject property is current vacant and wooded, with two Duke Energy Progress overhead powerlines running East-West and North South, perpendicular to each other. The applicant is requesting a variance from the requirement of mitigating all removed

Significant Trees at a 2 to 1 ratio. According to Section 8.1.3 'Tree Survey Required' of the Pender County Unified Development Ordinance (UDO), a tree survey is required for any development proposal on commercial or industrial zoned property, as well as in all mixed-use districts. In addition, if any significant tree is proposed to be removed, such removal shall be mitigated by the planting on site of two trees of the same species with a minimum caliper of 2" or greater.

Chris Jones, applicant, managing member of Hampstead Self Storage, LLC stated there are 75 to 80 significant trees that will need to be removed during development. While the applicant plans to replant as many trees as possible on site, replacement planting of 150+ trees is not practical nor warranted. It appears to the applicant that this ordinance was designed to preserve and/or replace the usual limited number of significant trees on a given property. It is most unusual to find property with this number of significant trees on it and it seems to me that the ordinance was not written with this fact pattern in mind. We have submitted a site plan that complies with the ordinance. We changed the required setback of ten feet to twenty feet to allow for more room for planting. We also changed the planned relocation of the Duke Progress power lines from the perimeter of the property to below the proposed internal driveways. The result of this plan is that we end up planting trees in very close proximity to each other, much closer than is recommended. A consequence of this close planting is that as these trees grow, they will be growing into each other causing disease and destruction of healthy trees. Another result is that the aesthetic enhancement that these trees could offer is compromised. With the replanting of some of the existing species of trees, there will be no shortage of trees remaining on the property. Additionally, there are a number of significant other trees across the front of the property that will be preserved and enhanced. There is one tree that is thirteen feet in circumference, six feet in diameter on the eastern perimeter of the property, which is being preserved at the cost of some significant developable land. Our request for a variance would allow us to re-plant or newly-plant trees around the perimeter of the property as much as practical but consistent with the recommended spacing between the trees. This would result in a planting of perhaps 30 trees instead of the 150+ trees required by the ordinance.

Samantha Nelson, Board member, asked if the 77 trees in question how many of these trees can be replanted onto the property using applicant's layout? Applicant indicated that he could put 40 to 45 around the perimeter if he could do them 30 feet apart and will supplement with understory trees. Applicant stated that over planting or planting to close will not provide the vision wanted for the future of this application.

Kyle Breuer, Vice Chairman, asked Attorney Trey Thurman, if it is proper for this board to consider payment in lieu of for additional trees if there's not a specific ordinance language that can help clarify or direct the board? It is Attorney Thurman's understanding to allow or impose conditions that are inherent, it doesn't come up nearly as much for variances but does with special use permits that you know are a conditional zoning that you have, and I there just would be an inherent power of the board that is addressed by statute. Samantha Nelson, Board Member, asked the attorney "How specific can the board be as to where that money can go" Attorney Thurman replies "Any and all spending by the county is governed by the board of Commissioners. Monies can be put into a special use fund but will still need to be approved by the County Commissioners to use."

Max Kipfer, Chairman, indicated the issue is the quantity of trees, if we were to say whatever that the quantity of these trees must go this department it must be planted in these areas so it's not dollars its trees. Attorney Thurman explains that gets into how the parks are governed. Chairman Kipfer asked "would there be a "bank of trees" to be used?" Attorney Thurman suggested a dollar amount per tree should be determined instead of a per tree?

Andrew Olsen, board member, wonders should there be an excuse from the legislation but Travis Henley, planning director stated that is what a variance is.

Applicant stated that it is not healthy for the trees but can following the zoning as required. He is saving the big trees, but the sampling of the trees is just a scrubby tree 6 to 8 inch that has grown up under the big, tall pine trees. We can replace the appropriate number of trees; it has a lot of damaged and downed trees. Carlene Shaw, planner I, indicates the applicant would have to put 2 for every 1 tree. There are many different species. If there are 40 live oaks being replanted within the buffer area would make sure to log what was left over. Gideon Smith, senior planner, stated research as was done through several different nurseries then an average was taken of per each tree.

Jeff Snider, board member, questions if any consideration for saving two trees on the corner that you're talking about are beautiful trees, are there any more trees on the lot the same size or larger that are to be preserved.

Applicant stated that the larger tree is being preserved and is unaware of any additional large tree in the clear-cut area. Applicant stated that the tree in question is only a 14-inch trees.

Gideon Smith, senior planner, interjects restating the applicant did consider trying to save the larger species prior to rather than just cutting all the trees, was consideration to save specific ones and possibly discussion of relocating those trees. Chris Jones, applicant, replies with they tried within the constraints of our development plans working with his grading contractor about replanting several of the bigger trees. Putting a well on property to irrigate whatever plantings we do. Mr. Jones stated they have done a lot – they doubled the buffer around the property, redone the powerlines, try replant some of the trees, then we have to underplant with more trees and shrubberies that will look nice, we are preserving the trees that we can, and think will live and feels they have put forth a pretty reasonable effort to try to meet the ordinance. Chairman Kipfer asked “you are anticipating having to take out 77 significant trees and you are proposing to replace with somewhere between 40 to 45 – that is correct per Jones.” But you do not know specifically? Should the variance be approved, he would have a more accurate number and more specifics based on what this board allows for him to do.

Kyle Breuer, vice chairman, suggested 40 feet spacing and the applicant agrees it would promote healthier trees. Applicant again says he will pay the county for trees to be planted. Chairman Kipfer asked about the well for irrigation, Gideon Smith, senior planner, stated that it is part of the ordinance that water be within 75 feet of planting area.

Marvin Filley, 74 Williams Road – Is concerned with the placement of the storage facility in a residential area. Also, needs to know if there will be trees up so he cannot see the facility. Carlene Shaw, planner I, stated the parcel is zoned General Business. Gideon Smith, senior planner, indicated that there were different types of buffers, shrubbery, trees, and fencing. Fencing is required for any business adjacent to a residential lot. Chairman Kipfer suggested he voice his concerns to the applicant and work with him.

Charles Bush, 115 Williams Road – Is concerned this will severely impact the value of his property as the trees have been clear cut right up to his property line. He is also concerned with the wildlife residing at this location. Andrew Olsen, board member, questioned actual location of Mr. Bush’s property which is located next to the pond. Jimmy Fentress, Survey Engineer with Stroud Engineering said there was a buffer along the property line and panel fence and trees could be placed there. And would be willing to work with staff to enhance the buffers in that area. Willing to work with the neighbors to create something that is palatable as possible. Chairman Kipfer asked what type of fencing

would be placed and staff answered a 6-foot-tall solid wood fence and will make it part of the conditions.

Kyle Breuer, vice chairman, motioned to grant the variance for relief from the mitigating trees. Several items need to be put into the conditions: 1 – Being the mitigating trees be provided to the county with the county's discretion for planting and the factors in which staff should be directed to look at utilizing independent resources from the surrounding nurseries or jurisdictions to obtain a financial tied to the final amount of trees that are being mitigated understanding the attorneys advice about commissioners making the ultimate decisions for financial expenditures this may be somewhat subjective Trey Thurman, attorney, stated he would plead that placement of mitigating trees be located within the same watershed if we possibly could look at that from staff. 2- Buffers are provided meeting the ordinance standards along the entire boundary of the property to provide adequate buffering for neighbors. Chairman Kipfer mentions the discussion of spacing to be set at a minimum of 30 feet maximum of 40 feet. 3 – Applicant to work with staff to provide adequate spacing within that 100 lineal feet the number of canopies per that distance and if the board is so inclined to direct staff to look at and work with the Planning Board providing a payment in lieu option of significant tree mitigation as opposed to the hard and fast two to one understanding that circumstances sometimes many not be appropriate and think that's something that surrounding jurisdictions have reviewed and applied flexibility but also maintaining the credibility of our ordinance.

Samantha Nelson, board member, seconded allowing this variance relief with the proposed conditions of everything that was stated and stressed the importance to keep any of the trees that might be planted outside of this site be under the same watershed area or relatively close. Also wants to make sure that we do get that that buffer all away around and the proposed spacing of trees 30 to 40 feet.

Chairman Kipfer asked what should be the process if the transplanted trees do not survive? Andrew Olsen, Board Member, suggested that something should be built into the ordinance that it should either be maintained or replaced, Travis Henley, Planning Director indicates there is already stated in ordinance he read into the record "dead or diseased planting shall be removed unless specifically exempted, replacement planting shall be provided for any required plants which die or are removed for any reason and shall meet all minimum requirements."

Moved by Kyle Breuer, seconded by Samantha Nelson

Vote to approve variance

	For	Against	Abstained	Absent
Max Kipfer	x			
Kyle Breuer	x			
Samantha Nelson	x			
Andrew Olsen	x			
Douglas Scott Rivenbark				x
Jeffrey Snider	x			
Tera Cline				x
	5	0	0	2

CARRIED.

b) VAR 2021-06

Carlene Shaw, planner I, presented on behalf of the applicant Demetrius Batts. The applicant and owner, is requesting a variance for relief from the Pender County Unified Development Ordinance standards outlined in Section 4.14, 'Zoning District Dimensional Requirements'. Specifically, the request is to seek relief from the RP, Residential Performance zoning district minimum yard setbacks. The subject property is located at the terminus of the Hardison Drive right-of-way, approximately 500 feet southeast of its intersection with US HWY 17 in the Topsail Township. The subject property is Lot 12-A of the Family Subdivision for Lee Edward and Mary E. Batts as recorded at Map Book 66 Page 118 of the Pender County Registry. The subject property is currently vacant, with the western portion remaining wooded, and the eastern portion being cleared. The applicant is requesting a variance from the minimum front and rear yard setback requirements in the RP, Residential Performance Zoning District. Section 4.14 'Zoning District Dimensional Requirements' of the Pender County Unified Development Ordinance (UDO) outlines the minimum setbacks for the RP, Residential Performance zoning district. Staff has provided these minimum standards as well as the proposed standards associated with this request. The applicant has also submitted three other possible scenarios for the location of the proposed dwelling. Alternative Option 1, having the dwelling facing the north, would inhibit the applicant from being able to have a back porch due to additional required setback encroachment.

Demetrius Batts, applicant, stated that his preference is to have the primary option of the variance because that allows him to have a front porch as well as a back porch and not be in the setbacks.

Chairman Kipfer stated that his preference would be the house on an angle facing allowing for front and back porch but leaves seven (7) feet from what the future cul-de-sac. Those gravel roads lead to three other homes. Kyle Breuer, vice chairman, asks "Is Hardison beyond the cul-de-sac are those easements that are providing access, these ones not just they're not just a gravel drive but she actually mapped and recorded that way." Mr. Batts indicated they were. Carlene Shaw, planner I, from our research we see the easement on the plats recorded but we have not been able to find anything that says legal access. Chairman Kipfer, says "I guess as long as we are talking about the easement this isn't really particularly on of the variance but are any of those folks who have to use those gravel drives to get to their houses at all favorable to the idea of combining some of those through your property before they turn off is there any way to do that so you'd have less of your property covered with gravel that other folks are using. Mr. Batts answered "Nobody had any objections against it, but the road is cutting the part of my property off yes and I'm still allow that, its family property. It has been divided but I am not going to block the road off. Chairman Kipfer wondering if there was any discussion about the possibility of neighbor's consolidation of gravel driveways. Kyle Breuer, Vice Chairman, stated he thought it was mentioned in the staff report about the location of the septic field for this residence and can you please verify, that was the only area suitable to accommodate the waste coming from the house. Mr. Batts indicating that the inspector came out and tested 3 different area's and that was the only one that would work, and the septic system has been installed. Chairman Kipfer acknowledged the system has been installed.

Chairman Kipfer asked if any more questions for the applicant. Jeff Snider, board member, requested to know what is behind there and then asks for the aerial to be put back up. Travis Henley, Director, stated the lot is about a 3 2/3-acre tract total and a manufactured home at this area adjacent to 17. Chairman Kipfer asks if there is any further discussions?

Rudolph Batts, 145 Hardison Dr., resident voiced his opposition.

Kyle Breuer, vice chairman, stated he is prepared to make a motion, to grant the variance. Andrew Olsen, board member, seconded the motion that was made. Samantha Nelson, board member, stated she is concerned about the safety of the home's occupants.

Moved by Kyle Breuer, seconded by Andrew Olsen

Vote to approve variance

	For	Against	Abstained	Absent
Max Kipfer	x			
Kyle Breuer	x			
Samantha Nelson		x		
Andrew Olsen	x			
Douglas Scott Rivenbark				x
Jeffrey Snider	x			
Tera Cline				x
	4	1	0	2

CARRIED.

10 APPEAL

a) APPEAL 2021-06

Kyle Breuer, Vice Chairman, asked if it's appropriate to establish a baseline for standing at this moment as to are we going to require anybody who signs up that wants to speak. Attorney Thurman indicates that it would be up to the board to decide if the speaker has the proper credentials or some type of expertise to speak on the subject. Kyle Breuer, Vice Chairman asked if the applicant's council stands up and says "I don't think they have standing then we are going to have to determine." Chairman Max Kipfer stated that is basically what he understands as well. Attorney Thurman stated that it quasi-judicial and it would be handled, in this case as you are sort of the judge.

Kyle Breuer, vice chairman, requested to make everyone aware that he has heard these types of cases as part of his prior position here at the county. Not this property and I don't feel there is any sort of bias, and this is no issue for to me to hear the case and weigh upon it. Attorney for the applicant, Amy Schaefer stated "it's our understanding and belief that Mr. Breuer can be fair and impartial, we have no objection".

Travis Henley, planning director, stated that the case presented is an appeal of administrative decision of Evolve Acquisitions, LLC and Amy Schaefer if Lee Kaess, on behalf of Land Willow Development Company and Headwaters Properties, LLC the property owners are requesting an appeal of an administrative decision made by the Pender County Planning Board at their September 1, 2021 meeting. Pender County Planning Board voted 5 to 1 to deny a master development plan reference by case number MDP 2021-30, it would have allowed for a mixed-use development consisting of 174 multi-family units and 3

commercial out parcels on 4 tracks of land totaling approximately 24.26 acres within the Planned Development district. The subject properties associated with the both the master development plan denial and the appeal of the administrative decision located on the eastern side of US HWY 17 between its intersections with Hughes Road and Deerfield Drive in Topsail Township. Planning director, Travis Henley gives a brief history of the property it was originally approved under the PD Master Development Plan standards as "Headwaters Town Center" a purely non-residential mixed-use project in January 2017 and expired in October 2019. A Conditional Zoning Map Amendment for 294 multi-family units and 3 residential out parcels was submitted in January 2021 and withdrawn in May 2021 following a unanimous recommendation of denial from the Planning Board. Following the withdrawal, a Master Development Plan for 174 multi-family units under the existing Planned Development district was submitted. Background on master development plans most if not almost all development in the PD development zoning district are required to submit a master development plan that goes through the approval process this plan is reviewed by planning staff for its conformance with all applicable standards within the unified development ordinance and within the PD district because the master development plans can be used in any zoning district within the PD district the project shall demonstrate general conformance with the purpose statements listed in section 4.8 of the Pender county unified development ordinance which includes mixtures of uses promoting quality urban design and environmentally sensitive development and achieving other goals as stated in adoptive plans such as the Pender 2.0 comprehensive land use plan additionally mutually agreed upon conditions can be established to ensure conformance to the UDO and to the PD district purpose statements. Upon review by staff the plan is presented to the Planning Board in an administrative public hearing. The Planning Board shall approve the plan with required changes or deny the plan. Any decision rendered by the planning Board is appealable to the BOA within 30 days and we received an appeal of their decision within 30 days.

Overview of what was presented to the Planning Board. Planning director Henley describes the area as having many different planning districts in the area, office and Institutional, General Business, and residential performance. There are four tracks that combined total approximately 24.26 acres. The Master development plan includes 174 multi family units in 7 buildings. One of the buildings is 30 units while the other 6 are 24 units. There are 3 commercial out parcels and proposed pump station located at the extreme eastern portion of the property. There is a proposed collector street which is part of our collector street plan which would parallel highway 17. Additionally, there is an amenity site located in the very center of the proposal. Applicant has submitted

37 proposed uses to be permitted as part of the approved master development plan and all these uses are allowable within the PD Planned development zoning district with the caveat that a master development plan must be approved. Currently a traffic impact analysis is still underway, Pender County ordinance requires a traffic impact analysis to be done when the AM or PM hour trips exceed 100 or when the total daily trips exceed 1000 which this proposed site trips the threshold in every single category. Previous traffic analyses have been approved for this site as well as in conjunction with the previous approvals. The Pender 2.0 Comprehensive Land Use plan is the overall guiding document that sets forth the preferred growth scenario over the next 30 years, we as a CAMA County have been required to have this plan since 1970. This plan designates the subject properties as regional mixed use meaning mixture of residential and non-residential uses that serve not just the immediate residents but of the whole area. The proposal was found to be consistent with the future land use map as the Pender 2.0 Comprehensive Land Use plan. Additionally, the applicant agreed to the conditions of approval for the proposed master development plan. Some of these conditions are carryovers from the initial approval back 2017, some from public input meetings, both for the conditional rezoning as well as for the master development plan so there are a total of 10 conditions.

Amy Schaefer, Attorney for Lee Kaess, spoke on behalf of the applicant, she stated it is her understanding that the position of the board today is just to determine on the record if the planning board applied the proper process and procedure in coming to their decision. Applicant is not anticipating presenting additional evidence other than what you have in the record. I do have our engineer here available to answer any questions. As it states the NC General Assembly recently pass chapter 160d, which incorporates all the land use decisions. She stated this meeting is in a quasi-judicial capacity to see if the Planning Board followed proper process and procedure, this is on the appeal of an administrative decision. "Under 160d there are 3 types of decisions: There is an administrative decision where if the applicant, the property owner meets the code requirements the project gets approved because it is a check the box technical review of the code, that's what this master plan development is we're here on appeal of an administrative decision. Then there is a legislative decision which is a conditional rezoning, Only the County Commissioners can hear those, they are not authorized to delegate their legislative authority, this is not a legislative matter that was before the planning board, this was an administrative review of the master development plan approval, and then there's quasi-judicial and that's where we're here today where there might be some discretion of the board." Attorney Thurman interjects stating the Board of Adjustment can also review whether they made the right decision, and the Board of

Adjustment is basing their decision on the record that is before them and the boxes were checked, and it should have been approved and it wasn't. The Board of Adjustment can say it needs to be approved and that is their decision. Attorney Thurman indicated that the applicant was not notified of the time and date of the hearing, Attorney for the applicant, Amy Schaefer stated that is correct, but they are waiving that. Attorney Thurman states he just wanted that in the record. Amy Schaefer also indicates that there was no specific ruling in the planning boards letter of denial, it was just denied. Based on some the conversations that the planning board had during their deliberations in that meeting, it sounded like there were some confusions on their part as to the purpose statement. Ms. Schaefer states "it is pretty clear what a purpose statement is, and it is to explain what you are going to get into, so when it says consistent with the neighborhood, meets the requirements." The ordinance is to set out what those standards are and that's why it is not discretionary, that's why its not legislative because the ordinance sets those standards. Planning staff fully evaluated the proposal and stated that it was compliant with the code and there wasn't any evidence presented to the board at the that time that the plan wasn't in compliance with the code and ordinance. Attorney for the applicant, Amy Schaefer indicated she would not be calling any witnesses.

Kyle Breuer, Vice Chairman asked if there is a member present from the planning board at our hearing today? Mr. Breuer stated he did not believe we are trying to testify on their behalf. He questioned that regard to this case if it's a staff versus a planning board? How do we proceed? Attorney Thurman looked into the requirements that whoever delivered the decision must appear, but the decision was actually delivered in a letter signed by Senior Planner Gideon Smith who is here. If the Board of Adjustment wants to delay and a Planning Board Member will be here for the next meeting, but that is the prerogative, but the issue there is that the statue speaks to the person that made the decision. Vice Chairman Breuer indicates if you're here we need to hear the deliberation for decision that gets made unless be instructed otherwise I going to maintain the same question and try to answer that same question "did the applicant meet the standards of the ordinance"?

Andrew Olsen, board member, requests for some clarification as a land use attorney indicates this is new and wonders how a decision of any kind from the Planning Board could come to the Board of Adjustment but I understand that there was some legislative remodeling. So, the answer is that the Planning Board did not make any findings is that a fact – I have two thoughts on that. One I don't; think the planning board members have standing to come in front of us and talk about what they were thinking. Two, I know when I was a hearing officer, I decided once

I kind of thought might want to hear why I made it but no, he didn't. I see an error because the Planning Board should have made findings effect and my initial inclination tends to fit into the judicial thing of delay and we ought to remand this to the Planning Board for them to draft up all their findings and send them to us so we can decide if they had a reason for denying this. Samantha Nelson, board member, stated that we have the meeting minutes, I think that as a board that if we were to look over and address what was being said and it is clear on their minutes that we can defer to what was going on in that room at the time and does not necessarily think that a planning board member is needed to appear. Attorney for the applicant, Amy Schaefer reiterates that staff evaluated the plan and found it did meet all the necessary code requirements.

Chairman asked to hear from the public that signed up:
Attorney for the applicant, Amy Schaefer asked would the board just want a standing objection for the record or who would you prefer to be notified? The Chairman indicates he would like to be told each time.

Pat Donovan-Brandenburg, 201 Crestview Drive, Atty. Thurman asked what evidence do you have that would assist the board in making the determination of whether development plan should have been approved or not based on the criteria set forth in the ordinance. Has strong objections to the Storm water location of the sewage tank. Attorney indicates that this information is in the Planning Board minutes that this board has in their packet.

Doug Holdstein, 313 Crestview Drive, Resident but said he has nothing new to offer as evidence.

Linda Mueller, 976 Washington Acres, says she is not an expert witness but stresses this is not good for the residents.

Attorney for the applicant, Amy Schaefer objects to the prior testimony.

Kyle Breuer, Vice Chairman asked staff "as presented does this application meet the standards of the ordinance?" Travis Henley, Director answers "yes it did".

Samantha Nelson, board member asks Travis Henley, Director "Why do we have no information regarding the traffic analysis?" The Director responded because traditionally Pender County when it comes to a project that requires a traffic impact analysis are one not cheap to have done, they are quite expensive, the other reason that we don't typically require a traffic impact analysis in proposal because we don't want to make somebody do the full analysis prior to knowing whether they have

approval. But the third piece of this is that the Traffic Impact Analysis is really between NCDOT and either the Wilmington Metropolitan planning organization, Cape Fear Rural Organization Counties are not in the road business, we don't have a traffic engineer on staff nor does any other county to my knowledge. The process of and this is straight out of statute and has been this way for almost a century that state controls roads; and there are either state roads or private roads, so our role as staff our role in the traffic impact analysis process is that we provide contacts to the WNPO and NCDOT or the RPO and NCDOT depending on project location. The Planning Boards approval of a Master Development Plan or staff's approval of a Master Development Plan in no way grants any authority to begin construction. Samantha Nelson, board member asked if "there is evidence submitted to the Planning Board as far as expertise or documents regarding the traffic or anything else that going to need to be adjusted or addressed." Attorney for the applicant, Amy Schaefer answers that there was a traffic engineer at the Planning Board meeting who presented evidence that they are running our TIA and all the mitigation requirements were presented to the board. Samantha Nelson, board member asked if someone can read in the statement from to board as to what was already said at the planning meeting? Specifically, about the traffic that expertise that not here right now. Attorney for the applicant, Amy Schaefer indicated that the letter from the WMPO to our traffic engineer citing the migration that would require on our project. This letter as well as Ms. Kemp's testimony was presented to the Planning Board, what minutes say is that Ms. Kemp's gave a brief overview of the TIA.

The Chairman asked if there are any more questions and hearing none asks "does anyone like to suggest how we proceed? Kyle Breuer, Vice Chairman stated that what we've heard puts us in a position to proceed and potentially dispose of the case. Chairman agrees. Kyle Breuer, Vice Chairman made a motion to approve the appeal and is an appropriate one. Samantha Nelson, board member seconded.

Andrew Olsen, board member stated that the motion as it is now I will vote against and the reason is although I look through the minutes and see what people said and people testifying in regard to the development and also some of board members mentioned at some point in the minutes that I don't have in front of me, the rationale for the vote that was made by the board and no findings of fact to support their administrative decision I can't evaluated it at this point and so I have to vote no.

Jeff Snider, board member stated if you live in Pender County you work about the traffic, you worry about the building, and you worry about the schools.

The Chairman stated he did not hear any compelling testimony here today that gave me any reason to believe that there anything different

Moved by Kyle Breuer, seconded by Samantha Nelson

Vote to approve appeal

	For	Against	Abstained	Absent
Max Kipfer	x			
Kyle Breuer	x			
Samantha Nelson	x			
Andrew Olsen		x		
Douglas Scott Rivenbark				x
Jeffrey Snider	x			
Tera Cline				x
	4	1	0	2

CARRIED.

11 DISCUSSION ITEMS

12 NEXT MEETING DATE

December 15, 2021 9:00 AM
805 S. Walker Street
Burgaw, NC 28425

13 ADJOURNMENT

Chairman adjourned meeting at 12:08 PM