

Pender County Board of Adjustment Meeting Minutes – September 21, 2022

Members Present: Max Kipfer, Chairman
Kyle Breuer, Vice Chairman
Jeffrey Snider, Alternate
Andrew Olsen, Alternate

Members Absent: Brett Keeler

Others Present: Travis Henley, Planning Director
Justin Brantley, Senior Planner
Donna Sayre, Administrative Specialist
Trey Thurman, County Attorney
Amy Schaefer, Attorney
Mollie Cozart, Attorney
Gary S. Pape, GSP Consulting
Becky Maness, Member of the Public
Amber Young, Member of the Public
Camilla Stees, Member of the Public
Philippe Stuart, Member of the Public
Andrew Adkinson, Member of the Public
Mario Pinerio, Member of the Public
Michaele Blunt, Member of the Public
Al Burfield, Member of the Public
Lyndsay Oliver, Member of the Public
James Quaglia, Member of the Public
Karen Koon, Member of the Public

1. **Call to Order:** 9:01 a.m.
2. **Roll Call**
3. **Pledge of Allegiance and Moment of Silence**
4. **Adoption of Agenda**

Mr. Breuer made a motion to adopt the agenda. Mr. Snider seconded the motion, and the motion was unanimously approved.

5. **Adoption of Minutes**

Mr. Breuer made a motion to adopt the minutes from the August 17, 2022, meeting. Mr. Snider seconded the motion, and the motion was unanimously approved.

6. **Public Comment**

There was not public comment

7. Public Hearing

APPEAL CASE 2022-08 – Applicant Top Sail NC, LTD., on behalf of Trust Special, Ruth Kalmar Estate.

Mr. Henley, Planning Director, presented the Staff Report. Signature Top Sail NC, LTD., applicant and owner, and on behalf of Trust Special, Ruth Kalmar Estate, owner, is requesting an Appeal of Administrative Decision made by the Pender County Planning Board at their June 7, 2022, regular meeting. The Pender County Planning Board voted unanimously (4-0) to deny the Master Development Plan (MDP 2022-38) that would have allowed for a modification of the existing plan to allow for townhomes in Phases 7 and 11, increase the non-residential area within both phases, and remove Phase 10, located across Sloop Point Loop Road from the Craftsman Way entrance, from the project. The property is located to the east of US HWY 17, north of Doral Drive (SR 1693), west and east of Sloop Point Loop Road (SR 1563), and south of the Cardinal Acres Lane (private) in the Topsail Township.

Mr. Henley stated that the Master Development Plan known as Wyndwater was originally approved in November of 2013 and has been subject to numerous revisions over time since the original approval. As it currently exists, the Master Development Plan of Wyndwater includes approximately 234.28 acres, a significant number of which has already been developed or is in the process of being developed. Within Wyndwater, Phases 1,2,3,6,8, and 9 have received Final Plat approval and are entirely or mostly built out. All of Phase 4 has received Final Plat approval as well and is nearing completion, and Phase 5 is currently under construction. The overall Master Development Plan is approved to include 529 units, with the most recent revision being approved in March of 2021.

An application for a further Master Development Plan revision under the PD, Planned Development zoning district requirements was received on September 10, 2021, for the subject properties. The Master Development Plan Revision was designed to accomplish the removal of Phase 10 from the project, Phase 11 was previously approved for 76 townhome units and the proposal reduces this number to 56 townhome units and increases commercial acreage to include 56,000 square feet of medical office and retail space, and Phase 7 was previously noted as future development to now include 60 townhome units as well as 12,800 square feet of medical office space. The 60 residential units allocated to this phase are sourced from the reduction of units in Phase 11 and the removal of Phase 10 from the project. This phase was designated to contain townhomes in the most recent Master Development Plan Revision; however, no units were allocated to it.

Mr. Henley informed the Planning Board that per the Register of Deed's records, Phase 10 property has already been sold and transferred to another party.

Mr. Henley read number 13 of the Conditions of Approval section which states that all subsequent phases of the Wyndwater Master Development Plan that have not received an approved Preliminary Plat or Major Site Development Plan as of February 2, 2021, shall provide sidewalks or other equivalent pedestrian infrastructure along at least one side of every right-of-way or drive aisle within those phases. He then read number 14 which states all subsequent phases of the Wyndwater Master Development Plan that have not received an approved Preliminary Plat or Major Site Development Plan as of February 2, 2021, shall be held to a significant tree mitigation requirement of four to one (for every significant tree removed, four of the same species shall be planted). Significant trees to be planted shall be shown on Preliminary Plats or Major Site

Development Plans and fenced prior to approval of those documents. Fencing shall not be removed until all construction on-site is complete.

Mr. Henley informed the Board members that sections of Phases 7 and 11 are designated as un-numbered A flood zone.

Mr. Kipfer asked for verification that the Planning Board voted 4 to 0 to deny the Master Development Plan that would have allowed the modification and Mr. Henley affirmed.

Mr. Snider questioned as to whether the newer floodplain maps had been reviewed with this modification request even though they have not technically been approved. Mr. Henley stated that this question would need to be deferred to the Project Engineer for an answer.

County Attorney Trey Thurman swore in Mr. Henley, Mr. Brantley, Gary S. Pape, Becky Maness, Amber Young, Camilla Stees, Philippe Stuart, Andrew Adkinson, Mario Pinierio, Michael Blunt, Al Burfield, Lyndsay Oliver, James Quaglia, and Karen Koon.

Attorney Amy Schaefer asked Mr. Henley to review the administrative review and appeal process, which Mr. Henley provided.

Ms. Schaefer asked Mr. Henley if he or a Planning Department staff member had reviewed the Wyndwater Master Development Plan and found it to be compliant with the code, and Mr. Henley affirmed as such.

Ms. Schaefer then asked if there was any further review after the Planning Board's denial ruling. Mr. Henley stated that no further review has been done.

Ms. Schaefer questioned as to whether Section 7.9 of the Ordinance was required at the time of the preliminary plan and Mr. Henley stated that it was not required during preliminary planning.

Ms. Schaefer informed the board members that she is happy to answer any questions that they may have of her. Mr. Kipfer asked the members if they did have any questions and there were none presented.

Engineer, Gary S. Pape with GSP Consulting spoke to the Board members after being entered as an expert witness by Ms. Schaefer.

Mr. Kipfer asked Mr. Pape if he reviewed the stormwater management plan and Mr. Pape replied affirmatively. Mr. Pape stated that he feels that all requirements of Section 7.9 can be met.

Mr. Snider asked Mr. Pape if he has looked at the newer floodplain maps with Mr. Pape responding affirmatively and that he did not see much change between the current maps and the un-approved maps.

Attorney for Topsail Greens Homeowner's Association, Mollie Cozart of Jordan Price Wall Gray Jones & Carlton spoke about the homeowners' many concerns. She provided that property owners are concerned with impacts on utility easements, sewer issues, stormwater run-off, and the already existing flood issues.

Ms. Cozart stated that at the April 2022 Planning Board meeting, the Developer agreed to provide a surveyor's map of the three major sewer lines identified and the item was tabled until the June meeting to give the Developer appropriate time. To date, the Developer has not provided said map.

Topsail Greens' HOA is claiming that the preliminary plans submitted did not meet Section 7.9 requirements.

Ms. Cozart states that there continues to be questions as to stormwater run-off. She said the Developer did not comply with all requirements of 3.5.1 of the Ordinance. She stated that what the Developer is seeking does not comply with the Ordinance.

Ms. Cozart stated that the HOA is requesting that the Board denies the appeal.

Mr. Kipfer questioned as to whether the HOA has maps showing utility easements and the septic system including the septic lines. Ms. Cozart stated that the HOA does have some maps but that not all the easements are shown. She did state that the Vice President of the HOA, Becky Maness would be better equipped to answer that question. Ms. Maness stated that the map that the HOA has was submitted in April and June of 2022, but that these maps are older being from 1985 and 1989. Mr. Kipfer asked if the maps were complete, and Ms. Maness replied that the three main lines were accurate but lesser branched off lines may be inaccurate or not shown at all.

Mr. Kipfer asked Mr. Henley if the maps were available for review. Mr. Henley responded that one map was in the packet provided to the Board members. Ms. Maness stated that the map that was in this packet was not a map that was provided by the Applicant. Mr. Kipfer stated that he would like to see the maps and Ms. Cozart emailed them to Mr. Henley.

Mr. Breuer asked if any evidence of identifying stormwater impacts have been gathered. Ms. Cozart asked if he was referring to documentation by the residents, which Mr. Breuer responded affirmatively. Ms. Schaefer stated that she objects to anyone testifying as to stormwater, rain, or flooding issues.

Karen Koon, 214 Spar Court, spoke to the Board concerning flooding issue. She stated that during heavy rains and Hurricane Florence water will come up to the back of their house and that is with a place for the water to go. She is concerned that without a plan in place for the water, the community will be flooded out after the next heavy rain or hurricane. Ms. Koon feels that the developer needs to take flood issues into consideration.

Ms. Cozart stated that during the June 2022 Planning Board meeting, one of the members expressed their concern with stormwater run-off more than one time. That member asked where the water was going to run to, and the Developer had no response. She has photos from residents showing the flooding that has not taken place during a hurricane.

Mr. Olsen asked if the original approval was administrative, and Mr. Henley stated that it was approved administratively.

Amber Young, 400 Ensign Court, stated that she is concerned with the abundant wildlife and over one hundred different wild bird species being forced away from their long-standing habitation in Topsail Greens due to the new construction. She feels the Developer is not concerned with the

residents of Pender County due to not living here. Traffic is an issue with car insurance premiums rising due to the additional traffic. This matter will only continue to get worse if this development is allowed. Ms. Young presented the Board with a two-page packet that she would like to submit into the record as **Exhibit A**.

Camilla Stees, 400 Ensign Court, stated that she feels that residents are losing freedom every day. She feels that the Developer wants to build on wetlands, which will eventually sink, and either the state or county will be sued. Topsail Greens has two wells, and the Developer legally must not infringe upon either. This land is known to be flood prone and more flooding can leave residents homeless. Ms. Stees stated that without exact plan there should be no approval and to not allow the greed of others to take away the residents' freedom. Ms. Stees presented the Board with a two-page packet that she would like to submit into the record as **Exhibit B**.

Philippe Stuart stated that he is the son-in-law of Andrew Adkinson, who resides at 108 Admiral Court. Ms. Schaefer stated that she objects to all public comments, specifically to a person not living in the area. Mr. Kipfer stated that he feels that if you don't live in the area full time then he does not have a right to speak at the hearing. Mr. Olsen stated that he does not feel the son-in-law should have the right to speak.

Andrew Adkinson, 108 Admiral Court, stated his concerns of the Developer continuing to build where flood water used to flow. Currently, water seems to collect at the back of the property. Traffic is already bad, and the Developer is aware but does not stop developing. Mr. Adkinson stated that the Developer cheaply bought the property during a bankruptcy and already made his money. Mr. Adkinson presented the Board with a letter and two pictures that he would like to submit into the record as **Exhibit C**.

Mario Pinierio, 614 Galley Court, expressed his concern about the Fire and Police Department not being able to adequately do their jobs with all this development being put into place. Wildlife is abundant in this area and flooding is a major concern.

Michaele Blunt, 110 Admiral Court, stated that Topsail Greens has two entrances close together and the Wyndwater entrance will be close to both entrances. Traffic is heavy and with no stop light at Hwy 17, this makes exiting in the mornings and when school buses are running very difficult and dangerous. She stated that the golf course floods badly now without the two-acre pond being eliminated. After the last rain on August 22, 2022, there was a river of water running between homes. Ms. Blunt stated that she does not want to start paying flood insurance. Questions have been presented to the Developer in the past concerning how the water from Wyndwater was going to be stopped from running into Topsail Greens and no response was ever given. She is asking the Board of Adjustment to uphold the decision of the Planning Board.

Al Burfield, 353 Topsail Plantation Drive, discussed the lack of a drainage plan. The entire area will be in a flood area and who will be responsible then. There are highway improvements needed by the Developer and who will make the Developer be responsible. Mr. Burfield is also concerned with EMT and fire issues.

Lyndsay Oliver, 212 Spar Court, stated that she can see the land where Wyndwater will be building from her back yard. She has a retention pond bordering her property and has serious concerns pertaining to future flooding due to the serious flooding during Hurricane Florence. She stated that the Developers said they would build trenches and berms originally but since then, they have been

vague, and the issue has been brushed aside. Ms. Oliver stated that dirt and earth will absorb water, but concrete will not. She also stated that the Developer said at the Planning Board meeting that the retention pond will be filled in and that is concerning due to the turtle population in the ponds. She asked the Board members to think of the quality of life for the residents of Topsail Greens.

James Quaglia, 354 Topsail Plantation Drive, stated that he has a half-acre lot with the back part being in a flood zone. He has had to re-grade his own yard due to water and flooding. Mr. Quaglia is asking the Board members to deny the Appeal.

Ms. Schaeffer presented the Board members with a brief closing argument. She stated that during an Administrative Review, if the preliminary plat meets the code, then approval should be granted.

Ms. Cozart stated that she had nothing more to add at this time.

Mr. Henley spoke of traffic issues and traffic planning aspects. He also stated that the Army Corp of Engineers will be responsible for any wetland areas.

Mr. Kipfer stated that he thinks that there are still many hurdles to get through and Mr. Henley stated that this is just hurdle number one.

Mr. Snider asked if a response was given by the Developer as to how much water runs to the retention pond. Ms. Maness stated that there has not been a direct response and the HOA is concerned with the matter of access to the septic system repair fields.

Mr. Adkinson stated that a two-acre pond does exist and has been there since 1980. He questioned as to how the Developer is planning on filling in the pond and putting a medical center facility there instead. He cannot comprehend the justification of this action.

Garry Pape with GSP Consulting informed the Board members that all water will drain into new pond and that there is a plan for outer area drainage using trenches.

Mr. Olsen stated that at this point he cannot vote in favor. He stated that traffic is already bad and that it not about density solely. Moving townhomes from downhill to uphill will cause more issues and he feels this change is not productive.

Mr. Snider stated that there are still many unanswered questions concerning buffers, fences, sweet system, retention ponds, and traffic. He feels that the Developer still has some work to do on these issues.

Mr. Henley stated that buffers are required by the Ordinance and the Developer has the right to choose option C1 or C3. The Developer will have to pick one or the other and complete it. This is not an option.

Mr. Kipfer stated that future stages will come as necessary and there are many more steps to complete.

Mr. Breuer stated that he is aware that this land will be developed at some point and is having trouble understanding the perimeters. Seventy-six townhomes have already been approved and he

is struggling with the modifications. Stormwater run-off solutions are very unclear which he finds concerning.

Ms. Schaefer asked about the options of the Board. Mr. Henley read Section 3.16.6, of the Unified Development Ordinance, which is titled "Action by Board of Adjustment."

Mr. Kipfer stated that he thinks that the Planning Board members did not feel they had enough information, and he now feels his co-members are feeling the same way.

Mr. Olsen made a motion to deny the Appeal and Mr. Snider seconded the motion. Mr. Kipfer, Mr. Snider, and Mr. Olsen voted to uphold the decision of the Planning Board. Mr. Breuer voted to deny the decision made by the Planning Board.

8. Discussion Items

9. Next Meeting Date

October 19, 2022 @ 9:00 a.m.
Commissioner's Meeting Room
805 S. Walker Street
Burgaw, NC 28425

10. Adjournment

Meeting adjourned at 11:28 a.m.