Pender County

Agenda

Board of Adjustment Meeting

Wednesday, November 16, 2022 @ 9:00 AM

Pender County Public Assembly Room

		Presenter	Page
1.	CALL TO ORDER		
2.	ROLL CALL		
3.	INVOCATION		
4.	ADOPTION OF AGENDA		
5.	ADOPTION OF MINUTES		
	5.1. BOA Meeting Minutes 9-21-2022 BOA minutes 9-21-2022 - Pdf		3 - 18
6.	PUBLIC COMMENT		
7.	APPEAL		
	7.1. Appeal 2022-09 Appeal 2022-9 - Pdf		19 - 116
8.	DISCUSSION ITEMS		
	8.1. Wyndwater Appeal Case 2022-8 Board Order Discussion		
9.	NEXT MEETING DATE December 14, 2022		
10.	ADJOURNMENT		

Pender County
BOA meeting Minutes 9-21-2022

TO:	BOA
FROM:	Justin Brantley
DATE:	November 16, 2022
SUBJECT:	BOA Meeting Minutes 9-21-2022

SUMMARY:
BOA meeting minutes 9-21-2022

ACTION REQUESTED:
Adoption of mintues 9-21-2022

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 Pinierio, 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, Michaele 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**.

Philipe 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 concerning 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 hurtles 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.

September 21, 2022

To: Topsail Greens' attorneys and Pender CO. Planning / Community Development

From: Amber Young / Topsail Greens' residents

Re: Topsail Greens' residents vs. Wyndwater's land development 9/21/22 Appeal

- Topsail Greens' residents and I don't want to see the abundant wildlife and over 100 different species of wild birds get forced away from their long-standing: (habitation / bird homes / bird sanctuaries) in Topsail Greens and get taken away due to the new construction of the undeveloped land that Mr. Pollak wants to build.

- Topsail Greens' covenants promised us, residents, only single story homes where our covenant excludes multi-story buildings.

- Wyndwater hacked into Topsail Greens well-water pipe system when Wyndwater developer was constructing homes behind Topsail Greens. The water came into our residences with brown water, which we could not use.
  This happened for about several days. We don't share our private well water with anyone outside Topsail Greens nor do our covenants allow for this.

- Please don't let Wyndwater developers to illegally tap into our water sewers again at any time.

- Wyndwater developer / Mr. Pollak is not entitled to Topsail Greens' home-owners' lands. He does not pay our home-owner association dues/expenses; and he does not own our lands.

- Topsail Greens' (approx. 200+ residents) don't want our land, single story homes, and land views get disturbed and blocked by multi-level (second to four story) condos and commercial buildings. We do not want our clean air to become polluted by approx. 575+ to be new condominium residents' cars producing air pollution every day for 365 days per year for years to come. This has proven to give many exposed residents lung cancer. We already have about 375 new cars driving from the recently-developed Wyndwater land behind Topsail Greens' residents, plus 200+ of Topsail Greens residents' cars = total 575 driving cars. It would be a disaster to have a total of over 1,000 polluting car rides driving residents around every day per year for years in our community.

- Mr. Pollak, Wyndwater developer, wants to build here to get money and doesn't care about any Topsail Greens'residents / or any future residents living in flood zones and on native wetlands because he doesn't live in our Pender County. He doesn't care about Topsail Greens' 200, long-time, residents' peaceful and quiet neighborhood. He wants to build about 500 more residential condo. units including two medical

commercial facilities on US Highway 17 between Plantation Road and Topsail Greens Drive.

- There already has been too much vehicle traffic from the new additional aprox. 375 Wyndwater-developed homes that are in the back of Topsail Greens. Topsail Greens Drive residents can't even walk our dogs without fear of being run over by traffic.

- All our car insurance policy premiums were raised significantly because of this traffic that includes a high rise in many car accidents that have happened on US Highway 17 in front of both Topsail Greens' two road entrances: (Champion Road and Topsail Greens Drive).

- In the covenants of Topsail Greens, the golf course was not supposed to be (done away with and not provided to our residents). We, residents, did not approve of this. Now all these condo. units are going to take the place of green spaces: (the golf course / plus). Hampstead, whereTopsail Greens is, is an unincorporated village / place, located in an agricultural / farm country-side. None of our residents want to live in a cement dominated, incorporated city, like Wilmington, which is in a different county.

- Please help and save our Topsail Greens' neighborhood quality of life. Please don't let anyone rail-road us over.

Sincerely,

Amber Young,
Topsail Greens resident as follows:
400 Ensign CT., Hampstead, CA 28443.
(910) 352-3718.
2ayoung.us@gmail.com

Wednesday, September 21, 2022

Thank you for hearing us today.

The following points are extremely important:

- The USA exists for freedom, something we are losing every day.
- A couple from Washington Acres had a developer infringe upon their freedom. The developer built further up the hill, adjacent to them. In doing so, the developer changed the drainage runoff that literally flooded beneath their home and the couple lost their entire house they had for 15 years, making them rent then. They had no home or any financial compensation what so ever.
- This developer wants to build on wetland which eventually will sink. Either the State or the County will be sued.
- We have two water wells, one serving Champion Dr. residents and one serving Topsail Greens Rd. residents.
- Legally, the developer must not infringe upon either of these wells. If the developer changes the drainage runoff, it will ultimately lead to flooding. These acres are flooding acres and the insurance companies are well aware of this fact.
- Flooding in the HOA areas will leave the residents homeless. We will lose our freedom of living.
- If this happens, we of Topsail Greens will expect the developer to pay for each person's entire move, a new home, and all expenses included.

- We of Topsail Greems will ultimately lose our freedom of living.
- Topsail Greens residents live here for the freedom of a paid-in-full home.
- Money is trying to take away all of our freedoms and we should not allow the greed of others to take away our freedom.
- Further, building on exposed wetland and erecting multi-story condos (with all its weight) upon wetland should be denied by any brain thinking people. If it doesn't sink when it is built, it will later.
- Furthermore, flooding out Topsail Greens residents means that the land will not be viable for sale for flooded wetland, nor will it be buildable for future development.
- It is not the fault of the Topsail Greens residents that wetland is where the developer wants to build, but the developer should be denied the unacceptable building of such. Safety above money.
- Our State Representative should be aware of building on wetland. They have been notified.
-

Respectfully,
C. C. Stees
400 Ensign Ct.
Hampstead

Andrew Adkinson
108 Admiral Court
Hampstead, NC 28443
Tel. (910) 789-0640

FLOOD, TRAFFIC & GREED

The Story of Wyndwater's Revision Plan

1.) FLOOD:

Bellvedere Plantation, the other floodplain a mile south on HWY-17, is not as big as the one owned by Phil Shephard.

2014 Tropical Storm Flooded out

2018 Florence was worse because residents had to leave for 6 months for repairs

(a.) Picture of a Regular Thunderstorm on Friday August 12, 2022

(b.) Photograph on Monday Aug 15, 2022 shows that right in the middle of the development they have stopped all water flow on the property and this is 3 months of natural growth, which indicates a substatial amount of groundwater.

The FEMA flood map for Pender County Unicorporated Areas (No. 3720420400) has been effective since 2007, was revalidated in 2019, and shows these areas are at risk.

2.) TRAFFIC:

Mr. Pollak is already aware of problems Wyndwater residents have with restricted access because there is only one way out of this development and "all ways lead to HWY-17."

Extra access for new development is located 1/10 of a mile on either side of Topsail Greens, which creates traffic of about 400 to 759 vehicles per day.

Additionally, the EMS and Fire Station are in that same space, not to mention the Bypass located just 2 miles south-- We will get all that traffic, too!

3.) GREED:

Land was bought in Bankrupcy-- dirt cheap --but could not build in back because of permits. So, the land was traded for an exit to appease residents, who want convenient access. Now, they plan to bring those units to the front, add a commercial area, and increase their profits!

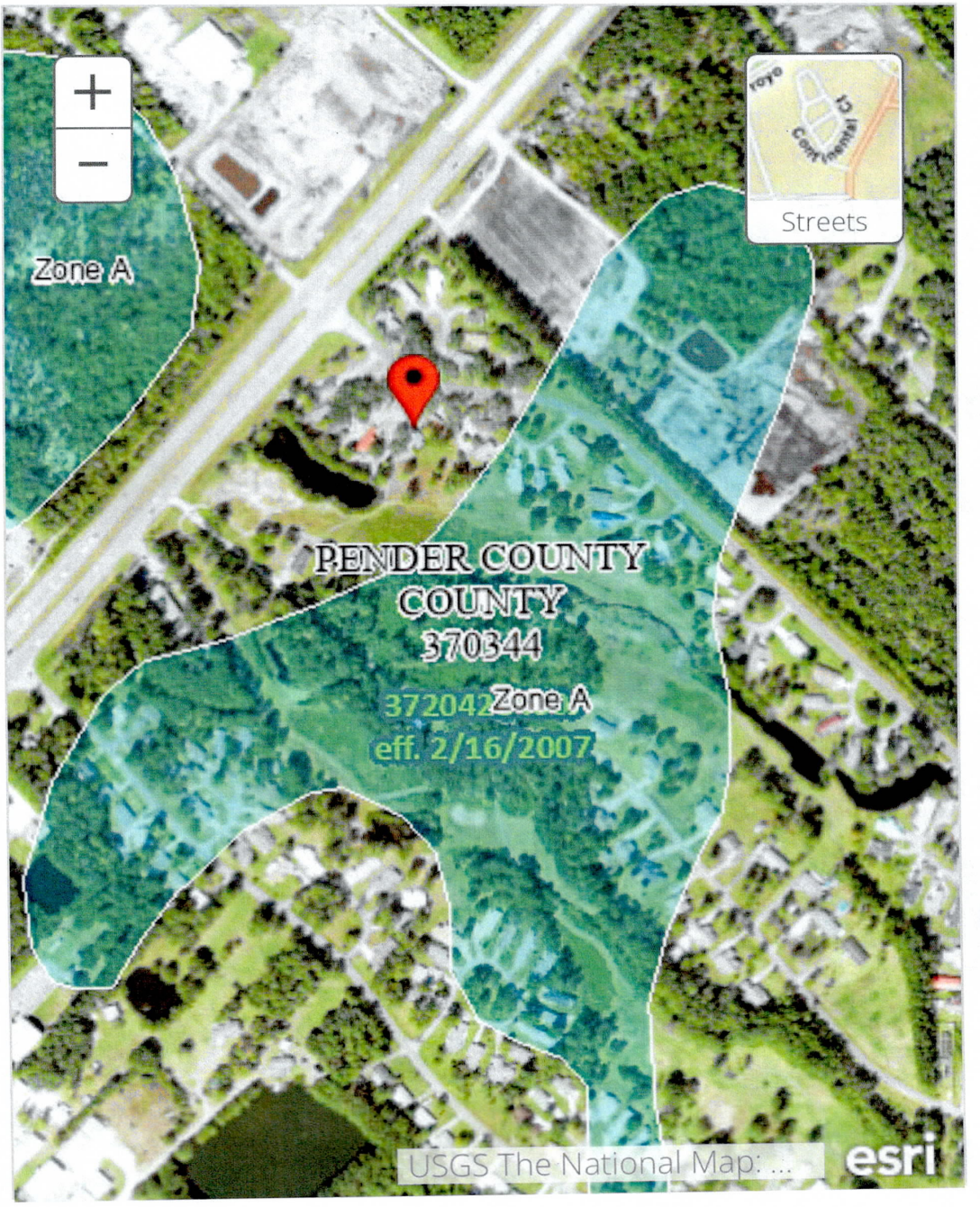
At the last meeting, in June, residents asked: "What about green-space?" Mr. Pollak answered to the effect that, "It's my property. It will have a picnic table," which indicates that he'll do what ever he wants, regardless.

In fact, our neighborhood is alreadhy treated as a green-space by Wyndwater residents to enjoy. At this rate, Topsail Greens will be the only green-space available in the area, which is not even big enough to accomodate the revised plan.

By our estimates, Wyndwater development has already recovered its original investment in Unincorporated Pinder County and much more. So, why "run rough-shod" over an established community of retirees? Because you can? Because this is about money-- green-space and local residents be damned.

In conclusion, I'd like to say a few words about the lack of representation in this situation by our so-called "Home Owners Association." They have been negligent in our representation to the point of complicity with the dismemberment of our community-- Shame on them!

Finally, like the song goes, please do not "pave-over paradise and put up a parking lot." Thank you for your attention.


Zone A
PENDER COUNTY
COUNTY
370344
372042
Zone A
eff. 2/16/2007
Streets
USGS The National Map: ...
esri

#4

#8

Pender County
Appeal 2022-09

TO:	BOA
FROM:	Justin Brantley
DATE:	November 16, 2022
SUBJECT:	Appeal 2022-09

SUMMARY:
The subject property is located at 120 Hugh Edens Lane, approximately one-half mile southeast of the intersection of Sloop Point Loop Road and Twin Oaks Drive in the Topsail Township and may be further identified by Pender County PIN 4214-91-8387-0000. The subject property is zoned RP, Residential Performance zoning district. Adam Winstead, Brian Walsh and Lauren Walsh, applicants, and owners are requesting an Appeal of an Administrative Decision made by the Pender County Planning and Community Development Department which found that the Special Use Permit Application for Case SUP 2022-36, requesting approval for a Community Boating Facility, was complete.

ACTION REQUESTED:
Vote on Appeal 2022-09

ATTACHMENTS:
Appeal 2022-09 Staff Report
Appeal of Administrative Decision
SUP 2022-36 Complete Application Packet
Map Book 26 Page 104
Deed Book 2295 Page 088
Deed Book 2295 Page 084 Deed of Easement
Map Book 35 page 069
Map Book 36 Page 048
Map Book 37 Page 028

PENDER COUNTY BOARD OF ADJUSTMENT
PLANNING STAFF REPORT
APPEAL OF ADMINISTRATIVE DECISION

SUMMARY:

Hearing Date:	November 16, 2022
Applicant:	Adam Winstead, Brian Walsh and Lauren Walsh
Property Owner:	Adam Winstead, Brian Walsh and Lauren Walsh
Case Number:	APPEAL 2022-09

Property Location and Description: The subject property is located at 120 Hugh Edens Lane, approximately one-half mile southeast of the intersection of Sloop Point Loop Road and Twin Oaks Drive in the Topsail Township and may be further identified by Pender County PIN 4214-91-8387-0000.

Zoning District of Property: The subject property is zoned RP, Residential Performance zoning district.

Summary of Appeal Request: Adam Winstead, Brian Walsh and Lauren Walsh, applicants, and owners are requesting an Appeal of an Administrative Decision made by the Pender County Planning and Community Development Department which found that the Special Use Permit Application for Case SUP 2022-36, requesting approval for a Community Boating Facility, was complete.

BACKGROUND AND DESCRIPTION OF APPEAL REQUEST:

The Subject Property, initially shown as Tract A in Map Book 26 Page 104, currently includes two duplex units, Parcels 4214-91-8387-000A and 4214-91-8387-000B each consist of a single unit respectively with the surrounding common area as Parcel 4214-91-8387-0000. The current owners of these parcels include Sloop Point Watch HOA (Common Area), 4214-91-8387-000A (Brian & Lauren Walsh) and 4214-91-8387-000B (Adam Winstead). Sloop Point Watch HOA is owned jointly by Brian & Lauren Walsh and Adam Winstead.

Figure 1 Subject Property In Red

Prior to the current ownership, Richard Lehrer and James A. Spicuzza filed a Declaration of Condominium for the Sloop Point Condominium on this property (Tract A) on January 5, 2004 in Book 2295 Page 088. This recording further established the Sloop Point Condominium Owners Association, INC. which included the duplex with surrounding common area. On the same date, a Deed of Easement was recorded with the Pender County Register of Deeds in Book 2295 Page 084. Grantors (Rishard A Lehrer, Anna M. Lehrer, James Spicuzza, and Amy Spicuzza) granted grantees (Owners of Lots 1A & B, 2A & B, 3A & B, 4A & B, 5A & B, 6A & B, 7A & B, 8A & B, 9A & B, 10A & B, and Lot 11, Sloop Point Duplexes) with a perpetual easement, for the use of a boat launching/landing ramp and access to the Atlantic Intracoastal Waterway through a portion of Tract A, as previously identified.

The respective lots were established in Map Book 35 Page 069 on September 24, 2002 with individual duplex tax parcels being established in Map Book 36 Page 048 on July 3, 2003. Subsequently, Map Book 37 Page 028 was recorded on January 5, 2004 and shows Tract A including duplex units A and B with a water access easement granted under Book 2295 Page 084.

In response to a letter sent from the Law Office of Matthew A. Nichols on August 13, 2021, Staff compiled a zoning verification letter that answered a number of questions asked by Mr. Nichols, including those referencing the zoning of the property, the classification of the existing use on site and history related to the site, and how such a use would be permitted under the standards outlined in the Pender County Unified Development Ordinance at that point in time. The zoning verification letter issued by the County clarified that the use was classified as a Community Boating Facility under the definitions outlined in the UDO, that establishing such a use would require the approval of a Special Use Permit by the County, and that there was no record of a Special Use Permit having ever been issued for the subject property.

On May 26, 2022, Planning Staff received an inquiry from Attorney Steve Coggins regarding a pre-submittal meeting for a Special Use Permit Application for a Community Boating Facility, which requires Special Use Permit approval by the Board of County Commissioners. Staff informed Mr. Coggins that the pre-submittal meeting was no longer required and provided him with the application documents.

The current Pender County UDO defines Community Boating Facility as follows: A private, nonprofit boating facility with navigable water frontage which includes a dock, pier, and/or launching ramp which is intended to serve five (5) or more residential units. Must be owned/controlled by a Homeowners Association (HOA) or any type of development association or collective owners group where more than one family has privileges to use facility. Commercial activities of any kind, including commercial letting of slips to parties that are not residents of the association or development, shall be prohibited.

On June 6, 2022, Mr. Coggins emailed Planning Staff a digital application submittal and on June 22, 2022, Planning Staff members Justin Brantley, Gregory Feldman, and Mark Haraway, Fire Marshall, met with Mr. Coggins to discuss the initial proposal to install and use a floating dock and kayak launch. After discussing concerns related to emergency access due to the limitation of the twelve foot (12’) wide easement leading towards the waterway, it was determined by Mr. Haraway that any modification of the existing facilities would require a twenty-foot (20’) wide fire access road and turnaround for emergency vehicles.

On July 19, 2022, Mr. Coggins provided Planning Staff with a revised site plan showing no proposed modifications or improvements to the easement area. On August 10, 2022, a revised application was received by Planning Staff and the Special Use Permit Application (Case SUP 2022-36) was determined by Planning Staff to be complete and was subsequently scheduled for a Public Hearing by the Board of Commissioners on September 19, 2022. The Application was signed by Steve Coggins as the applicant representing Betty Change signing as the owner on behalf of the Sloop Point Duplex Owners which identifies herself and the other 20 owners as easement holders as previously established.

On August 30, 2022, Attorney Matthew Nichols filed an application for the appeal of an administrative decision challenging the completeness determination made by Planning Staff on August 10, 2022. This appeal application filed pursuant to Pender County UDO Section 3.12.3.F, which provides that an appeal from a completeness determination may be made to the Board of Adjustment within twenty (20) days of the determination. See Appeal Application 2022-7 in this packet.

On August 30, 2022, Planning Staff received an application for the Appeal of an Administrative Decision (Appeal Case 2022-9) from Attorney Matthew Nichols, on behalf of Adam Winstead & Brian and Lauren Walsh, providing that Special Use Permit Application 2022-36 was incomplete and therefore should have been/should be rejected by the County as incomplete and insufficient to move forward to the Board of County Commissioners.

ZONING ADMINISTRATOR'S CONCLUSION:
It is the determination of the Zoning Administrator that Planning Staff correctly determined Special Use Permit Application 2022-37 to be complete. In this determination it was established that the easement holders had the right to apply for this development approval as it was consistent with their rights as easement holders. It was further established that Mr. Stephen Coggins had the right to apply as the applicant as an agent of the easement holders.

As specified in N.C.G.S. 153A-345(b), an appeal by any person aggrieved by a final order, interpretation or decision of the Administrator or other administrator in regard to the provisions of this Ordinance may be taken to the Board of Adjustment.

3.16.6 Action by Board of Adjustment

- **A.** The Board of Adjustment may reverse or affirm (wholly or partly) or may modify the order, requirement, decision, or determination appealed from and shall make any order, requirement, decision or determination that in its opinion ought to be made in the case before it. To this end, the Board of Adjustment shall have all the powers of the officer from whom the appeal is taken.
- **B.** A motion to reverse, affirm, modify the order, requirement, decision, or determination appealed from shall include, insofar as practicable, a statement of the specific reasons or findings of fact that support the motion.
- **C.** If a motion to reverse or modify is not made, or fails to receive the affirmative vote of a majority of members present, the appeal shall be denied.
- **D.** Any motion to overturn a decision shall state the reasons or findings of fact that support the motion.

BOARD ACTION FOR APPEAL:

MOVED_____ SECONDED_____

APPROVED_____DENIED_____ MODIFIED_____ UNANIMOUS_____

YEA VOTES: KIPFER____ BREUER_____ KEELER_____ OLSEN_____ SNIDER_____

Pender County
Planning and Community Development

Planning Division
805 S. Walker Street
PO Box 1519
Burgaw, NC 28425

Phone: 910-259-1202
Fax: 910-259-1295
www.pendercountync.gov

APPEAL OF ADMINISTRATIVE DECISION

As specified in N.C.G.S. 153A-345(b), an appeal by any person aggrieved by a final order, interpretation, or decision of the Administrator or other administrator in regard to the provisions of this Ordinance may be taken to the Board of Adjustment.

Application Requirements

A. An appeal of an administrative decision shall be taken by filing a written notice of appeal specifying the grounds for the appeal with the Administrator and the Board of Adjustment within thirty days after the decision by the Administrator.
B. An application for appeal of an administrative decision shall be submitted in accordance with Section 3.1.2, Application Requirements.
C. A notice of appeal of an administrative decision shall be considered filed when a complete application is delivered to the Administrator. The date and time of filing shall be entered on the notice.

Deadline for Submission of Application

An appeal of an administrative decision shall be filed with the Administrator and Board of Adjustment within thirty (30) days of receipt of the decision.

Action by Board of Adjustment

A. The Board of Adjustment may reverse or affirm (wholly or partly) or may modify the order, requirement, decision, or determination appealed from and shall make any order, requirement, decision or determination that in its opinion ought to be made in the case before it. To this end, the Board of Adjustment shall have all the powers of the officer from whom the appeal is taken.
B. A motion to reverse, affirm, modify the order, requirement, decision, or determination appealed from shall include, insofar as practicable, a statement of the specific reasons or findings of fact that support the motion.
C. If a motion to reverse or modify is not made, or fails to receive the affirmative vote of a majority of members present, the appeal shall be denied.
D. Any motion to overturn a decision shall state the reasons or findings of fact that support the motion.

Appeals from the Board of Adjustment

Appeals to the Superior Court may be taken by any person, firm or corporation aggrieved, or by any office, department, board, of the County affected by any decision of the Board of Adjustment, provided such appeals shall be taken within thirty (30) days after the decision of the Board of Adjustment is filed in the office of the Administrator, or after a written copy thereof is delivered to the applicant, whichever is later. The decision of the Board shall be delivered to the applicant by certified mail.

Authentisign ID: 04011679-5F03-4873-98F2-49FF42E5111D

APPLICATION FOR APPEAL OF ADMINISTRATIVE DECISION

THIS SECTION FOR OFFICE USE			
Application No.	**AAD** APPEAL 2022-9	**Date**	09/02/2022
Application Fee	**$** 250.00	**Receipt No.**	027511

SECTION 1: APPLICANT INFORMATION			
Applicant's Name:	Adam Winstead, Brian Walsh and Lauren Walsh	**Owner's Name:**	Same as Applicant
Applicant's Address:	120 Hugh Edens Ln.	**Owner's Address:**	
City, State, & Zip	Hampstead, NC 28443	**City, State, & Zip**	
Phone Number:	(910) 523-0637	**Phone Number:**	
Legal relationship of applicant to land owner:	The Applicants are the landowners.		

SECTION 3: SIGNATURES			
Applicant's Signature	Authentisign Brian Walsh 8/30/2022 6:29:37 PM GMT	**Date:**	
	Authentisign Lauren Walsh 8/30/2022 6:34:28 PM GMT	**Date:**	
		Date:	
Owner's Signature	Authentisign Brian Walsh 8/30/2022 6:29:39 PM GMT	**Date:**	
	Authentisign Lauren Walsh 8/30/2022 6:34:30 PM GMT	**Date:**	

NOTICE TO APPLICANT:

1. Applicant must also submit the information described below in the Appeal of Administrative Decision Checklist.
2. Applicant or agent authorized in writing must attend the public hearing.
3. Once the public hearing has been advertised, the case will be heard unless the applicant withdraws the application or unless the Board of Adjustment agrees to table or delay the hearing.

APPEAL OF ADMINISRATIVE DECISION CHECKLIST

☐	Signed application form
☐	Application fee
☐	One business size envelope legibly addressed with **certified** postage for all participants for the appeal
☐	Appeal Description: Written description of the Appeal taken forward including all pertinent materials (pictures, permits, etc.)

OFFICE USE ONLY

☐	**AAD Fees $250**	**Total Fee Calculation $**	
Payment Method :	**Cash :** ☐ $_____	**Credit Card:** ☐ Master Card ☐ Visa	**Check:** ☐ Check # _____
Application received by:		Date:	
Application completeness approved by:		Date:	
Date scheduled for public hearing:			

APPLICATION FOR APPEAL OF ADMINISTRATIVE DECISION

THIS SECTION FOR OFFICE USE			
Application No.	AAD APPEAL 2022-9	**Date**	09/02/2022
Application Fee	$ 250.00	**Receipt No.**	027511

SECTION 1: APPLICANT INFORMATION

Applicant's Name:	Adam Winstead, Brian Walsh and Lauren Walsh	**Owner's Name:**	Same as Applicant
Applicant's Address:	120 Hugh Edens Ln.	**Owner's Address:**	120 Hugh Edens Ln
City, State, & Zip	Hampstead, NC 28443	**City, State, & Zip**	Hampstead NC 28443
Phone Number:	(910) 523-0637	**Phone Number:**	910 523 0637
Legal relationship of applicant to land owner:	The Applicants are the landowners.		

SECTION 3: SIGNATURES

Applicant's Signature	Adam T. Winstead	**Date:**	8/30/2022
		Date:	
		Date:	
Owner's Signature	Adam T. Winstead	**Date:**	8/30/2022
		Date:	
		Date:	

NOTICE TO APPLICANT:

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APPEAL OF ADMINISRATIVE DECISION CHECKLIST

- ☐ Signed application form
- ☐ Application fee
- ☐ One business size envelope legibly addressed with **certified** postage for all participants for the appeal
- ☐ Appeal Description: Written description of the Appeal taken forward including all pertinent materials (pictures, permits, etc.)

OFFICE USE ONLY

☐ **AAD Fees $250**		**Total Fee Calculation $**	
Payment Method :	**Cash :** ☐ $_____	**Credit Card:** ☐ Master Card ☐ Visa	**Check:** ☐ Check # _____
Application received by:		Date:	
Application completeness approved by:		Date:	
Date scheduled for public hearing:			

AUTHORITY FOR APPOINTMENT OF PERSON TO ACT ON MY BEHALF

The undersigned applicant/owners Adam Winstead, Brian Walsh and Lauren Walsh does hereby appoint Matthew A. Nichols to act on my behalf for the purpose of petitioning Pender County for: a) an appeal to the Pender County Board of Adjustment from a determination of the code enforcement officer or zoning official or petition for an interpretation of the UDO; b) an application for a variance to the Pender County Board of Adjustment; and/or c) an application for a floodplain variance to the Pender County Board of Adjustment

The applicant/owner does hereby covenant and agree with Pender County that said person has the authority to do the following acts for and on behalf of the applicant:

(1) To submit a proper petition, appeal or variance application and the required supplemental materials:

(2) To appear at public meetings to give testimony and make commitments on behalf of the applicant/owner; and

(3) To accept conditions or recommendations made for the issuance of a variance on the applicant/owner's property.

(4) To act on the applicant/owner's behalf without limitations with regard to any and all things directly or indirectly connected with or arising out of any petition, appeal or variance request.

This appointment agreement shall continue in effect until final disposition of the petition submitted in conjunction with this appointment.

Date: 8/30/2022

Signature of Applicant/Owner:

Adam Winstead

Brian Walsh

Lauren Walsh

Appointee's Name, Address & Telephone:

Matthew A. Nichols

Law Office of Matthew A. Nichols

3205 Randall Parkway, Suite 104

Wilmington, NC 28403

Ph: (910) 508-7476
Email: matt@mattnicholslaw.com

Authentisign ID: 04011679-5F03-4873-98F2-49FF42E5111D

AUTHORITY FOR APPOINTMENT OF PERSON TO ACT ON MY BEHALF

The undersigned applicant/owners Adam Winstead, Brian Walsh and Lauren Walsh does hereby appoint Matthew A. Nichols to act on my behalf for the purpose of petitioning Pender County for: a) an appeal to the Pender County Board of Adjustment from a determination of the code enforcement officer or zoning official or petition for an interpretation of the UDO; b) an application for a variance to the Pender County Board of Adjustment; and/or c) an application for a floodplain variance to the Pender County Board of Adjustment

The applicant/owner does hereby covenant and agree with Pender County that said person has the authority to do the following acts for and on behalf of the applicant:

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(4) To act on the applicant/owner's behalf without limitations with regard to any and all things directly or indirectly connected with or arising out of any petition, appeal or variance request.

This appointment agreement shall continue in effect until final disposition of the petition submitted in conjunction with this appointment.

Signature of Applicant/Owner:

Date: _____

Adam Winstead

Authentisign
Brian Walsh
8/30/2022 6:29:42 PM GMT
Brian Walsh

Authentisign
Lauren Walsh
8/30/2022 6:34:33 PM GMT
Lauren Walsh

Appointee's Name, Address & Telephone:

Matthew A. Nichols

Law Office of Matthew A. Nichols

3205 Randall Parkway, Suite 104

Wilmington, NC 28403

Ph: (910) 508-7476
Email: matt@mattnicholslaw.com

APPEAL DESCRIPTION

APPLICANTS/: APPELLANTS	Adam Winstead, Brian Walsh and wife, Lauren Walsh
AGENT:	Matthew A. Nichols Law Office of Matthew A. Nichols
DATE:	August 30, 2022
PROPERTY:	120 Hugh Edens Lane (Pender County PIN Nos.: 4214-91-8387-000A, 4214-91-8387-000B, 4214-91-8387-0000)

Statement by Owner-Applicant/Appellant

NOW COMES the Applicants/Appellants and property owners, Adam Winstead, Brian Walsh and wife, Lauren Walsh (the "Appellants") and hereby appeal the completeness determination made by the Pender County Planning and Community Development Department for a Special Use Permit Application submitted by attorney Stephen D. Coggins as applicant (the "SUP Applicant") on behalf of 21 purported easement holders (the "21 purported easement holders") for a Community Boating Facility *on an existing pier and property owned by the Appellants* located at 120 Hugh Edens Lane, Hampstead, Pender County, NC. A copy of the Special Use Permit Application appealed from herein is attached hereto as **Exhibit 1** (the "SUP Application").

1. The Appellants are the owners of the subject property located at 120 Hugh Edens Lane.

2. Appellant Adam Winstead acquired all of Unit A in the Sloop Point Watch Condominium, together with a one-half undivided interest in the Sloop Point Watch Condominium common areas, via North Carolina General Warranty Deed dated and recorded on September 11, 2019, in Book 4693 at Page 254 of the Pender County Registry (copy attached hereto as **Exhibit 2**).

3. Appellants Brian Walsh and wife, Lauren Walsh, acquired all of Unit B in the Sloop Point Watch Condominium, together with a one-half undivided interest in the Sloop Point Watch Condominium common areas, via North Carolina General Warranty Deed dated October 2, 2020, and recorded on October 21, 2020, in Book 4728 at Page 2246 of the Pender County Registry (copy attached hereto as **Exhibit 3**).

4. As the owners of the subject property located at 120 Hugh Edens Lane, the Appellants have standing to bring this appeal pursuant to N.C.G.S. § 160D-406(d), N.C.G.S. § 160D-1402(c)(1)(a) and other applicable law. The

Appellants will also suffer special damages, distinct from the rest of the community, if the SUP Application is granted, including without limitation, the imposition of conditions on the Appellants' property without the Appellants' consent or permission, which conditions the Appellants strongly object to and oppose. Additionally, as will be shown by the evidence in the Hearing of this matter, the purported easement holders' use of the Appellants' property creates significant safety concerns and potential liability issues related to the proposed use of Appellants' property by approximately 40+ noncontiguous duplex owners (and presumably even more potential users with their tenants and guests).

5. The Appellants (the property owners) have not signed the SUP Application. The Appellants (the property owners) do not agree to a Special Use Permit being placed on their property. For the reasons set forth herein and to be more fully set forth at the Hearing in this matter, the Appellants strongly object to and oppose the SUP Application.

6. Furthermore, for the reasons set forth herein and to be more fully set forth at the Hearing in this matter, the Appellants hereby object to and appeal the County's determination that the SUP Application is complete because the Appellants/property owners have not signed the SUP Application and the Appellants/property owners oppose the Special Use Permit.

7. The Appellants respectfully contend that the SUP Application is incomplete and insufficient and should have been/should be rejected by the County as incomplete and insufficient to move forward with an SUP Hearing before the Pender County Board of Commissioners.

8. Mr. Coggins' clients do not own 120 Hugh Edens Lane; rather, Mr. Coggins' clients are purported holders of an easement across a portion of the property owned by Appellants and located at 120 Hugh Edens Lane.

9. Mr. Coggins and his clients did not obtain the consent or signatures of the Appellant owners of 120 Hugh Edens Lane, *i.e.*, Adam Winstead, and Brian Walsh and wife, Lauren Walsh.

10. In fact, at no time prior to filing the SUP application did the SUP Applicant reach out to the Appellants/owners of 120 Hugh Edens Lane (*i.e.*, Adam Winstead, Brian Walsh and Lauren Walsh) or the Appellants/owners' counsel regarding the SUP application.

11. As of the date of the filing of this appeal to the Board of Adjustment, at no time did the SUP Applicant reach out to the Appellants/owners of 120 Hugh

Edens Lane (*i.e.*, Adam Winstead, Brian Walsh and Lauren Walsh), or the Appellants/owners' counsel regarding the SUP Application.

12. As of the date of the filing of this appeal to the Board of Adjustment, at no time did the SUP Applicant send the property owners/Appellants or their counsel a copy of the SUP Application submitted to the County.

13. While Mr. Coggins, as an attorney, can represent an applicant for a special use permit, the Appellants respectfully contend that Mr. Coggins himself cannot be the Special Use Permit applicant in this matter.

14. The SUP Application is not signed by the owners of 120 Hugh Edens Lane (the Appellants).

15. The SUP Application lists Betty Chang as "Owner and Agent for Sloop Point Duplex Owners" and is signed by Ms. Chang.

16. Upon information and belief, however, there were no agency forms submitted to the County along with the SUP Application.

17. None of the other purported 21 easement holders listed on the SUP Application signed the SUP Application.

18. There is no entity called the "Sloop Point Duplex Owners" registered with the North Carolina Secretary of State's Office.

19. The "Owner" information on the SUP application is incomplete.

20. For the Owner's phone number, the SUP application states "unknown".

21. For the Owner's email address, the SUP application states "unknown".

22. As set forth more fully herein, Betty Chang is not an "owner" of 120 Hugh Edens Lane within the meaning of N.C.G.S. Chapter 160D. Ms. Chang is the purported <u>holder</u> of an easement across a portion of 120 Hugh Edens Lane.

23. N.C.G.S Chap. 160D defines an "administrative decision" (sometimes referred to as an "administrative determination") as follows: "(1) Administrative decision. – Decisions made in the implementation,

administration, or enforcement of development regulations that involve the determination of facts and the application of objective standards set forth in this Chapter or local government development regulations. These are sometimes referred to as ministerial decisions or administrative determinations." N.C.G.S. § 160D-102 (Definitions), subsection (1).

24. N.C.G.S. Chap. 160D has an entirely separate definition for "quasi-judicial" decisions, which specifically include Special Use Permits: "(28) Quasi-judicial decision. – A decision involving the finding of facts regarding a specific application of a development regulation and that requires the exercise of discretion when applying the standards of the regulation. The term includes, but is not limited to, decisions involving variances, special use permits, certificates of appropriateness, and appeals of administrative determinations. Decisions on the approval of subdivision plats and site plans are quasi-judicial in nature if the regulation authorizes a decision-making board to approve or deny the application based not only upon whether the application complies with the specific requirements set forth in the regulation, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision on the findings to be made by the decision-making board." N.C.G.S. § 160D-102 (Definitions), subsection (28).

25. While N.C.G.S § 160D-403 (titled "Administrative development approvals and determinations") allows an "easement **holder**" (emphasis added) to apply for an administrative development approval or administrative determination, this section does not apply to quasi-judicial development approvals or permits, such as a Special Use Permit or a variance. This is because quasi-judicial development approvals involve voluntary conditions placed on specific properties at the request of the owner of the property.

26. The Appellants also note that Chapter 160D specifically speaks in terms of an easement "holder", and not an easement "owner". The holder of an easement is not a property "owner" for purposes of Chapter 160D. *See* N.C.G.S § 160D-403.

27. N.C.G.S § 160D-705(c) (titled "Special Use Permits") specifically provides: "Reasonable and appropriate conditions and safeguards may be imposed upon these permits." Property owner consent is required in order for the government to place specific and individual conditions on private property that is not otherwise applicable to other properties in the same zoning district. Government actions of forcing specific conditions or limitations on a specific property beyond ordinance requirements generally applicable to other properties in the same zoning district via a Special Use Permit

Order/Ordinance without that property owners' consent constitutes a taking of private property for which just compensation is owed.

28. This is precisely why the Chapter 160D requires that in order to modify a Special Use Permit issued for multiple properties, each property owner must apply for the modification in order for the modification to be effective as to that particular property. The statute clearly states: "If multiple parcels of land are subject to a special use permit, the owners of individual parcels may apply for permit modification so long as the modification would not result in other properties failing to meet the terms of the special use permit or regulations. Any modifications approved apply only to those properties whose owners apply for the modification." N.C.G.S § 160D-705(c) (emphasis added).

29. If property owner consent and property owner application is required under Chapter 160D in order to modify a Special Use Permit (and it clearly is required), then a property owner's consent and application is certainly required in order to obtain a Special Use Permit in the first instance. This is because property owner consent is required in order to place Special Use Permit conditions on any property.

30. The Appellants, being the owners of the subject property at 120 Hugh Edens Lane, do not consent to any Special Use Permit being placed on the property and do not consent to any conditions being placed on their property through the Special Use Permit process.

31. Pender County UDO Appendix A Definitions defines "Community Boating Facility" as follows: "A private, nonprofit boating facility with navigable water frontage which includes a dock, pier, and/or launching ramp which is intended to serve five (5) or more residential units. Must be owned/controlled by a Homeowners Association (HOA) or any type of development association or collective owners group where more than one family has privileges to use facility. Commercial activities of any kind, including commercial letting of slips to parties that are not residents of the association or development, shall be prohibited. (emphasis added).

32. The "Sloop Point Duplex Owners" do not own or control the property at 120 Hugh Edens Lane. Furthermore, the "Sloop Point Duplex Owners" are not residents of the Sloop Point Watch Condominium. The Sloop Point Duplexes and the Sloop Point Watch Condominium are not part of the same development.

33. The SUP Application seeks "use of existing pier and dockage for Community Boating Facility per attached narrative." The SUP Applicant and the 21 purported easement holders have no right to use the existing dock and pier located at 120 Hugh Edens Lane and have no ownership interest in the existing dock and pier at 120 Hugh Edens Lane.

34. The existing pier and dock located at 120 Hugh Edens Lane was constructed by Appellant property owner Adam Winstead, and the pier and dock is owned entirely by the Appellant property owners Adam Winstead, Brian Walsh and Lauren Walsh.

35. In addition to the foregoing, the SUP Applicant and the 21 purported easement holders have not demonstrated that they have a right to access Hugh Edens Lane, which is a private road that does not provide and is not required for access to the Sloop Point Duplexes. Under Pender County UDO § 3.12.B.4, an SUP applicant must demonstrate a means of access to the site.

36. The Sloop Point Duplexes are at least approximately 1,300 feet from 120 Hugh Edens Lane by way of Twin Oaks Drive and Hugh Edens Lane (private road).

37. Moreover, the Appellants respectfully assert that the SUP Application also involves the use of Hugh Edens Lane itself (a private road), which private road is the only means of access between 120 Hugh Edens Lane and the Sloop Point Duplexes. The property owners along Hugh Edens Lane should be required to sign the Special Use Permit application also, as they are required to maintain the private roadway which provides the only means of access to their properties.

38. In addition to the concerns regarding Pender County UDO § 3.12.B.4 (means of access to the site) raised above, there is a question regarding whether the SUP Applicant and the 21 purported easement holders are privy to the road maintenance agreement obligations for Hugh Edens Lane.

39. Additionally, as determined by the official determination of the Pender County Planning and Community Development Department dated August 31, 2021, regarding 120 Hugh Edens Lane, a copy of which is attached hereto as **Exhibit 4**) (hereinafter the "August 31, 2021 Official Determination"), at the time of the creation of the purported easement held by the 21 easement holders, a community boating facility (or boat access facility) was not even allowed under the Pender County Ordinances on the

subject property located at 120 Hugh Edens Lane. The August 31, 2021 Official Determination states:

"According to our records, a Community Boating Facility (previously "Boat Access Facilities") Special Use Permit has not been issued on the subject property. In addition, there were no exceptions, exemptions, variances, or other/previous ordinance provisions that would have allowed a Community Boating Facility on the subject property before the map was recorded in 2004. According to the adopted November 18, 2003 Pender County Zoning Ordinance, Community Boating Facilities were not permitted in the R-20C zoning district, the zoning district of the subject property prior to the adoption of the Pender County Unified Development Ordinance in 2010. Based on these findings, a Special Use Permit will be required for the subject site to come into compliance with current UDO standards."

40. The 21 purported easement holders never appealed the August 31, 2021 Official Determination to the Board of Adjustment, and the time for filing such an appeal has long since expired.

41. The purported easement for a community boating facility or boat access facility was not a permitted and legal use on the Subject Property under the Pender County Ordinances at the time that the easement was created.

42. **Reservation of Rights and Defenses.** The Appellants reserve their rights to assert additional arguments, objections and defenses as the facts become discovered and further known in this matter. The Appellants reserve their right to present witnesses and other evidence at the Hearing in this matter, including all rights to inspect the County's evidence (if any) and the right to cross-examine the SUP Applicant and the SUP Applicant's witnesses at the Hearing.

43. In addition to the foregoing, the Appellants reserve all of their rights to assert additional arguments and grounds against the SUP request at any Hearing before the Pender County Board of Commissioners regarding the SUP Application, including but not limited to: adverse traffic impacts on Hugh Edens Lane (a private road); lack of adequate parking along Hugh Edens Lane for a community boating facility at 120 Hugh Edens Lane; lack of adequate emergency vehicle access for a community boating facility at 120 Hugh Edens Lane; insufficiency of 120 Hugh Edens Lane to accommodate potentially 40+ users of a portion of a small, residential-scale property; history of prior use and concerning incidents at the subject property.

44. Based upon the foregoing and the evidence and arguments to be presented at the Hearing in this matter, the SUP Application should be rejected and denied as an incomplete application submittal to the County.

EXHIBIT
1

Pender County
Planning and Community Development

805 S. Walker Street
PO Box 1519
Burgaw, NC 28425

Phone: 910-259-1202
Fax: 910-259-1295
www.pendercountync.gov

Special Use Permit Submission

Applications will be considered for the Board of County Commissioners hearing and reviewed by Staff only when deemed complete. The application will be regarded as incomplete until the following items are received by the Planning and Community Development Staff.

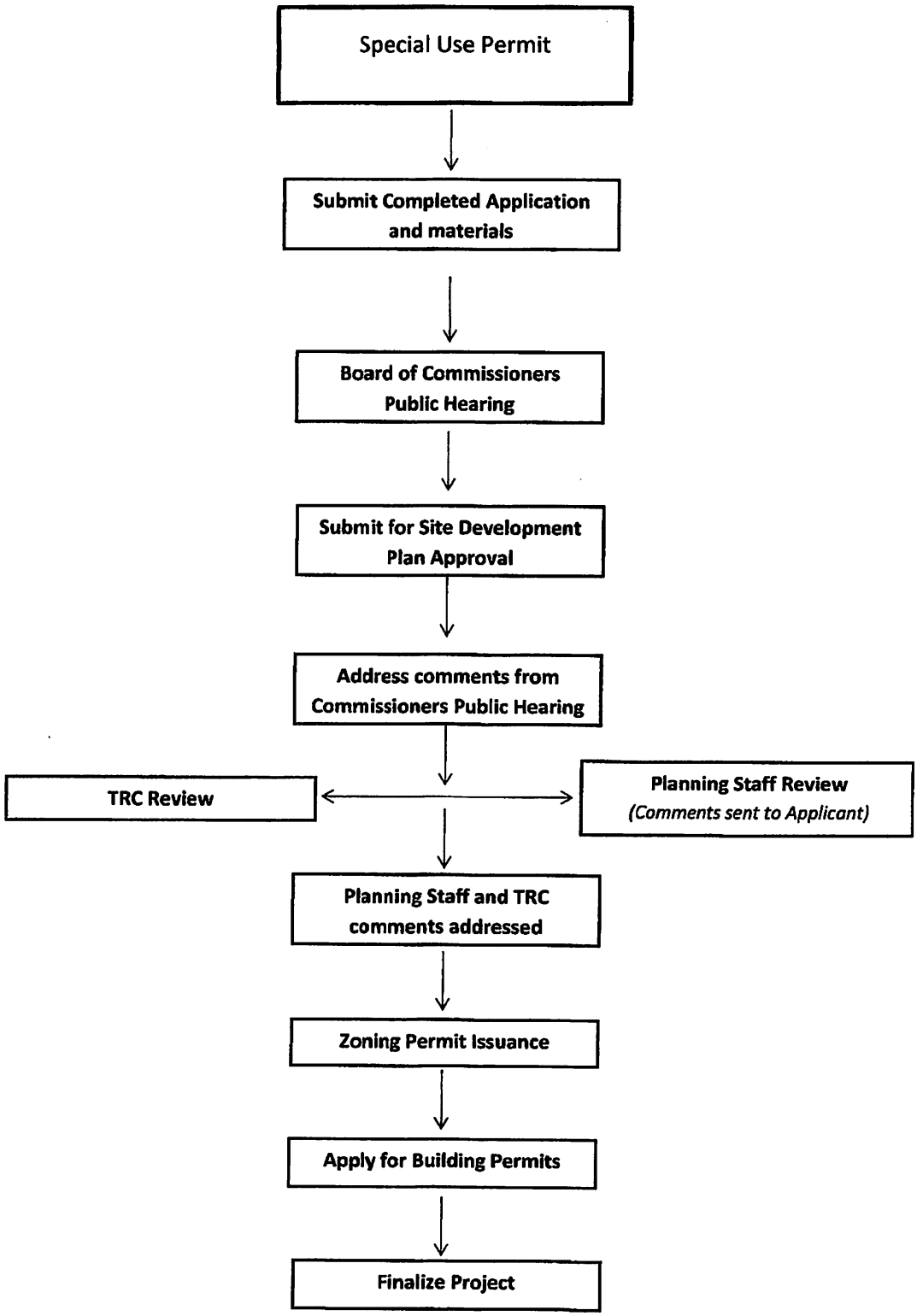
1. N/A **Pre-submittal Meeting**
   Date of Meeting 6/22/2022 JBB
2. X **Signed Application**
3. X **Payment**
   $300 for the first 5 acres; $10 per acre over 5 acres of the project area
4. X **Site Plan**
   All Site Plans submitted must be in accordance with Section 3.12.2 of the Unified Development Ordinance.
5. X **Digital Submission**
   For all documents submitted in paper copy, bring a digital copy with paper submission.
6. X **Adjacent Property List**
   The applicant shall provide to the Administrator a list of names and addresses of the owners of all properties located within 500-feet of the perimeter of the project bounds along of the property under consideration.
7. X **Adjacent Property Envelopes**
   The applicant shall provide one (1) set of #10 envelopes with typed addresses to each person on the owners of all properties located within 500-feet of the perimeter of the project bounds and accompanied with the required amount for first class postage.
8. X **Project Narrative**
   A description of the proposed Special Use Permit including response to the standards set forth in Section 3.12.3.G of the Unified Development Ordinance.

I certify that all information presented in this application is accurate to the best of my knowledge.

Signature of Applicant Stephen D Coggins Date 7/29/22

Printed Name STEPHEN D. COGGINS

Staff Initials: JBB
Date: 8/10/2022


Special Use Permit
Submit Completed Application and materials
Board of Commissioners Public Hearing
Submit for Site Development Plan Approval
Address comments from Commissioners Public Hearing
TRC Review
Planning Staff Review
(Comments sent to Applicant)
Planning Staff and TRC comments addressed
Zoning Permit Issuance
Apply for Building Permits
Finalize Project

		Agenda Deadline	Meeting Date
BOCC	January	12.6.19	1.21.20
	February	1.3.20	2.18.20
	March	2.7.20	3.16.20
	April	3.6.20	4.20.20
	May	4.3.20	5.18.20
	June	5.1.20	6.15.20
	July	6.5.20	7.6.20
	August	6.26.20	8.17.20
	September	8.7.20	9.21.20
	October	8.28.20	10.19.20
	November	10.2.20	11.16.20
	December	11.6.20	12.7.20

Complete Application Date: All documents must be received by 12PM on the deadline date to be considered a complete application.

Special Use Permit Specific Requirements

1. Project Narrative–Written description of the project (max of 3 pages) including the following:

- Location of the project and type of access to project site
- Detailed description of the activities to be undertaken on the site, including hrs. of operation, # of employees, etc.
- Description of all construction activities to be undertaken on the site
- Describe type of utilities that will serve project and status of approval from applicable providers
- List of all state and federal permits that will be required for the project
- Applicant must specifically address the 8 written findings for Special Use Permit approval which are identified on page 1 of this application and in the Pender County Unified Development Ordinance (Section 3.12.3.G.). Describe any potential impacts the project will have on the community or adjacent properties such as traffic, noise, etc. and explain efforts to mitigate these impacts. The applicant may also wish to describe any positive benefits the project will provide for the community and/or neighbors of the project.

2. Project Map(s)--Map or maps of the special use project site with boundaries of the project if less than the parcel boundaries. This map or maps shall be drawn to a readable scale. The scale shall be not more than 200' to the inch. The map shall display an accurate bar graph scale, date prepared, north arrow and the author of the map. This map(s) shall show the following:

- Structures. Location of all structures within fifty (50) feet of the property; location and depth, if known, of any existing utility lines in the property or along any adjacent road.
- Location of property boundaries, location of any easements for utility lines or passage which cross or occupy any portion of the property for proposed lines;
- Name, address, tax map number, acreage, zoning, township and means of access to the site (road or recorded access easement);
- Location and status of utilities: water, sewer, well, septic system, method of solid waste disposal, electrical service and natural gas if available;
- Existing topography and all proposed changes. Include calculations to show total acreage of area to be graded or disturbed;
- Existing and proposed streams, drainage ways, ponds, lagoons, wetlands, flood plains, berms, etc.
- Existing and proposed structures and on-site improvements;
- Existing and proposed fencing, vegetative screening and buffering;
- Existing and proposed signs, lighting, landscaping, walks, parking and drives;
- Detail any expected impact to the community, such as; traffic, noise, vibration, glare, odor, dust, etc. and the method being used to lessen these impacts.

APPLICATION FOR SPECIAL USE PERMIT

THIS SECTION FOR OFFICE USE			
Application No.	SUP	**Date**	
Application Fee	$	**Invoice Number**	
Pre-Application Conference		**Hearing Date**	

SECTION 1: APPLICANT INFORMATION			
Applicant's Name:	Stephen D. Coggins, Rountree Losee LLP, on behalf of 21 easement holders (list attached)	**Owner's Name:**	Please see attached list
Applicant's Address:	2419 Market Street	**Owner's Address:**	Please see attached list Type text here
City, State, & Zip	Wilmington NC 28403	**City, State, & Zip**	
Phone Number:	(910)763-3404	**Phone Number:**	unknown
Email Address:	scoggins@rountreelosee.com	**Email Address:**	unknown
Legal relationship of applicant to landowner:	Applicant represents 21 dominant appurtenant easement owners. The list of easement owners is attached The servient estate owners are Adam Winstead, 1228 Wataugh St., Raleigh NC 27604/120A Hugh Edens Lane Hampstead, NC and Brian Walsh, 102B Hugh Edens Lane Hampstead, NC, 29443		

SECTION 2: PROJECT INFORMATION			
Property Identification Number (PIN):	4214-91-8387 A & B	**Total property acreage:** Total tract 0.66 Easement area 0.16	
Zoning Classification:	RP	**Acreage to be disturbed:** 0	
Water Provider:	Private Well Water	**Wastewater Provider:** Private Septic	
Project Address:	120 Hugh Edens Drive	**NAICS Code:**	N/A
Description of Project Location:	INTRACOASTAL WATERWAY		
Describe activities to be undertaken on project site:	Installation and use of floating dock and kayak launch.		

SECTION 3: SIGNATURES			
Applicant's Signature	Stephen D. Coggins	**Date:**	7/29/2022
Applicant's Printed Name:	Stephen D. Coggins	**Date:**	
Owner's Signature	Betty Chang	**Date:**	6/9/2022
Owner's Printed Name:	Betty Chang, Owner and Agent for Sloop Point Duplex Owners	**Date:**	6/9/2022

NOTICE TO APPLICANT

1. Applicant must also submit the information described on the Special Use Checklist.
2. Applicant or agent authorized in writing must attend the public hearing.
3. Once the public hearing has been advertised, the case will be heard unless the applicant withdraws the application or unless the Board of Commissioners or other authorized person agrees to table or delay the hearing.
4. Applicant may wish to review the required findings for approval of a Special Use Permit found on page 1 of this application
5. **Permit will become void after 12 months if a final zoning permit is not obtained, unless specifically requested at the time of public hearing.**

DUPLEX OWNERS, ADDRESSES & LOT NOS.:

Robert D. Russell 6612 Providence Rd Wilmington NC 28411 290A and B Twin Oaks Dr. Re. Lot 1A & B	
Amy Boardwine 276A Twin Oaks Drive Hampstead NC 28443 Re: Lot 2A	Kerry and Melissa Danger 276B Twin Oaks Hampstead NC 28443 Re Lot 2B
Christopher P. Ianno 14 Sutton Place N Massapequa NY Re: 256A and B Twin Oaks Drive Lot 3A & B	
Robert J. O'Connor 270A Twin Oaks Drive Hampstead NC 28443 Re. Lot 4A	Brian J. Polansky 270B Twin Oaks Drive Hampstead NC 28443 Re. Lot 4B
G Squared Consultants LLC 1629 Kings Landing Road Hampstead NC 28443 Re 234A & B Twin Oaks Drive, Lot 5A & B	
Caleb Smith 220 Twin Oaks Drive, Unit A Hampstead NC 28443 Re. Lot 6A	Lee Stikeleather 2855 Juniper Church Rd. Four Oaks NC Re. 220B Twin Oaks Drive, Lot 6B
Thomas M. Flynn 515 Carolina Ave Willow Spring NC 27592 Re. 200A Twin Oaks Drive, Lot 7A	Betty Weihung Chang 1100 Dalgarven Drive Apex NC 27502 Re. 200A Twin Oaks Drive, Lot 7B
Danny C. Nobles 89 HL Smit Road Wilmington NC 28411 Re. 214A Twin Oaks Drive, L:ot 8A	Alex W. Robinson 214B Twin Oaks Drive Hampstead NC 28443 Lot 8B
Adam J. Slack 1804 Register Lane Wilmington NC 28411 Re. 178A Twin Oaks Drive, Lot 9A & B	
Villari Rocco 7303 Artifact Court Wilmington NC 28411 Re: 164A Twin Oakes Drive , Lot 10A	Colleen Humphrey 164 Twin Oakes Dr., Unit B Hampstead NC 28443 Re: Lot 10B
Travis G. Sexton 5 Looking Glass Lane Asheville NC 28805 Re: 140 Twin Oaks Drive, Lot 11	

George Rountree, Jr.
(1904-1979)
Ryan F. Tennant
(1973-2016)
George Rountree, III
Special Counsel
Geoffrey A. Losee
Stephen D. Coggins
Corey T. Zurbuch
———
Pardis Camarda
Michael A. Becker
Brian S. Akers
———
Joseph E. Horowitz
Of Counsel

North Carolina Address
2419 Market Street
Wilmington, NC 28403

Tennessee Address
4596 Pecan Grove Lane
Memphis, TN 38120

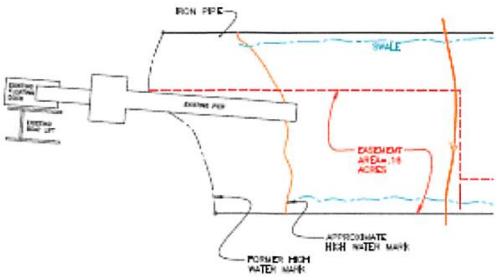
Phone
910-763-3404

Fax
910-763-0320
910-763-0080

July 29, 2022

NARRATIVE FOR SPECIAL USE PERMIT APPLICATION FOR COMMUNITY BOATING FACILITY AT 120 HUGH EDENS LANE, HAMPSTEAD NC 28443 PARCEL TAX ID# 4214-91-8387-000A

The owners of the Sloop Point Duplexes ("Duplexes") desire to exercise their easement rights and exercise Community Boating Facility ingress and egress rights to the existing shoreline and dock ("Facility") on the subject tract ("Subject") located on the Atlantic Intracoastal Waterway at 120 Hugh Edens Lane, Hampstead NC (Parcel Tax ID # 4214-91-8387-000). A Site Plan of existing Facility ("Site Plan") is attached as **Exhibit 1**.[1] The portion of the Subject consisting of the existing Facility is shown on Site Plan as follows:



No new construction is proposed. Rather, only use of the existing Facility is sought. The existing Facility would serve the Duplexes located nearby. Located on the waterway navigable water frontage, the Facility will serve five (5) or more residential units and will be controlled by the collective Sloop Point Duplexes owners group. In these circumstances, the Pender County Zoning Administrator deems the proposed project to be a "Community Boating Facility" as defined in the Pender County UDO.[2]

The Subject is zoned Residential Performance ("RP"). The UDO's Table of Uses lists "Community Boating Facility" as an allowed use through a Special Use Permit with

[1] The Project Map It provides the information required by UDO Section 3.12.2 and the Pender County Special Use Permit Application form available online at https://www.pendercountync.gov/pcd/wp-content/uploads/sites/15/2020/10/Special-Use-Permit-Application.pdf.

[2] **COMMUNITY BOATING FACILITY:** A private, nonprofit boating facility with navigable water frontage which includes a dock, pier, and/or launching ramp which is intended to serve five (5) or more residential units. Must be owned/controlled by a Homeowners Association (HOA) or any type of development association or collective owners group where more than one family has privileges to use facility. Commercial activities of any kind, including commercial letting of slips to parties that are not residents of the association or development, shall be prohibited.

conditions imposed by the UDO. Under subsection C of Section 5.2.12 of the UDO[3], a Special Use Permit must be obtained to allow use of a Community Boating Facility in the RP zoning district.

Duplex Owners' Easement Rights In a Boat Dock Launch/Landing Ramp and Access Facility and Use of Dock

The Subject consists of a lot with two duplex residential units (120A & 120B Hugh Edens Lane, Hampstead NC 28443). The Parcel Tax ID # for the two units is 4214-91-8387-000A & B. The Subject is described as "Tract A" as shown in Map Book 26 Page 104 of the Pender Registry, attached as **Exhibit 2**.

The Owners of Sloop Point Duplexes ("Duplex Owners") as shown in Map Book 35 at Pages 69 and 76 and Map Book 36 at Page 48 of the Pender Registry have easement rights over the Subject by virtue of that Deed of Easement recorded at Deed Book 2295 Page 85 (attached as **Exhibit 3**) and a Plat recorded at Map Book 37 Page 28 (attached as **Exhibit 4**), Both were recorded 5 January 2004 at 3:42 pm. The Deed of Easement specifically grants to the Duplex Owners easement rights that allow them to use the existing pier and dock and to construct a floating dock and kayak launch:

> Grantor has agreed to grant each Grantee a perpetual easement, appurtenant to the lots owned by each of the Grantees for the use of a boat launching/ ramp and access to the Atlantic Intracoastal Waterway, together with the use of any pier or dock placed on said property by Grantor. Said easement shall be located per the Grantor, and others may construct a boat launching/landing ramp facility and pier/dock on said premises.
>
> Grantor ...conveys to each of the Grantees and his heirs and assigns the rights and privilege on ingress, egress and regress to and from boat launching/landing facilities to be constructed for semi-private use on [the Subject...together with the right and privileged to use the pier/dock constructed on said site as an accessory to the boat launching/landing facility and as access to the Atlantic Intracoastal Waterway. The grant shall be appurtenant to and run with the title to the lots described in Book 36 at Page 48, Book 35 at Page 76 and book 35 at page 69 of the Pender County Registry.

---

[3] **5.3.12 Miscellaneous Uses**
***
C. Community Boating Facility
1) Must serve five (5) or more residential units and may include a dock, pier, ramp, or launching pad.
2) No commercial activities of any kind shall be allowed within the confines of the facility.
***

Per the terms of this Deed of Easement (**Exhibit 3**), the Grantor located the easement on the Subject through the Plat that was recorded at Map Book 37 Page 28 (**Exhibit 4**) at the same time that the Deed of Easement was recorded.

The Plat describes a 12 ft-wide "Water Access Easement" along and within the Subject's northern boundary, a water access and parking easement area, and a pier. The existing Facility is located within the Water Access Easement.

Present Condition of Subject Land

The Subject has a pier with an existing floating dock at its end and a boat lift immediately adjacent to the floating dock at the north. To the north of the pier is an area that has been used to launch boats. A duplex has been built in the center of the lot. (See Site Plan attached as **Exhibit 1**.)

Existing Facility for Which Special Use Permit for Community Boating Facility is Sought

The Duplex Owners desire to use the existing Facility as shown on the Site Plan attached as **Exhibit 1** through ingress and egress via the 12 ft-wide Water Access Easement, as shown both on the Site Plan attached as **Exhibit 1 and** the Plat recorded at Map Book 37 Page 28 attached as **Exhibit 4**.

No utilities are to be installed. A water line and spigot exists at the boat dock entrance.

Use of the Existing Facility As a Community Boating Facility Fulfills the Eight Criterial Set Forth in UDO Section 3.12.3. G

In order to obtain a Special Use Permit, the UDO at subsection G of Section 3.12.3 provides that eight factors must fulfilled. Those eight factors are met as set forth below:

(1) The use requested is listed among the special uses in the district for which application is made, or is similar in character to those listed in that district;

> **The UDO Table of Permitted Uses lists "Community Boating Facility" as a use allowed by Special Use Permit With Conditions in the Residential Performance zoning district.**

(2) The requested use will not impair the integrity or character of the surrounding or adjoining districts, nor adversely affect the safety, health, morals, or welfare of the community or of the immediate neighbors of the property;

The existing Facility on the navigable waters of the AICW is in keeping with the long-time historical use of the Subject and with the many already-existing floating docks and launch areas adjacent to and nearby the Subject. The existing Facility use is low-intensity in comparison to other similar uses in the district. The existing Facility does not and will not adversely affect the safety, health, morals, or welfare of the community or of the immediate neighbors of the property

(3) The proposed use shall not constitute a nuisance or hazard;

The existing Facility has no history of being a nuisance or hazard, is the same as, and in keeping with, similar facilities nearby in the neighborhood and zoning district and will not be a nuisance or hazard.

(4) The requested use will be in conformity with the Pender County Land Use Plan and other official plans or policies adopted by the Board of County Commissioners;

The existing Facility conforms to the "Pender 2.0: Comprehensive Land Use Plan" ("LUP") adopted by the Board of County Commissioners on August 20, 2018. For example, the LUP provides as follows:

Map 5.14 of the LUP identifies the Subject tract as being in a "Coastal Residential" area for Future Land Use planning purposes. The LUP states the following regarding the "Coastal Residential" designation:

Supporting the County's coastal character and natural habitat is a top priority for Pender County residents. To more appropriately preserve the County's coastal character, the Coastal Residential future land use category is established. Coastal residential land uses are located east of the US 17 corridor and generally within a half-mile of estuarine waters such as coastal creeks and the Intracoastal Waterway. *Appropriate uses include* single-family residences, community recreation and open space uses, and *water-based recreation uses (public and private).* Unencumbered access to public trust coastal waters and maximum development setback from the shoreline is highly encouraged. Clustering of new communities is encouraged.

To support adjacent coastal surface water quality, low impact development (LID) is encouraged. In general, lots should maximize pervious surfaces. Tree preservation and mitigation is required for stormwater purposes and as a means of

> **preserving the coastal habitat. Development density within this category is three dwelling units an acre or less….**
> **Desired Uses:**
> - **Single-family dwellings – detached**
> - **Recreation, parks, and open space**
>
> **(*Italics supplied*)**

The Subject tract and existing Facility are located in and on the Estuarine Area of Environmental Concern as designated under CAMA. The LUP and state policies developed under CAMA provide that development activities which are water dependent and require water access and cannot function elsewhere (e.g. simple access structures, structures to prevent erosion, boat docks, marinas, wharves, and mooring piling) may be allowed within this AEC [i.e, Estuary system at Atlantic Intracoastal Waterway]. [See LUP, Chpt 3 Natural Systems Analysis, p. 3-3]

The water and submerged tidal lands are held in trust for the public to use through activities such as fishing, swimming, and boating. These areas will often overlap with estuarine waters… As general guidance, the following lands and waters are considered to be public trust areas:

> *******
>
> **▪ All tidally influenced waters and associated submerged lands below the MHWL;**
> **▪ All navigable natural water bodies and the lands underneath from the normal high water line seaward (Navigable waters include anything you can float a canoe in).**
> **[LUP, Chpt 3 Natural Systems Analysis, p. 3-5]**

Policy 4.4.E of the LUP accordingly provides:

> **Policy 4.4.E: Public Trust Waters Navigation: The County opposes any use which significantly interferes with the public right to navigate or utilize existing access to any public trust waters. [Chpt 4 Community Facilities and Services, p. 4-40]**

Here, the existing Facility will enhance, not interfere with, the public right to navigate or utilize existing access to public waters.

Maps 3.4 and 3.5 of the LUP (found on the 116th and 117th page of that 285-page document) classify the waters of the AICW as "SA-HQW". The LUP provides that those waters are protected for boating uses.

[LUP, Chpt 3 Natural Systems Analysis, p. 3-15] The existing Facility is a boating use for which the AICW waters are protected.

The LUP touts five NCWRC boat launch sites in Pender County as making Pender County an attractive place to live. [See, e.g., Chpt 4 Community Facilities and Services, pp. 4-25 & -26, and Maps 4.10 and 4.11] However, the LUP notes that only one is located on the AICW in the unincorporated areas of the County [p. 4-30] and that there are no CAMA public access sites in unincorporated Pender County. [p. 4-26]. Thus, the LUP points to the need for more boat access to the AICW. The need for more available boat access is underlined by LUP Policies 4.4.C and 4.4.D that encourage more public access facilities. [pp 4-39 & -40]. Accordingly, the existing Facility serves the need for more boat access articulated in the LUP.

In addition, the County through the LUP encourages the use of the AICW for navigation. For instance, Policy 4.4.G encourages dredging of the AICW to keep it open to navigation. Another example is Policy 4.4.H, which states the County supports development that promotes Pender County as a recreational destination. [Chpt 4 Community Facilities and Services, p. 4-40]. The existing Facility is an example of using the AICW for navigation and thus serves the LUP Policies 4.4.G & .H.

The County's overriding policy of encouraging boat access at the AICW is further shown by the LUP's new "Commercial Waterfront" and "Recreation" future land use designations. These LUP statements made in that context illustrate the policy of encouraging boat access:

> **Pender County's Intracoastal Waterway and river segments are prime locations for strategically placed development to support and enhance coastal activities, water-based recreation, and the tourism industry…*Direct access to public trust waters should be provided.* Development within this future land use category should be compatibly designed and connected to the adjacent waterbody – river or Intracoastal Waterway – through designated public access locations such as a boardwalk, dock, pier, and/or canoe/kayak or small boat launch.**
> *******
> **Recreation uses such as parks, golf courses, boat launches, and passive open space should be preserved for use by future generations.**

[Chpt 5 Land Use and Growth Management, pp. 5-18 & -19, & -24] (*italics supplied*). The existing Facility serves this LUP goal of providing and preserving AICW access.

(5) Adequate utilities, access roads, drainage, sanitation or other necessary facilities have been or are being provided;

The existing Facility requires no utilities. Access is provided by nearby roads leading to the Water Access Easement on the Subject.

The existing Facility will not increase land surface water drainage. Nor has it in the past or now produce waste for which sanitation facilities are needed.

(6) That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize the traffic congestion in the public roads;

Use of the existing Facility serving only 21 residences located nearby will be intermittent, infrequent and will not involve significant automobile use. The served Sloop Point Duplexes are so nearby that a Duplex Owner can readily walk (or ride on a golf cart) along Twin Oaks Drive to Hugh Edens Lane to the entrance of the Water Access Easement.

(7) That the special use shall, in all other respects, conform to the applicable regulations of the district in which it is located; and

Applicant is not aware of any other regulations applicable to the Residential Performance zoning district to which the existing Facility does not conform.

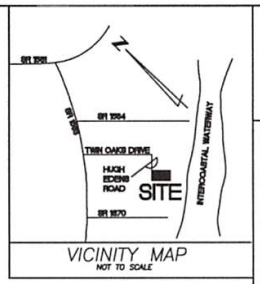
(8) The proposed use shall not adversely affect surrounding uses and shall be placed on a lot of sufficient size to satisfy the space requirements of said use.

The existing Facility is a benign, low intensity use in keeping with uses surrounding the area.

The Water Access Easement has been, is, and will be sufficient in width and length to use the existing Facility. Thus, the Subject is a lot of sufficient size to satisfy the space requirements for the existing Facility.

NOTES

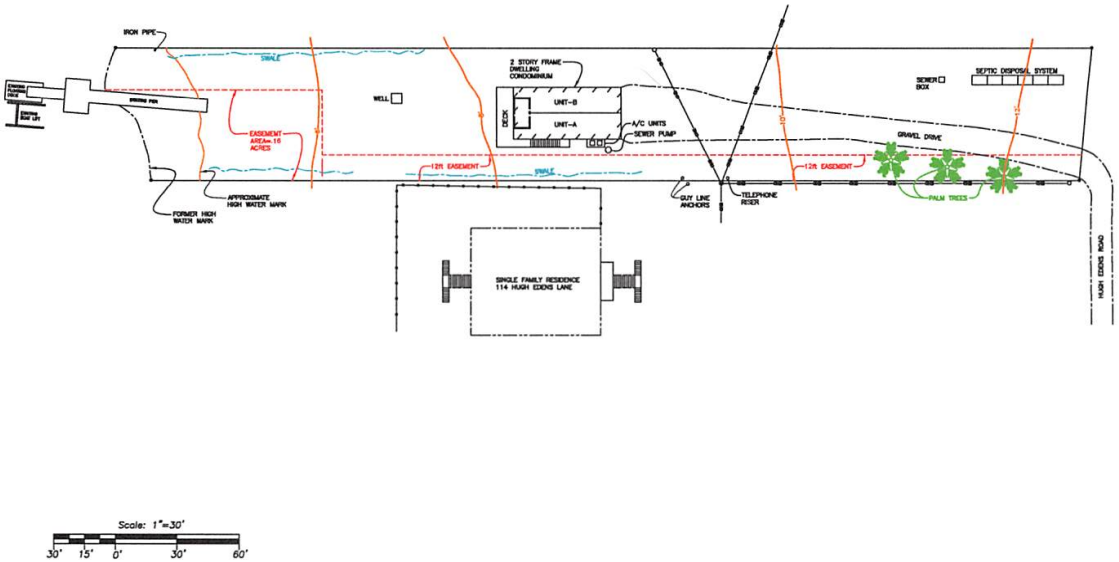
1. TOPOGRAPHIC LINES FROM PENDER COUNTY GIS MAP (NC DOT 2ft CONTOURS).
2. MEANS OF ACCESS TO EASEMENT RECORDED IN
   MAP BOOK 26/PAGE 104 AND SHOWN ON:
   MAP BOOK 35/PAGE 69
   MAP BOOK 36/PAGE 48
   MAP BOOK 37/PAGE 28
3. TOTAL EASEMENT AREA–0.16 ACRES TO HIGH WATER MARK.
4. TOTAL TRACT AREA–0.66 ACRES
5. UNIT "A" OWNED BY ADAM WINSTEAD
6. UNIT "B" OWNED BY BRIAN WALSH



VICINITY MAP
NOT TO SCALE

LEGEND

- NEW IRON PIPE (NIP)
- EXISTING IRON PIPE (EIP)
- R/W RIGHT OF WAY
- POWER POLE
- OVERHEAD ELECTRICAL
- TOPOGRAPHIC CONTOUR LINE



Scale: 1"=30'
30' 15' 0' 30' 60'

THE CLARK GROUP
PO BOX 1008, WILMINGTON, NC 28401-1008
PH. 910.392.5555 - FAX: 910.392.5552

120 HUGH EDENS LANE

Topsail Township Pender County North Carolina

ACCESS EASEMENT WITH EXISTING AND PROPOSED STRUCTURES

SLOOP POINT WATCH CONDOMINIUM
Hugh Edens Road
Topsail, North Carolina

DATE: 6/24/22
DRAWN BY: BKF
1"=30'
PROJECT No.: 22107
DRAWING SHEET
1 of 1

dotloop signature verification

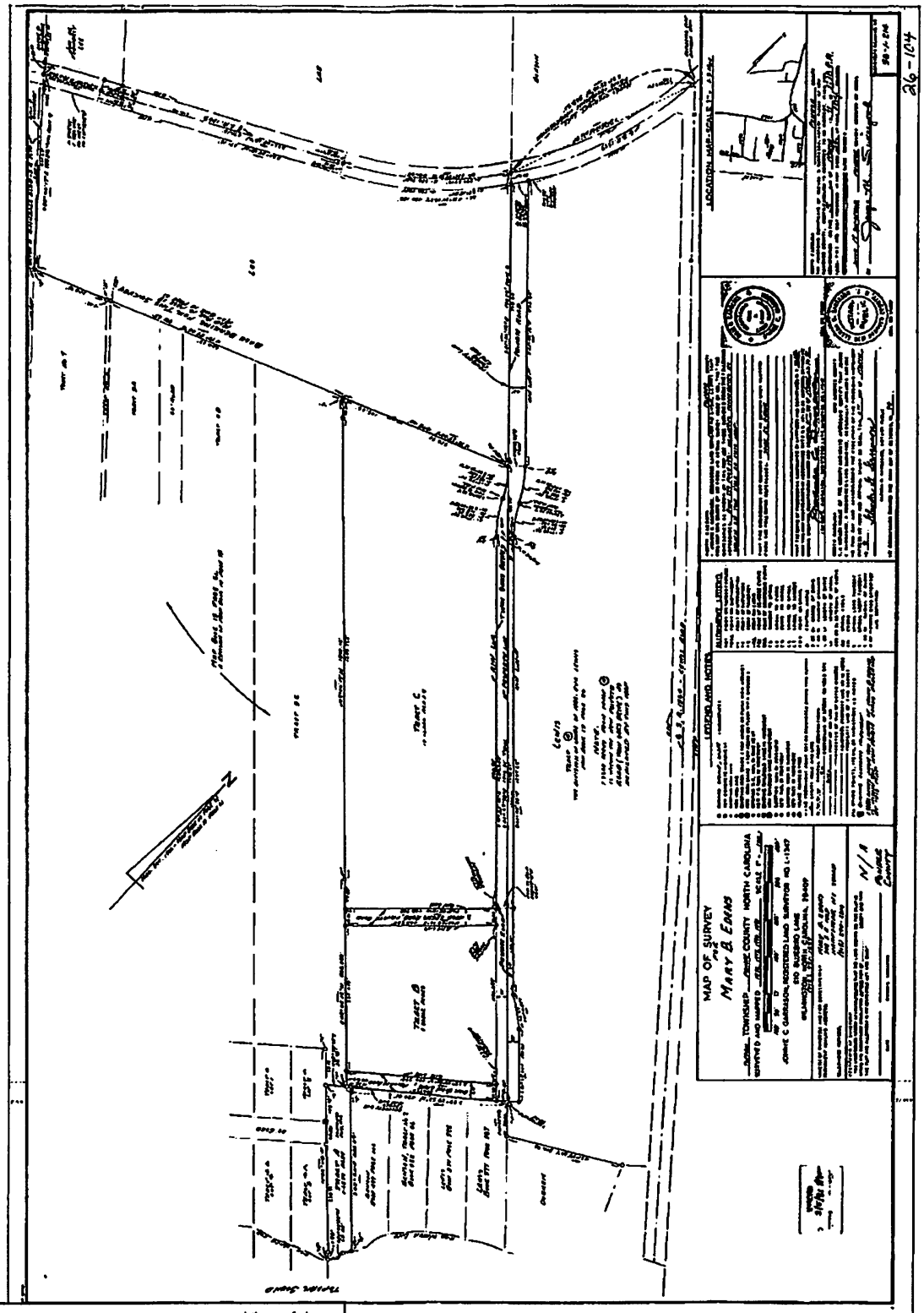


EXHIBIT 2

Weihung Betty Chang

dotloop verified
05/21/20 8:15 AM EDT
JGDP-VYQV-UNFI-CU9Q

EXHIBIT 3

BK2295PG084

FILED

04 JAN -5 PM 3:42

JOYCE M. SWICEGOOD
REGISTER OF DEEDS
PENDER COUNTY, NC

Recorded and Verified
Joyce M. Swicegood
Register of Deeds
Pender County, NC

COVER SHEET

(Type of Document: Deed of Easement

Grantor: Richard A. Lehrer and wife, Anna M. Lehrer and James A. Spicuzza and wife, Amy L. Spicuzza

Trustee (If applicable):

Grantee: Owners of Lots 1A &B, 2A & B, 3A & B, 4A & B, 5A & B, 6A & B 7A & B, 8A & B, 9A & B, 10A & B, and Lot 11, Sloop Point Duplexes

(Brief Description of property, if applicable):

Sloop Point Duplexes

Return to: Ray C. Blackburn, Jr.
PO Box 895, Hampstead, NC 28443

3

PENDER COUNTY

DEED OF EASEMENT

THIS DEED OF EASEMENT, made as of 30 December 2003, by and between Richard A. Lehrer and wife, Anna M. Lehrer, and James A. Spicuzza and wife Amy L. Spicuzza, herein called Grantor, and the owners of lots 1A and B, 2A and B, 3A and B, 4A and B, 5A and B, 6A and B, 7A and B, 8A and B, 9A and B, 10A and B, and 11 Sloop Point duplexes, herein called Grantee. (The designation Grantor and Grantee, as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine, or neuter as required by context);

WITNESSETH:

RECITALS:

R1. Grantor is the owner of a 2 undivided interest in Tract A as shown on a map entitled Map of Survey for Mary B. Edens recorded in map Book 26 at page 104 of the Pender County Registry, by virtue of a deed recorded in Book 1969 at page 312 of the Pender County Registry.

R2. The owners of lots described in a deed recorded in Book 36 at page 48 and/or Book 35 at Page 69 of the Pender County Registry.

R3. The owners of lots described in Book 35 at page 76, and/or Book 35 at page 69 of the Pender County Registry.

R4. Grantor has agreed to grant to each Grantee a perpetual easement, appurtenant to the lots owned by each of the Grantees, for the use of a boat launching/landing ramp and access to the Atlantic Intracoastal Waterway, together with the use of any pier or dock placed on said property by Grantor. Said easement shall be located per Grantor, and others may construct a boat launching/landing ramp facility and pier/dock on said premises.

NOW, THEREFORE, in consideration of the premises and other good valuable considerations, the receipt, sufficiency and adequacy of which are hereby acknowledged, Grantor gives, grants, bargains and conveys to each of the Grantees and his hei and assigns the right and privilege on ingress, egress and regress to and from boat launching/landing facilities to be constructed for semi-private use on Tract A as shown on the map entitled Map of Survey for Mary B. Edens recorded in Map Book 26 at Page 104 of the Pender County Registry together with the right and privilege to use the pier/dock constructed on said site as an accessory to the boat launching/landing facility and as access to the Atlantic Intracoastal Waterway. This grant shall be appurtenant to and run with the title to the lots described in Book 36 at page 48, Book 35 at page 76 and book 35 at page 69 of the Pender County Registry.

Said easement is conveyed subject to a maintenance obligation for said facilities. Each person or entity acquiring an easement of right of way hereunder shall bear a proportionate cost of maintaining such amenities, including the pier/dock and the boat launching/landing facilities.

TO HAVE AND TO HOLD said easement of right of way to the Grantee in perpetuity.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on this, the day and year first above written.

JENISHA F BONICELLI NOTARY PUBLIC STATE OF COLORADO

(SEAL)

Richard A. Lehrer

(SEAL)

Anna M. Lehrer

STATE OF COLORADO
COUNTY OF El Paso

I, Jenisha Bonicelli, a Notary Public in and for the aforesaid County and State, do hereby certify that Richard A. Lehrer and his wife, Anna M. Lehrer, personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and notarial seal this the 30 day of December, 2003.

Notary Public

My Commission Expires: 2/13/05

(SEAL)

James A. Spicuzza

(SEAL)

Amy L. Spicuzza

STATE OF NORTH CAROLINA
COUNTY OF Pender

I, Mary E. McAllister, a Notary Public in and for the aforesaid County and State, do hereby certify that James A. Spicuzza and his wife, Amy L. Spicuzza, personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and notarial seal this the 2nd day of January, 2004.

Notary Public

My Commission Expires: 11-12-2005

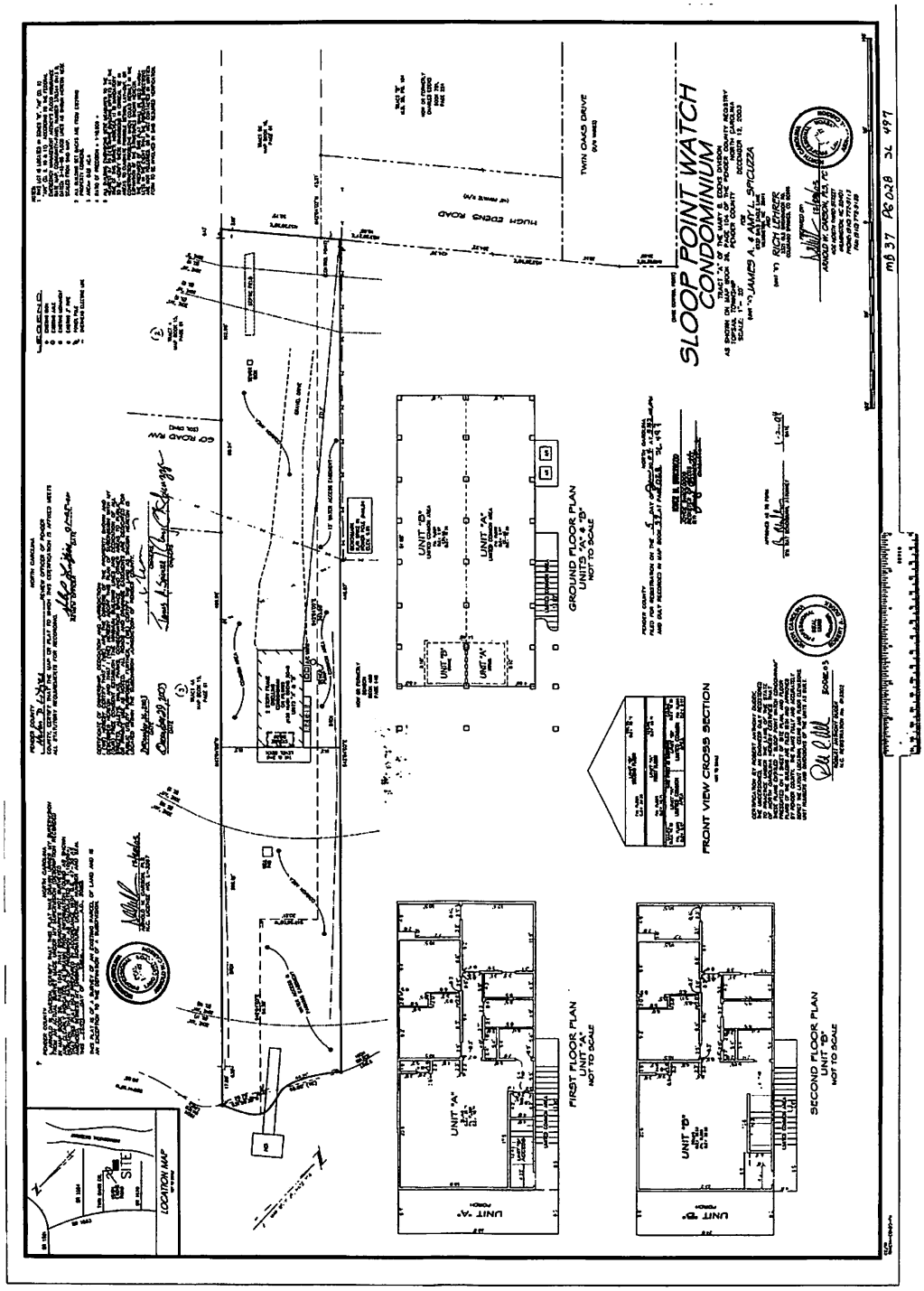
NORTH CAROLINA - PENDER COUNTY: The foregoing (or annexed) certificate of Jenisha F. Bonicelli is certified to be correct. This 5 day of Jan, A.D. 2004

JOYCE M. SWICEGOOD - Pender County Register of Deeds

By: Sabrina D. Green Deputy/~~Assistant~~ Register of Deeds

*Mary E. McAllister

EXHIBIT 4


SLOOP POINT WATCH
CONDOMINIUM
LOCATION MAP
SITE
FIRST FLOOR PLAN
UNIT "A"
NOT TO SCALE
SECOND FLOOR PLAN
UNIT "B"
NOT TO SCALE
GROUND FLOOR PLAN
UNIT "A" & UNIT "B"
NOT TO SCALE
FRONT VIEW CROSS SECTION
UNIT "A"
UNIT "B"
HIGH EDGE ROAD
TWIN OAKS DRIVE
GOT ROAD
RICH LEHRER
JAMES A. & AMY L. SPICUZZA
ARNOLD K. CARSON, P.E. P.C.
MB 37 PG 028 SL 497

BK 4693 PG 254 - 256 (3) DOC# 20053759
This Document eRecorded: 09/11/2019 02:38:21 PM
Fee: $26.00 DocType: DEED Tax: $640.00
Pender County, North Carolina
Sharon Lear Willoughby, Register of Deeds

EXHIBIT
2

NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax: $640.00

Parcel Identifier No. 4214-91-8413-0000 Verified by _____ County on the ____ day of _____, 20__
By: _____

Mail/Box to: Wilkerson Law, PLLC, 2030 Eastwood Rd, Unit 2, Wilmington, NC 28403

This instrument was prepared by: Wilkerson Law, PLLC, 2030 Eastwood Rd, Unit 2, Wilmington, NC 28403

Brief description for the Index: Unit A, Sloop Point Watch Condominium

THIS DEED made this 11 day of September, 2019, by and between

GRANTOR	GRANTEE
Stuart Dalee Laney, Jr. and Melba Thompson Laney, Trustees of the Laney Family Revocable Trust dated June 29, 2006 and any amendments thereto 504 Captain Dexter Wynd Wilmington, NC 28411	Adam Thomas Winstead, an unmarried man 1228 Watauga Street Raleigh, NC 27604

Enter in appropriate block for each Grantor and Grantee: name, mailing address, and, if appropriate, character of entity, e.g. corporation or partnership.

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot, parcel of land or condominium unit situated in the City of Hampstead, _____ Township, Pender County, North Carolina and more particularly described as follows:

See Exhibit A attached hereto and incorporated herein by reference as if fully set out.

The property hereinabove described was acquired by Grantor by instrument recorded in Book 4604 page 2854.
All or a portion of the property herein conveyed ___ includes or X does not include the primary residence of a Grantor.

A map showing the above described property is recorded in Plat Book 37 page 28.

NC Bar Association Form No. 3 © 1976, Revised © 1977, 2002, 2013
Printed by Agreement with the NC Bar Association – 1981

This standard form has been approved by:
North Carolina Bar Association – NC Bar Form No. 3

Submitted electronically by "Wilkerson Law"
in compliance with North Carolina statutes governing recordable documents
and the terms of the submitter agreement with the Pender County Register of Deeds.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever, other than the following exceptions:

1. The lien of the 2019 Ad Valorem taxes, now due and payable; 2. Restrictions of record applicable to said lot; 3. Easements to public utilities of record; and 4. Zoning and/or building and subdivision ordinances.

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

Stuart Dalee Laney, Jr. Trustee (SEAL)
(Entity Name)
By: _____
Print/Type Name & Title: _____
Print/Type Name: Stuart Dalee Laney, Jr., Trustee of the Laney Family Revocable Trust dtd 6/29/2006 and any amendments thereto

Melba Thompson Laney Trustee (SEAL)
Print/Type Name: Melba Thompson Laney, Trustee of the Laney Family Revocable Trust dtd 6/29/2006 and any amendments thereto

By: _____ (SEAL)
Print/Type Name & Title: _____
Print/Type Name: _____

By: _____ (SEAL)
Print/Type Name & Title: _____
Print/Type Name: _____

State of North Carolina - County or City of New Hanover

I, the undersigned Notary Public of the County or City of New Hanover and State aforesaid, certify that Stuart Dalee Laney, Jr., Trustee of the Laney Family Revocable Trust dtd 6/29/2006 and any amendments thereto personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 11 day of September, 2019.

My Commission Expires: 10-30-23
(Affix Seal)

Yvonne R. Snedden
Notary Public
Notary's Printed or Typed Name

State of North Carolina - County or City of New Hanover

I, the undersigned Notary Public of the County or City of New Hanover and State aforesaid, certify that Melba Thompson Laney, Trustee of the Laney Family Revocable Trust dtd 6/29/2006 and any amendments thereto personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 11 day of September, 2019.

My Commission Expires: 10-30-23
(Affix Seal)

Yvonne R. Snedden
Notary Public
Notary's Printed or Typed Name

State of _____ - County or City of _____

I, the undersigned Notary Public of the County or City of _____ and State aforesaid, certify that _____ personally came before me this day and acknowledged that he is the _____ of _____, a North Carolina or _____ corporation/limited liability company/general partnership/limited partnership (strike through the inapplicable), and that by authority duly given and as the act of such entity, he signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and Notarial stamp or seal, this _____ day of _____, 20___.

My Commission Expires: _____
(Affix Seal)

_____
Notary Public
Notary's Printed or Typed Name

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Printed by Agreement with the NC Bar Association – 1981

This standard form has been approved by:
North Carolina Bar Association – NC Bar Form No. 3

EXHIBIT "A"

BEING all of Unit A together with a one-half undivided interest in the lands designated as "common area" and together with the exclusive use of the lands shown on "Unit "A" limited common area" as the same are shown or denominated on a map entitled "Sloop Point Watch Condominium" and recorded in Map Book 37 at Page 28, of the Pender County Registry, to which said plat reference is hereby made for a greater certainty of description and incorporated herein by reference.

Sometimes known as: 120 Hugh Edens Lane, Unit A
Hampstead, NC 28443

Tax Parcel # 4214-91-8413-0000

BK 4728 PG 2246 - 2248 (3) DOC# 20071984
This Document eRecorded: 10/21/2020 12:05:16 PM
Fee: $26.00 DocType: DEED Tax: $638.00
Pender County, North Carolina
Sharon Lear Willoughby, Register of Deeds

EXHIBIT
3

NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax: $638.00

Parcel Identifier No. 4214-91-8387-000B Verified by _____ County on the ____ day of _____, 20__
By: _____

Mail/Box to: Wilkerson Law, PLLC, 2030 Eastwood Rd, Unit 2, Wilmington, NC 28403

This instrument was prepared by: Wilkerson Law, PLLC, 2030 Eastwood Rd, Unit 2, Wilmington, NC 28403

Brief description for the Index: UNIT B, Sloop Point Watch Condo

THIS DEED made this 2nd day of October, 2020, by and between

GRANTOR	GRANTEE
Megaleg, LLC, a North Carolina limited liability company 112 Broadview Lane Hampstead, NC 28443	Brian C. Walsh and wife, Lauren Cardwell 120 Hugh Edens Lane, #B Hampstead, NC 28443

Enter in appropriate block for each Grantor and Grantee: name, mailing address, and, if appropriate, character of entity, e.g. corporation or partnership.

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot, parcel of land or condominium unit situated in the City of Hampstead, _____ Township, Pender County, North Carolina and more particularly described as follows:

See Exhibit A attached hereto and incorporated herein by reference.

The property hereinabove described was acquired by Grantor by instrument recorded in Book 3993 page 176.
All or a portion of the property herein conveyed ___ includes or X does not include the primary residence of a Grantor.

A map showing the above described property is recorded in Plat Book 37 page 28.

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Printed by Agreement with the NC Bar Association – 1981

This standard form has been approved by:
North Carolina Bar Association – NC Bar Form No. 3

Submitted electronically by "Wilkerson Law"
in compliance with North Carolina statutes governing recordable documents
and the terms of the submitter agreement with the Pender County Register of Deeds.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever, other than the following exceptions:
1. The lien of the 2020 Ad Valorem taxes, now due and payable; 2. Restrictions of record applicable to said lot; 3. Utility easements of record; and 4. Zoning and/or building and subdivision ordinances.

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

Megaleg, LLC, a North Carolina limited liability company (Entity Name)
By: Mary Diane Edens Thomas, Manager
Print/Type Name & Title: Mary Diane Edens Thomas, Manager

_____ (SEAL)
Print/Type Name: _____

_____ (SEAL)
Print/Type Name: _____

By: _____
Print/Type Name & Title: _____

_____ (SEAL)
Print/Type Name: _____

By: _____
Print/Type Name & Title: _____

_____ (SEAL)
Print/Type Name: _____

State of _____ - County or City of _____

I, the undersigned Notary Public of the County or City of _____ and State aforesaid, certify that _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this _____ day of _____, 20___.

My Commission Expires: _____
(Affix Seal)

_____ Notary Public
Notary's Printed or Typed Name

State of _____ - County or City of _____

I, the undersigned Notary Public of the County or City of _____ and State aforesaid, certify that _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this _____ day of _____, 20___.

My Commission Expires: _____
(Affix Seal)

_____ Notary Public
Notary's Printed or Typed Name

State of North Carolina - County or City of New Hanover

I, the undersigned Notary Public of the County or City of New Hanover and State aforesaid, certify that Mary Diane Edens Thomas personally came before me this day and acknowledged that she is the Manager of Megaleg, LLC, a North Carolina or ~~corporation~~/limited liability company/~~general partnership/limited partnership~~ (strike through the inapplicable), and that by authority duly given and as the act of such entity, she signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and Notarial stamp or seal, this 20th day of October, 2020.

My Commission Expires: 8/11/2024
(Affix Seal)

JANET PATTERSON
NOTARY PUBLIC
NEW HANOVER CO., NC
My Commission Expires 8-11-2024

Janet Patterson Notary Public
Notary's Printed or Typed Name

NC Bar Association Form No. 3 © 1976, Revised © 1977, 2002, 2013
Printed by Agreement with the NC Bar Association – 1981

This standard form has been approved by:
North Carolina Bar Association – NC Bar Form No. 3

EXHIBIT A

BEING ALL OF UNIT "B" TOGETHER WITH ONE-HALF UNDIVIDED INTEREST IN THE LANDS DESIGNATED AS "COMMON AREAS" AND TOGETHER WITH THE EXCLUSIVE USE OF THE LANDS SHOWN AS "SLOOP POINT WATCH CONDOMINIUM UNIT B LIMITED COMMON AREA" AS THE SAME ARE SHOWN OR DENOMINATED ON A MAP RECORDED IN MAP BOOK 37 AT PAGE 28 OF THE PENDER COUNTY REGISTRY, REFERENCE TO WHICH SAID MAP IS HEREBY MADE FOR A MORE PARTICULAR DESCRIPTION.

SAID PROPERTY IS CONVEYED TOGETHER WITH AND SUBJECT TO THE TERMS OF THAT DEED OF EASEMENT RECORDED IN BOOK 2295, PAGE 84 OF THE PENDER COUNTY REGISTRY.

Property address: 120 Hugh Edens Lane, #B, Hampstead, NC 28443

Parcel ID #: 4214-91-8387-000B

EXHIBIT 4

Pender County
Planning and Community Development

Planning Division
805 S. Walker Street
PO Box 1519
Burgaw, NC 28425

Phone: 910-259-1202
Fax: 910-259-1295
www.pendercountync.gov

August 31, 2021

Law Office of Matthew A. Nichols
3205 Randall Parkway, Suite 104
Wilmington, North Carolina 28403

VIA EMAIL: matt@mattnicholslaw.com

Re: 120 Hugh Edens Lane – Written Interpretation (Pender County PIN: 4214-91-8387-0000)

Mr. Nichols,

The above-referenced property is currently zoned RP, Residential Performance zoning district and is within the jurisdiction of Pender County for zoning purposes.

Under the current Unified Development Ordinance (UDO), a Community Boating Facility is defined as a private, nonprofit boating facility with navigable water frontage which includes a dock, pier, and/or launching ramp which is intended to serve five (5) or more residential units. Based on the information provided in the determination request letter regarding the number of users of the "easement" area, the described use would be considered a Community Boating Facility. A Special Use Permit is required for Community Boating Facilities in the RP, Residential Performance zoning district.

According to our records, a Community Boating Facility (previously "Boat Access Facilities") Special Use Permit has not been issued on the subject property. In addition, there were no exceptions, exemptions, variances, or other/previous ordinance provisions that would have allowed a Community Boating Facility on the subject property before the map was recorded in 2004. According to the adopted November 18, 2003 Pender County Zoning Ordinance, Community Boating Facilities were not permitted in the R-20C zoning district, the zoning district of the subject property prior to the adoption of the Pender County Unified Development Ordinance in 2010. Based on these findings, a Special Use Permit will be required for the subject site to come into compliance with current UDO standards.

If you have any questions, please do not hesitate to contact me at (910) 259-1408 or cshaw@pendercountync.gov.

Sincerely,

Carlene Shaw

Carlene Shaw
Current Planner
Pender County Department of Planning & Community Development

Property Owners within 500 Feet

Owner	Mailing Address	City State Zip	Property Address
New Belews Properties, Inc.	107 Ridge Road	Hampstead NC 28443	Lot 4 Oak View Ln.
Andrew Lee Jones	1185 St. Johns Church Road	Hampstead NC 28433	Lot 1 Oak View Ln.
Sloop Point Watch HOA	120 Hugh Edens Lane	Hampstead NC 28443	120 Hugh Edens Ln.
Brian C. Walsh	120B Hugh Edens Lane	Hampstead NC 28443	120 B Hugh Edens Ln.
Adam Winstead	1228 Watauga Street	Raleigh NC 27604	120 A Hugh Edens Ln.
State of North Carolina	1321 Mail Service Center	Raleigh NC 27699	613 Lewis Rd. SW
Michael Evans Scott	172 Longwood Drive	Eden NC 27268	307 E. Island View Dr.
Carolyn Mathias	200 Pelican Walk	Hampstead NC 28443	200 Pelican Walk
Daniel C. Johnson	201 Pelican Walk	Hampstead NC 28443L	201 Pelican Walk
Custom Built Homes of the Carolinas	22019 HWY 17 N	Hampstead NC 28433	Lots 4 & 5 Oak View Ln.
Mark S. Haynes, Jr.	239 Bagley Avenue	Wilmington NC 28409	Lot 3 Oak View Lane
Houston D. Meares, Jr	301 Pelican Walk	Hampstead NC 28443	301 Pelican Walk
Viorel Verka	301 Willingham Road	Morrisville NC 27560	Lot 6 Oak View Ln.
Tymeshia Nycz	303 E. Island View Drive	Hampstead NC 28443	303 E. Island View Drive
Timothy Bizzell	309 E Island View Drive	Hampstead NC 28443	309 E Island View Drive
Kevin B. Ennis	310 Pelican Walk	Hampstead NC 28443	310 Pelican Walk
Robert Thompson	311 E. Island View Drive	Hampstead NC 28443	311 E. Island View Drive
Robert A Jenkins	311 Pelican Walk	Hampstead NC 28443	311 Pelican Walk
Sandra Pfeifer	312 E. Island View Drive	Hampstead NC 28443	312 E. Island View Drive
Kristan A. Siemon	315 E. Island View Drive	Hampstead NC 28443	315 E. Island View Drive
Barry A. Devries, et al.	316 E Island Drive	Hampstead NC 28443	316 E Island Drive
William W. Southmyd	317 E Island View Drive	Hampstead NC 28443	317 E Island View Drive
Troy Sabatura	319 E Island View Drive	Hampstead NC 28443	319 E. Island View Dr.
Jeffrey L. Snider	319 Pelican Walk	Hampstead NC 28443	319 Pelican Walk
Reginald G. Walker, IV	32 Oak View Lane	Hampstead NC 28443	32 Oak View Ln.
William B. Jones	321 E Island View Drive	Hampstead NC 28443	321 E. Island View Dr.
John T. Blakeney	338 Windsong Road	Wilmington NC 28411	114 Hugh Edens Ln.
Daniel M. Ogden	363 Twin Oaks Drive	Hampstead NC 28443	363 Twin Oaks Dr.
Elizabeth Lewis	408 Lewis Road	Hampstead NC 28443	408 Lewis Rd.
Donald E. Berg, Trustee	4240 Berkeley View Drive	Berkeley Lake GA 30096-3078	Lot 123 Pecan Grove
Doris Ann Seabolt	5126 Russell Road	Durham NC 27712	615 Lewis Rd. SW
Seafood Market and/or Resident	579 Lewis Road	Hampstead NC 28443	579 Lewis Rd.
Pecan Grove Plantation HOA, Inc.	611 Lewis Road SW	Hampstead NC 28443	611 Lewis Rd. SW
Bradford Karwoski	62 Oak View Lane	Hampstead NC 28443	62 Oak View Ln.
Sloop Point Marina Owners Association	6331 Oleander Drive	Wilmington NC 28403	579 Lewis Rd.
Glenn M. Lewis	668 Lewis Road	Hampstead NC 28443	668 Lewis Rd.
Mark Lewis	668 Lewis Road	Hampstead NC 28443	668 Lewis Rd.
Phillip and Courtney Holt	690 Lewis Road	Hampstead NC 28443	690 Lewis Rd.
Pecan Grove Plantation HOA INC c/o Century 21	1630 Military Cutoff Rd.	Wilmington, NC 28403	Open Space
George K. Houck	P. O. Box 451	Wrightsville Beach NC 28480	Lot 1A & Part Tract 7
Tawes Adam	P.O. Box 67	Hampstead NC 28443	305 E. Island View
Phillip Ezra Mills III	P.O. Box 904	Hampstead NC 28443	712 Lewis Lane
Marvin A. Edens c/o Neva Bartholomew	307 Pitch Pine Ln.	Chapel Hill NC 27514	321 Pelican Walk

APPLICATION FOR SPECIAL USE PERMIT

THIS SECTION FOR OFFICE USE			
Application No.	SUP 2022-36	**Date**	8/10/2022
Application Fee	$ 300.00	**Invoice Number**	27972
Pre-Application Conference	6/22/2022	**Hearing Date**	9/19/2022

SECTION 1: APPLICANT INFORMATION			
Applicant's Name:	Stephen D Coggins, Rountree Losee LLP, on behalf of 21 easement holders (list attached)	**Owner's Name:**	Please see attached list
Applicant's Address:	2419 Market Street	**Owner's Address:**	Please see attached list Type text here
City, State, & Zip	Wilmington NC 28403	**City, State, & Zip**	
Phone Number:	(910)763-3404	**Phone Number:**	unknown
Email Address:	scoggins@rountreelosee.com	**Email Address:**	unknown
Legal relationship of applicant to landowner:	Applicant represents 21 dominant appurtenant easement owners. The list of easement owners is attached The servient estate owners are Adam Winstead, 1228 Wateugh St., Raleigh NC 27604/120A Hugh Edens Lane Hampstead, NC and Brian Walsh, 102B Hugh Edens Lane Hampstead, NC, 29443		

SECTION 2: PROJECT INFORMATION			
Property Identification Number (PIN):	4214-91-8387 A & B	**Total property acreage:** Total tract 0.66 Easement area 0.16	
Zoning Classification:	RP	**Acreage to be disturbed:** 0	
Water Provider:	Private Well Water	**Wastewater Provider:** Private Septic	
Project Address:	120 Hugh Edens Drive	**NAICS Code:**	N/A
Description of Project Location:	INTRACOASTAL WATERWAY		
Describe activities to be undertaken on project site:	Use of existing pier and dockage for Community Boating Facility per attached narrative. No construction or alterations involved.		

SECTION 3: SIGNATURES			
Applicant's Signature	Stephen D Coggins	**Date:**	7/29/2022
Applicant's Printed Name:	Stephen D. Coggins	**Date:**	
Owner's Signature	Betty Chang	**Date:**	6/9/2022
Owner's Printed Name:	Betty Chang, Owner and Agent for Sloop Point Duplex Owners	**Date:**	6/9/2022

NOTICE TO APPLICANT

1. Applicant must also submit the information described on the Special Use Checklist.
2. Applicant or agent authorized in writing must attend the public hearing.
3. Once the public hearing has been advertised, the case will be heard unless the applicant withdraws the application or unless the Board of Commissioners or other authorized person agrees to table or delay the hearing.
4. Applicant may wish to review the required findings for approval of a Special Use Permit found on page 1 of this application
5. **Permit will become void after 12 months if a final zoning permit is not obtained, unless specifically requested at the time of public hearing.**

George Rountree, Jr.
(1904-1979)
Ryan F. Tennant
(1973-2016)
George Rountree, III
Special Counsel
Geoffrey A. Losee
Stephen D. Coggins
Corey T. Zurbuch

Pardis Camarda
Michael A. Becker
Brian S. Akers

Joseph E. Horowitz
Of Counsel

ROUNTREE LOSEE LLP
Est. 1896

North Carolina Address
2419 Market Street
Wilmington, NC 28403

Tennessee Address
4596 Pecan Grove Lane
Memphis, TN 38120

Phone
910-763-3404

Fax
910-763-0320
910-763-0080

July 29, 2022

Via Hand-Delivery
Pender County Planning and Community Development
805 S Walker Street
Burgaw NC 28425
Attn: Justin Brantley, Senior Planner
Greg Feldman, CZO

RE: Special Use Permit Application - Sloop Point Duplex Easement Holders
Our File No. 2022-00154

Dear Mr. Brantley and Mr. Feldman:

Enclosed please find the following documents and items regarding the above-noted Special Use Permit Submission:

1. Special Use Permit Submission Checklist
2. Executed Special Use Permit Application (including list of easement owners)
3. Project Narrative and Exhibits (including Site Plan)
4. Our firm's check in the sum of $300.00
5. List of property owners within 500 feet
6. Copies of emails between Steve Coggins and the Pender County Fire Marshal
7. Pre-addressed and stamped No. 10 envelopes to adjacent property owners
8. Thumb-drive containing digital copies of submission documents

Thank you for your help and attention in this matter and if you need anything further, please do not hesitate to contact us.

Sincerely,

Julie D. Cavanaugh

Julie D. Cavanaugh

/jdc

Enclosures

Pender County
Planning and Community Development

805 S. Walker Street
PO Box 1519
Burgaw, NC 28425

Phone: 910-259-1202
Fax: 910-259-1295
www.pendercountync.gov

Special Use Permit Submission

Applications will be considered for the Board of County Commissioners hearing and reviewed by Staff only when deemed complete. The application will be regarded as incomplete until the following items are received by the Planning and Community Development Staff.

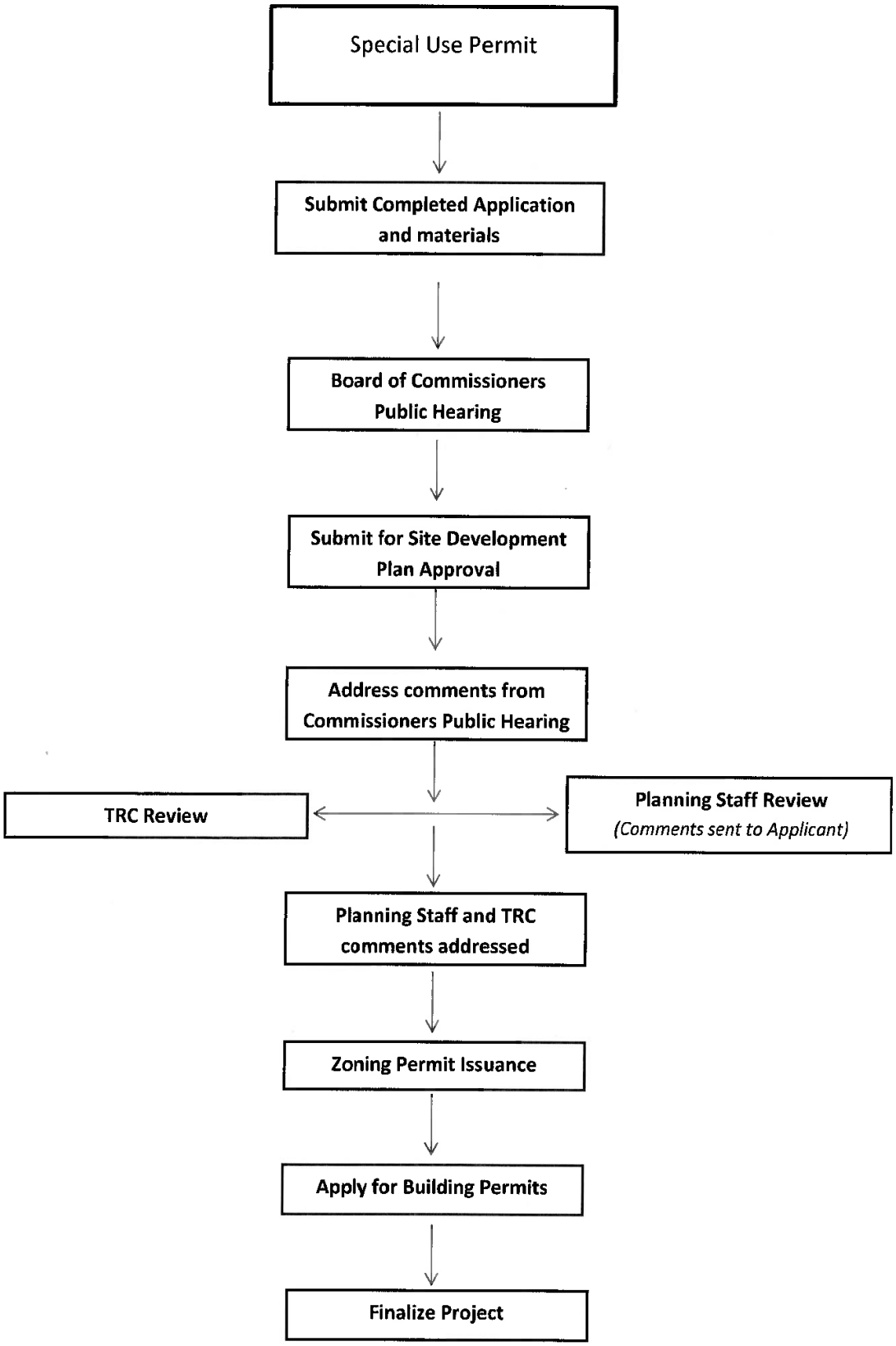
1. N/A **Pre-submittal Meeting**
   Date of Meeting 6/22/2022 JBB
2. X **Signed Application**
3. X **Payment**
   $300 for the first 5 acres; $10 per acre over 5 acres of the project area
4. X **Site Plan**
   All Site Plans submitted must be in accordance with Section 3.12.2 of the Unified Development Ordinance.
5. X **Digital Submission**
   For all documents submitted in paper copy, bring a digital copy with paper submission.
6. X **Adjacent Property List**
   The applicant shall provide to the Administrator a list of names and addresses of the owners of all properties located within 500-feet of the perimeter of the project bounds along of the property under consideration.
7. X **Adjacent Property Envelopes**
   The applicant shall provide one (1) set of #10 envelopes with typed addresses to each person on the owners of all properties located within 500-feet of the perimeter of the project bounds and accompanied with the required amount for first class postage.
8. X **Project Narrative**
   A description of the proposed Special Use Permit including response to the standards set forth in Section 3.12.3.G of the Unified Development Ordinance.

I certify that all information presented in this application is accurate to the best of my knowledge.

Signature of Applicant [signature] Date 7/29/22

Printed Name STEPHEN D. COGGINS

Staff Initials: JBB
Date: 8/10/2022


Special Use Permit
Submit Completed Application and materials
Board of Commissioners Public Hearing
Submit for Site Development Plan Approval
Address comments from Commissioners Public Hearing
TRC Review
Planning Staff Review
(Comments sent to Applicant)
Planning Staff and TRC comments addressed
Zoning Permit Issuance
Apply for Building Permits
Finalize Project

		Agenda Deadline	Meeting Date
BOCC	January	12.6.19	1.21.20
	February	1.3.20	2.18.20
	March	2.7.20	3.16.20
	April	3.6.20	4.20.20
	May	4.3.20	5.18.20
	June	5.1.20	6.15.20
	July	6.5.20	7.6.20
	August	6.26.20	8.17.20
	September	8.7.20	9.21.20
	October	8.28.20	10.19.20
	November	10.2.20	11.16.20
	December	11.6.20	12.7.20

Complete Application Date: All documents must be received by 12PM on the deadline date to be considered a complete application.

Special Use Permit Specific Requirements

1. Project Narrative--Written description of the project (max of 3 pages) including the following:

- Location of the project and type of access to project site
- Detailed description of the activities to be undertaken on the site, including hrs. of operation, # of employees, etc.
- Description of all construction activities to be undertaken on the site
- Describe type of utilities that will serve project and status of approval from applicable providers
- List of all state and federal permits that will be required for the project
- Applicant must specifically address the 8 written findings for Special Use Permit approval which are identified on page 1 of this application and in the Pender County Unified Development Ordinance (Section 3.12.3.G.). Describe any potential impacts the project will have on the community or adjacent properties such as traffic, noise, etc. and explain efforts to mitigate these impacts. The applicant may also wish to describe any positive benefits the project will provide for the community and/or neighbors of the project.

2. Project Map(s)--Map or maps of the special use project site with boundaries of the project if less than the parcel boundaries. This map or maps shall be drawn to a readable scale. The scale shall be not more than 200' to the inch. The map shall display an accurate bar graph scale, date prepared, north arrow and the author of the map. This map(s) shall show the following:

- Structures. Location of all structures within fifty (50) feet of the property; location and depth, if known, of any existing utility lines in the property or along any adjacent road.
- Location of property boundaries, location of any easements for utility lines or passage which cross or occupy any portion of the property for proposed lines;
- Name, address, tax map number, acreage, zoning, township and means of access to the site (road or recorded access easement);
- Location and status of utilities: water, sewer, well, septic system, method of solid waste disposal, electrical service and natural gas if available;
- Existing topography and all proposed changes. Include calculations to show total acreage of area to be graded or disturbed;
- Existing and proposed streams, drainage ways, ponds, lagoons, wetlands, flood plains, berms, etc.
- Existing and proposed structures and on-site improvements;
- Existing and proposed fencing, vegetative screening and buffering;
- Existing and proposed signs, lighting, landscaping, walks, parking and drives;
- Detail any expected impact to the community, such as; traffic, noise, vibration, glare, odor, dust, etc. and the method being used to lessen these impacts.

APPLICATION FOR SPECIAL USE PERMIT

THIS SECTION FOR OFFICE USE			
Application No.	**SUP**	**Date**	
Application Fee	**$**	**Invoice Number**	
Pre-Application Conference		**Hearing Date**	

SECTION 1: APPLICANT INFORMATION			
Applicant's Name:	Stephen D. Coggins, Rountree Losee LLP, on behalf of 21 easement holders (list attached)	**Owner's Name:**	Please see attached list
Applicant's Address:	2419 Market Street	**Owner's Address:**	Please see attached list Type text here
City, State, & Zip	Wilmington NC 28403	**City, State, & Zip**	
Phone Number:	(910)763-3404	**Phone Number:**	unknown
Email Address:	scoggins@rountreelosee.com	**Email Address:**	unknown
Legal relationship of applicant to landowner:	Applicant represents 21 dominant appurtenant easement owners. The list of easement owners is attached The servient estate owners are Adam Winstead, 1228 Wataugh St., Raleigh NC 27604/120A Hugh Edens Lane Hampstead, NC and Brian Walsh, 102B Hugh Edens Lane Hampstead, NC, 29443		

SECTION 2: PROJECT INFORMATION			
Property Identification Number (PIN):	4214-91-8387 A & B	**Total property acreage:** Total tract 0.66 Easement area 0.16	
Zoning Classification:	RP	**Acreage to be disturbed:** 0	
Water Provider:	Private Well Water	**Wastewater Provider:** Private Septic	
Project Address:	120 Hugh Edens Drive	**NAICS Code:**	N/A
Description of Project Location:	INTRACOASTAL WATERWAY		
Describe activities to be undertaken on project site:	Installation and use of floating dock and kayak launch.		

SECTION 3: SIGNATURES			
Applicant's Signature	Stephen D Coggins	**Date:**	7/29/2022
Applicant's Printed Name:	Stephen D. Coggins	**Date:**	
Owner's Signature	Betty Chang	**Date:**	6/9/2022
Owner's Printed Name:	Betty Chang, Owner and Agent for Sloop Point Duplex Owners	**Date:**	6/9/2022

NOTICE TO APPLICANT

1. Applicant must also submit the information described on the Special Use Checklist.
2. Applicant or agent authorized in writing must attend the public hearing.
3. Once the public hearing has been advertised, the case will be heard unless the applicant withdraws the application or unless the Board of Commissioners or other authorized person agrees to table or delay the hearing.
4. Applicant may wish to review the required findings for approval of a Special Use Permit found on page 1 of this application
5. **Permit will become void after 12 months if a final zoning permit is not obtained, unless specifically requested at the time of public hearing.**

DUPLEX OWNERS, ADDRESSES & LOT NOS.:

Robert D. Russell 6612 Providence Rd Wilmington NC 28411 290A and B Twin Oaks Dr. Re. Lot 1A & B	
Amy Boardwine 276A Twin Oaks Drive Hampstead NC 28443 Re: Lot 2A	Kerry and Melissa Danger 276B Twin Oaks Hampstead NC 28443 Re Lot 2B
Christopher P. Ianno 14 Sutton Place N Massapequa NY Re: 256A and B Twin Oaks Drive Lot 3A & B	
Robert J. O'Connor 270A Twin Oaks Drive Hampstead NC 28443 Re. Lot 4A	Brian J. Polansky 270B Twin Oaks Drive Hampstead NC 28443 Re. Lot 4B
G Squared Consultants LLC 1629 Kings Landing Road Hampstead NC 28443 Re 234A & B Twin Oaks Drive, Lot 5A & B	
Caleb Smith 220 Twin Oaks Drive, Unit A Hampstead NC 28443 Re. Lot 6A	Lee Stikeleather 2855 Juniper Church Rd. Four Oaks NC Re. 220B Twin Oaks Drive, Lot 6B
Thomas M. Flynn 515 Carolina Ave Willow Spring NC 27592 Re. 200A Twin Oaks Drive, Lot 7A	Betty Weihung Chang 1100 Dalgarven Drive Apex NC 27502 Re. 200A Twin Oaks Drive, Lot 7B
Danny C. Nobles 89 HL Smit Road Wilmington NC 28411 Re. 214A Twin Oaks Drive, L:ot 8A	Alex W. Robinson 214B Twin Oaks Drive Hampstead NC 28443 Lot 8B
Adam J. Slack 1804 Register Lane Wilmington NC 28411 Re. 178A Twin Oaks Drive, Lot 9A & B	
Villari Rocco 7303 Artifact Court Wilmington NC 28411 Re: 164A Twin Oakes Drive , Lot 10A	Colleen Humphrey 164 Twin Oakes Dr., Unit B Hampstead NC 28443 Re: Lot 10B
Travis G. Sexton 5 Looking Glass Lane Asheville NC 28805 Re: 140 Twin Oaks Drive, Lot 11	

George Rountree, Jr.
(1904-1979)
Ryan F. Tennant
(1973-2016)
George Rountree, III
Special Counsel
Geoffrey A. Losee
Stephen D. Coggins
Corey T. Zurbuch

Pardis Camarda
Michael A. Becker
Brian S. Akers

Joseph E. Horowitz
Of Counsel

North Carolina Address
2419 Market Street
Wilmington, NC 28403

Tennessee Address
4596 Pecan Grove Lane
Memphis, TN 38120

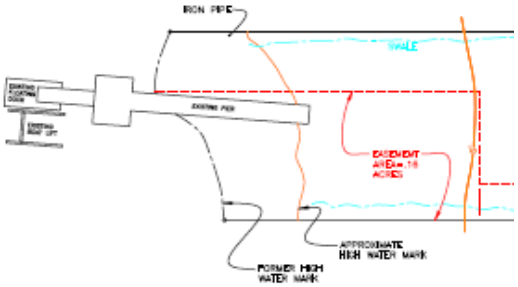
Phone
910-763-3404

Fax
910-763-0320
910-763-0080

July 29, 2022

NARRATIVE FOR SPECIAL USE PERMIT APPLICATION FOR COMMUNITY BOATING FACILITY AT 120 HUGH EDENS LANE, HAMPSTEAD NC 28443 PARCEL TAX ID# 4214-91-8387-000A

The owners of the Sloop Point Duplexes ("Duplexes") desire to exercise their easement rights and exercise Community Boating Facility ingress and egress rights to the existing shoreline and dock ("Facility") on the subject tract ("Subject") located on the Atlantic Intracoastal Waterway at 120 Hugh Edens Lane, Hampstead NC (Parcel Tax ID # 4214-91-8387-000). A Site Plan of existing Facility ("Site Plan") is attached as **Exhibit 1**.[1] The portion of the Subject consisting of the existing Facility is shown on Site Plan as follows:



No new construction is proposed. Rather, only use of the existing Facility is sought. The existing Facility would serve the Duplexes located nearby. Located on the waterway navigable water frontage, the Facility will serve five (5) or more residential units and will be controlled by the collective Sloop Point Duplexes owners group. In these circumstances, the Pender County Zoning Administrator deems the proposed project to be a "Community Boating Facility" as defined in the Pender County UDO.[2]

The Subject is zoned Residential Performance ("RP"). The UDO's Table of Uses lists "Community Boating Facility" as an allowed use through a Special Use Permit with

[1] The Project Map It provides the information required by UDO Section 3.12.2 and the Pender County Special Use Permit Application form available online at https://www.pendercountync.gov/pcd/wp-content/uploads/sites/15/2020/10/Special-Use-Permit-Application.pdf.

[2] **COMMUNITY BOATING FACILITY:** A private, nonprofit boating facility with navigable water frontage which includes a dock, pier, and/or launching ramp which is intended to serve five (5) or more residential units. Must be owned/controlled by a Homeowners Association (HOA) or any type of development association or collective owners group where more than one family has privileges to use facility. Commercial activities of any kind, including commercial letting of slips to parties that are not residents of the association or development, shall be prohibited.

conditions imposed by the UDO. Under subsection C of Section 5.2.12 of the UDO[3], a Special Use Permit must be obtained to allow use of a Community Boating Facility in the RP zoning district.

Duplex Owners' Easement Rights In a Boat Dock Launch/Landing Ramp and Access Facility and Use of Dock

The Subject consists of a lot with two duplex residential units (120A & 120B Hugh Edens Lane, Hampstead NC 28443). The Parcel Tax ID # for the two units is 4214-91-8387-000A & B. The Subject is described as "Tract A" as shown in Map Book 26 Page 104 of the Pender Registry, attached as **Exhibit 2**.

The Owners of Sloop Point Duplexes ("Duplex Owners") as shown in Map Book 35 at Pages 69 and 76 and Map Book 36 at Page 48 of the Pender Registry have easement rights over the Subject by virtue of that Deed of Easement recorded at Deed Book 2295 Page 85 (attached as **Exhibit 3**) and a Plat recorded at Map Book 37 Page 28 (attached as **Exhibit 4**), Both were recorded 5 January 2004 at 3:42 pm. The Deed of Easement specifically grants to the Duplex Owners easement rights that allow them to use the existing pier and dock and to construct a floating dock and kayak launch:

> Grantor has agreed to grant each Grantee a perpetual easement, appurtenant to the lots owned by each of the Grantees for the use of a boat launching/ ramp and access to the Atlantic Intracoastal Waterway, together with the use of any pier or dock placed on said property by Grantor. Said easement shall be located per the Grantor, and others may construct a boat launching/landing ramp facility and pier/dock on said premises.
>
> Grantor …conveys to each of the Grantees and his heirs and assigns the rights and privilege on ingress, egress and regress to and from boat launching/landing facilities to be constructed for semi-private use on [the Subject…together with the right and privileged to use the pier/dock constructed on said site as an accessory to the boat launching/landing facility and as access to the Atlantic Intracoastal Waterway. The grant shall be appurtenant to and run with the title to the lots described in Book 36 at Page 48, Book 35 at Page 76 and book 35 at page 69 of the Pender County Registry.

[3] **5.3.12 Miscellaneous Uses**
***
C. Community Boating Facility
1) Must serve five (5) or more residential units and may include a dock, pier, ramp, or launching pad.
2) No commercial activities of any kind shall be allowed within the confines of the facility.
***

Per the terms of this Deed of Easement (**Exhibit 3**), the Grantor located the easement on the Subject through the Plat that was recorded at Map Book 37 Page 28 (**Exhibit 4**) at the same time that the Deed of Easement was recorded.

The Plat describes a 12 ft-wide "Water Access Easement" along and within the Subject's northern boundary, a water access and parking easement area, and a pier. The existing Facility is located within the Water Access Easement.

Present Condition of Subject Land

The Subject has a pier with an existing floating dock at its end and a boat lift immediately adjacent to the floating dock at the north. To the north of the pier is an area that has been used to launch boats. A duplex has been built in the center of the lot. (See Site Plan attached as **Exhibit 1**.)

Existing Facility for Which Special Use Permit for Community Boating Facility is Sought

The Duplex Owners desire to use the existing Facility as shown on the Site Plan attached as **Exhibit 1** through ingress and egress via the 12 ft-wide Water Access Easement, as shown both on the Site Plan attached as **Exhibit 1 and** the Plat recorded at Map Book 37 Page 28 attached as **Exhibit 4**.

No utilities are to be installed. A water line and spigot exists at the boat dock entrance.

Use of the Existing Facility As a Community Boating Facility Fulfills the Eight Criterial Set Forth in UDO Section 3.12.3. G

In order to obtain a Special Use Permit, the UDO at subsection G of Section 3.12.3 provides that eight factors must fulfilled. Those eight factors are met as set forth below:

(1) The use requested is listed among the special uses in the district for which application is made, or is similar in character to those listed in that district;

> **The UDO Table of Permitted Uses lists "Community Boating Facility" as a use allowed by Special Use Permit With Conditions in the Residential Performance zoning district.**

(2) The requested use will not impair the integrity or character of the surrounding or adjoining districts, nor adversely affect the safety, health, morals, or welfare of the community or of the immediate neighbors of the property;

The existing Facility on the navigable waters of the AICW is in keeping with the long-time historical use of the Subject and with the many already-existing floating docks and launch areas adjacent to and nearby the Subject. The existing Facility use is low-intensity in comparison to other similar uses in the district. The existing Facility does not and will not adversely affect the safety, health, morals, or welfare of the community or of the immediate neighbors of the property

(3) The proposed use shall not constitute a nuisance or hazard;

The existing Facility has no history of being a nuisance or hazard, is the same as, and in keeping with, similar facilities nearby in the neighborhood and zoning district and will not be a nuisance or hazard.

(4) The requested use will be in conformity with the Pender County Land Use Plan and other official plans or policies adopted by the Board of County Commissioners;

The existing Facility conforms to the "Pender 2.0: Comprehensive Land Use Plan" ("LUP") adopted by the Board of County Commissioners on August 20, 2018. For example, the LUP provides as follows:

Map 5.14 of the LUP identifies the Subject tract as being in a "Coastal Residential" area for Future Land Use planning purposes. The LUP states the following regarding the "Coastal Residential" designation:

Supporting the County's coastal character and natural habitat is a top priority for Pender County residents. To more appropriately preserve the County's coastal character, the Coastal Residential future land use category is established. Coastal residential land uses are located east of the US 17 corridor and generally within a half-mile of estuarine waters such as coastal creeks and the Intracoastal Waterway. *Appropriate uses include* single-family residences, community recreation and open space uses, and *water-based recreation uses (public and private).* Unencumbered access to public trust coastal waters and maximum development setback from the shoreline is highly encouraged. Clustering of new communities is encouraged.

To support adjacent coastal surface water quality, low impact development (LID) is encouraged. In general, lots should maximize pervious surfaces. Tree preservation and mitigation is required for stormwater purposes and as a means of

> **preserving the coastal habitat. Development density within this category is three dwelling units an acre or less….**
> **Desired Uses:**
> - **Single-family dwellings – detached**
> - **Recreation, parks, and open space**
>
> **(*Italics supplied*)**

The Subject tract and existing Facility are located in and on the Estuarine Area of Environmental Concern as designated under CAMA. The LUP and state policies developed under CAMA provide that development activities which are water dependent and require water access and cannot function elsewhere (e.g. simple access structures, structures to prevent erosion, boat docks, marinas, wharves, and mooring piling) may be allowed within this AEC [i.e, Estuary system at Atlantic Intracoastal Waterway]. [See LUP, Chpt 3 Natural Systems Analysis, p. 3-3]

The water and submerged tidal lands are held in trust for the public to use through activities such as fishing, swimming, and boating. These areas will often overlap with estuarine waters… As general guidance, the following lands and waters are considered to be public trust areas:

> *******
>
> **▪ All tidally influenced waters and associated submerged lands below the MHWL;**
> **▪ All navigable natural water bodies and the lands underneath from the normal high water line seaward (Navigable waters include anything you can float a canoe in).**
> **[LUP, Chpt 3 Natural Systems Analysis, p. 3-5]**

Policy 4.4.E of the LUP accordingly provides:

> **Policy 4.4.E: Public Trust Waters Navigation: The County opposes any use which significantly interferes with the public right to navigate or utilize existing access to any public trust waters. [Chpt 4 Community Facilities and Services, p. 4-40]**

Here, the existing Facility will enhance, not interfere with, the public right to navigate or utilize existing access to public waters.

Maps 3.4 and 3.5 of the LUP (found on the 116th and 117th page of that 285-page document) classify the waters of the AICW as "SA-HQW". The LUP provides that those waters are protected for boating uses.

[LUP, Chpt 3 Natural Systems Analysis, p. 3-15] The existing Facility is a boating use for which the AICW waters are protected.

The LUP touts five NCWRC boat launch sites in Pender County as making Pender County an attractive place to live. [See, e.g., Chpt 4 Community Facilities and Services, pp. 4-25 & -26, and Maps 4.10 and 4.11] However, the LUP notes that only one is located on the AICW in the unincorporated areas of the County [p. 4-30] and that there are no CAMA public access sites in unincorporated Pender County. [p. 4-26]. Thus, the LUP points to the need for more boat access to the AICW. The need for more available boat access is underlined by LUP Policies 4.4.C and 4.4.D that encourage more public access facilities. [pp 4-39 & -40]. Accordingly, the existing Facility serves the need for more boat access articulated in the LUP.

In addition, the County through the LUP encourages the use of the AICW for navigation. For instance, Policy 4.4.G encourages dredging of the AICW to keep it open to navigation. Another example is Policy 4.4.H, which states the County supports development that promotes Pender County as a recreational destination. [Chpt 4 Community Facilities and Services, p. 4-40]. The existing Facility is an example of using the AICW for navigation and thus serves the LUP Policies 4.4.G & .H.

The County's overriding policy of encouraging boat access at the AICW is further shown by the LUP's new "Commercial Waterfront" and "Recreation" future land use designations. These LUP statements made in that context illustrate the policy of encouraging boat access:

> **Pender County's Intracoastal Waterway and river segments are prime locations for strategically placed development to support and enhance coastal activities, water-based recreation, and the tourism industry…*Direct access to public trust waters should be provided.* Development within this future land use category should be compatibly designed and connected to the adjacent waterbody – river or Intracoastal Waterway – through designated public access locations such as a boardwalk, dock, pier, and/or canoe/kayak or small boat launch.**
> *******
> **Recreation uses such as parks, golf courses, boat launches, and passive open space should be preserved for use by future generations.**

[Chpt 5 Land Use and Growth Management, pp. 5-18 & -19, & -24] (*italics supplied*). The existing Facility serves this LUP goal of providing and preserving AICW access.

(5) Adequate utilities, access roads, drainage, sanitation or other necessary facilities have been or are being provided;

The existing Facility requires no utilities. Access is provided by nearby roads leading to the Water Access Easement on the Subject.

The existing Facility will not increase land surface water drainage. Nor has it in the past or now produce waste for which sanitation facilities are needed.

(6) That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize the traffic congestion in the public roads;

Use of the existing Facility serving only 21 residences located nearby will be intermittent, infrequent and will not involve significant automobile use. The served Sloop Point Duplexes are so nearby that a Duplex Owner can readily walk (or ride on a golf cart) along Twin Oaks Drive to Hugh Edens Lane to the entrance of the Water Access Easement.

(7) That the special use shall, in all other respects, conform to the applicable regulations of the district in which it is located; and

Applicant is not aware of any other regulations applicable to the Residential Performance zoning district to which the existing Facility does not conform.

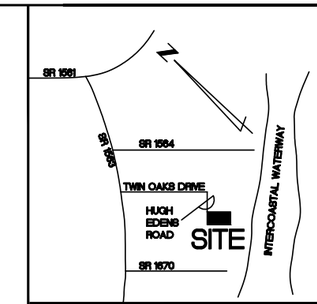
(8) The proposed use shall not adversely affect surrounding uses and shall be placed on a lot of sufficient size to satisfy the space requirements of said use.

The existing Facility is a benign, low intensity use in keeping with uses surrounding the area.

The Water Access Easement has been, is, and will be sufficient in width and length to use the existing Facility. Thus, the Subject is a lot of sufficient size to satisfy the space requirements for the existing Facility.

NOTES

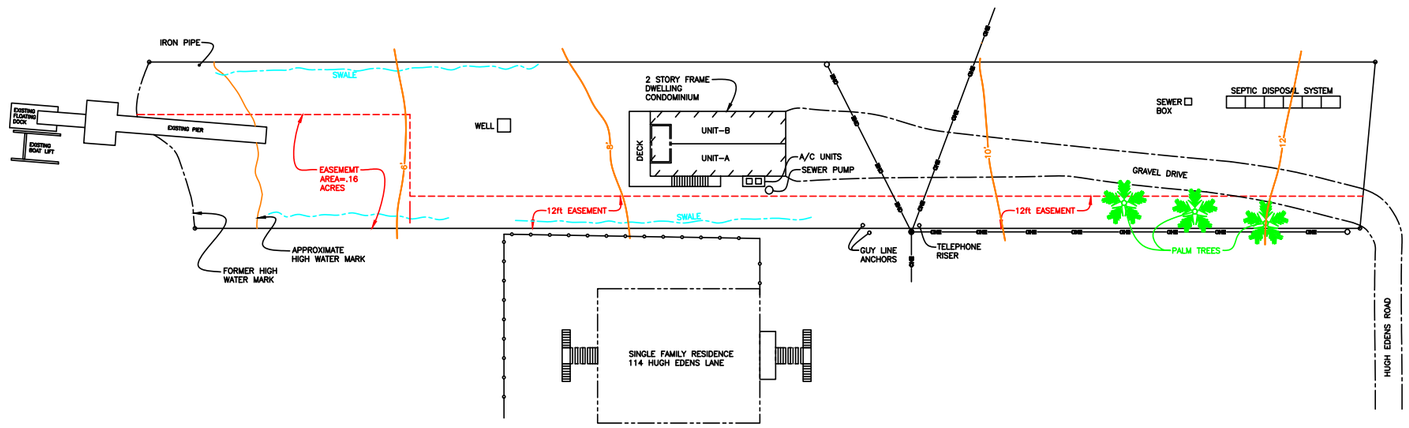
1. TOPOGRAPHIC LINES FROM PENDER COUNTY GIS MAP (NC DOT 2ft CONTOURS).
2. MEANS OF ACCESS TO EASEMENT RECORDED IN
   MAP BOOK 26/PAGE 104 AND SHOWN ON:
   MAP BOOK 35/PAGE 69
   MAP BOOK 36/PAGE 48
   MAP BOOK 37/PAGE 28
3. TOTAL EASEMENT AREA–0.16 ACRES TO HIGH WATER MARK.
4. TOTAL TRACT AREA–0.66 ACRES
5. UNIT "A" OWNED BY ADAM WINSTEAD
6. UNIT "B" OWNED BY BRIAN WALSH



VICINITY MAP
NOT TO SCALE

LEGEND

- NEW IRON PIPE (NIP)
- EXISTING IRON PIPE (EIP)
- R/W RIGHT OF WAY
- POWER POLE
- OVERHEAD ELECTRICAL
- 10' TOPOGRAPHIC CONTOUR LINE



Scale: 1"=30'
30' 15' 0' 30' 60'

THE CLARK GROUP
PO BOX 1036, WILMINGTON, NC 28402-0036
PH. 910.392.5555 - FAX: 910.392.5552

120 HUGH EDENS LANE

Topsail Township Pender County North Carolina

ACCESS EASEMENT WITH EXISTING AND PROPOSED STRUCTURES

SLOOP POINT WATCH CONDOMINIUM
Hugh Edens Road
Topsail, North Carolina

DATE: 5/26/22
DRAWN BY: RHF
1"=30'
PROJECT No.: 22123
DRAWING NAME:
1 of 1

EXHIBIT 2

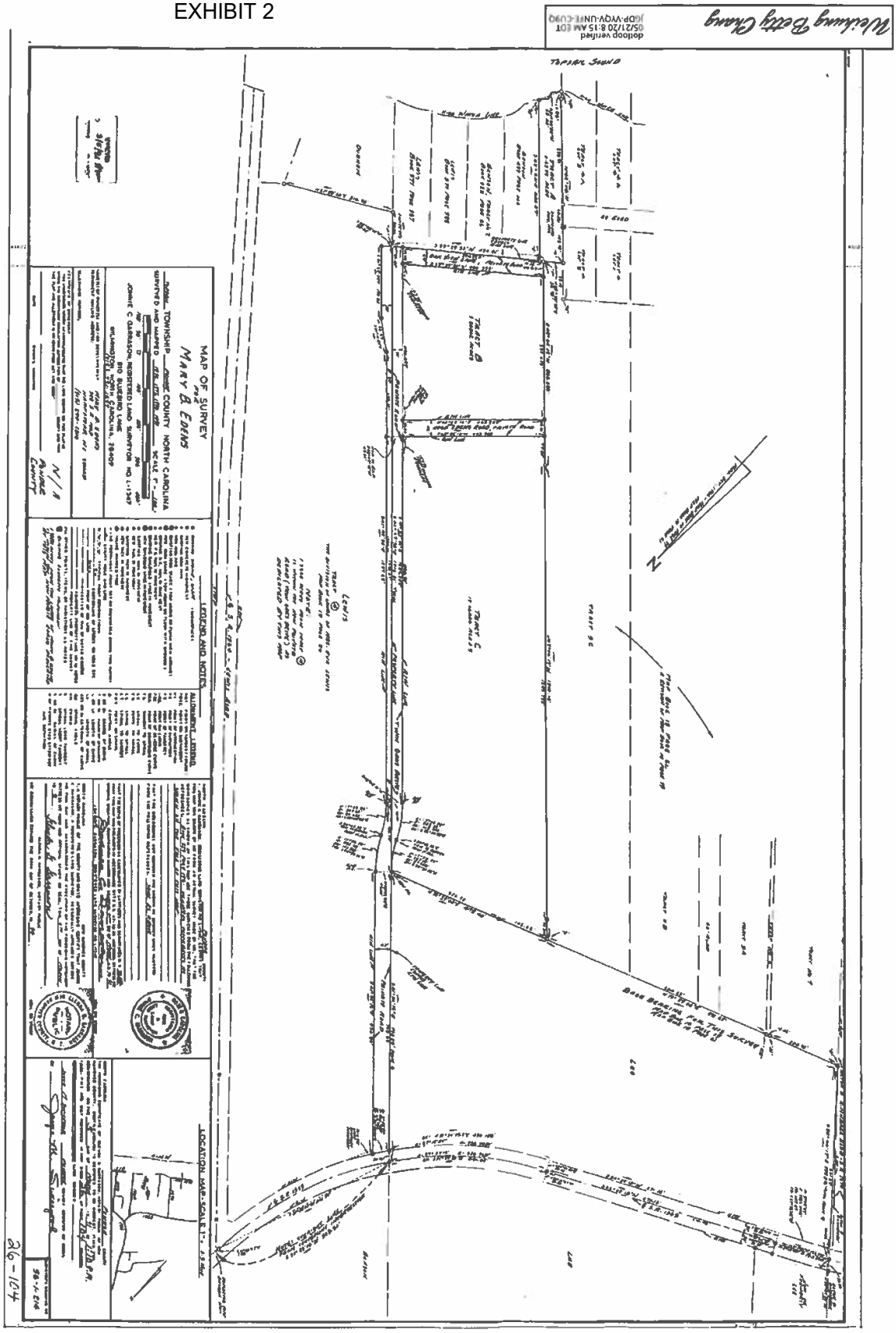

MAP OF SURVEY
FOR
MARY B. EDENS
TOWNSHIP
WAKE COUNTY NORTH CAROLINA
SCALE
JOHNIE C. GARRISON, REGISTERED LAND SURVEYOR NO. L-1347
810 BUSBEE LANE
WILMINGTON, NORTH CAROLINA 28409
LEGEND AND NOTES
LOCATION MAP
TRACT A
TRACT B
TRACT C
TRACT D
LEWIS
N/A
WAKE COUNTY
26-164

EXHIBIT 3

BK2295PG084

FILED

04 JAN -5 PM 3:42

JOYCE M. SWICEGOOD
REGISTER OF DEEDS
PENDER COUNTY, NC

Recorded and Verified
Joyce M. Swicegood
Register of Deeds
Pender County, NC

COVER SHEET

(Type of Document: Deed of Easement

Grantor: Richard A. Lehrer and wife, Anna M. Lehrer and James A. Spicuzza and wife, Amy L. Spicuzza

Trustee (If applicable):

Grantee: Owners of Lots 1A &B, 2A & B, 3A & B, 4A & B, 5A & B, 6A & B 7A & B, 8A & B, 9A & B, 10A & B, and Lot 11, Sloop Point Duplexes

(Brief Description of property, if applicable):

Sloop Point Duplexes

Return to: Ray C. Blackburn, Jr.
PO Box 895, Hampstead, NC 28443

3

PENDER COUNTY

DEED OF EASEMENT

THIS DEED OF EASEMENT, made as of 30 December 2003, by and between Richard A. Lehrer and wife, Anna M. Lehrer, and James A. Spicuzza and wife Amy L. Spicuzza, herein called Grantor, and the owners of lots 1A and B, 2A and B, 3A and B, 4A and B, 5A and B, 6A and B, 7A and B, 8A and B, 9A and B, 10A and B, and 11 Sloop Point duplexes, herein called Grantee. (The designation Grantor and Grantee, as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine, or neuter as required by context);

WITNESSETH:

RECITALS:

R1. Grantor is the owner of a 2 undivided interest in Tract A as shown on a map entitled Map of Survey for Mary B. Edens recorded in map Book 26 at page 104 of the Pender County Registry, by virtue of a deed recorded in Book 1969 at page 312 of the Pender County Registry.

R2. The owners of lots described in a deed recorded in Book 36 at page 48 and/or Book 35 at Page 69 of the Pender County Registry.

R3. The owners of lots described in Book 35 at page 76, and/or Book 35 at page 69 of the Pender County Registry.

R4. Grantor has agreed to grant to each Grantee a perpetual easement, appurtenant to the lots owned by each of the Grantees, for the use of a boat launching/landing ramp and access to the Atlantic Intracoastal Waterway, together with the use of any pier or dock placed on said property by Grantor. Said easement shall be located per Grantor, and others may construct a boat launching/landing ramp facility and pier/dock on said premises.

NOW, THEREFORE, in consideration of the premises and other good valuable considerations, the receipt, sufficiency and adequacy of which are hereby acknowledged, Grantor gives, grants, bargains and conveys to each of the Grantees and his hei and assigns the right and privilege on ingress, egress and regress to and from boat launching/landing facilities to be constructed for semi-private use on Tract A as shown on the map entitled Map of Survey for Mary B. Edens recorded in Map Book 26 at Page 104 of the Pender County Registry together with the right and privilege to use the pier/dock constructed on said site as an accessory to the boat launching/landing facility and as access to the Atlantic Intracoastal Waterway. This grant shall be appurtenant to and run with the title to the lots described in Book 36 at page 48, Book 35 at page 76 and book 35 at page 69 of the Pender County Registry.

Said easement is conveyed subject to a maintenance obligation for said facilities. Each person or entity acquiring an easement of right of way hereunder shall bear a proportionate cost of maintaining such amenities, including the pier/dock and the boat launching/landing facilities.

TO HAVE AND TO HOLD said easement of right of way to the Grantee in perpetuity.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on this, the day and year first above written.

JENISHA F. BONICELLI NOTARY PUBLIC STATE OF COLORADO (SEAL)

Richard A. Lehrer

Anna M. Lehrer

STATE OF COLORADO
COUNTY OF El Paso

I, Jenisha Bonicelli, a Notary Public in and for the aforesaid County and State, do hereby certify that Richard A. Lehrer and his wife, Anna M. Lehrer, personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and notarial seal this the 30 day of December, 2003.

Notary Public

My Commission Expires: 2/13/05

(SEAL)

James A. Spicuzza

(SEAL)

Amy L. Spicuzza

STATE OF NORTH CAROLINA
COUNTY OF Pender

I, Mary E. McAllister, a Notary Public in and for the aforesaid County and State, do hereby certify that James A. Spicuzza and his wife, Amy L. Spicuzza, personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and notarial seal this the 2nd day of January, 2004.

Notary Public

My Commission Expires: 11-12-2005

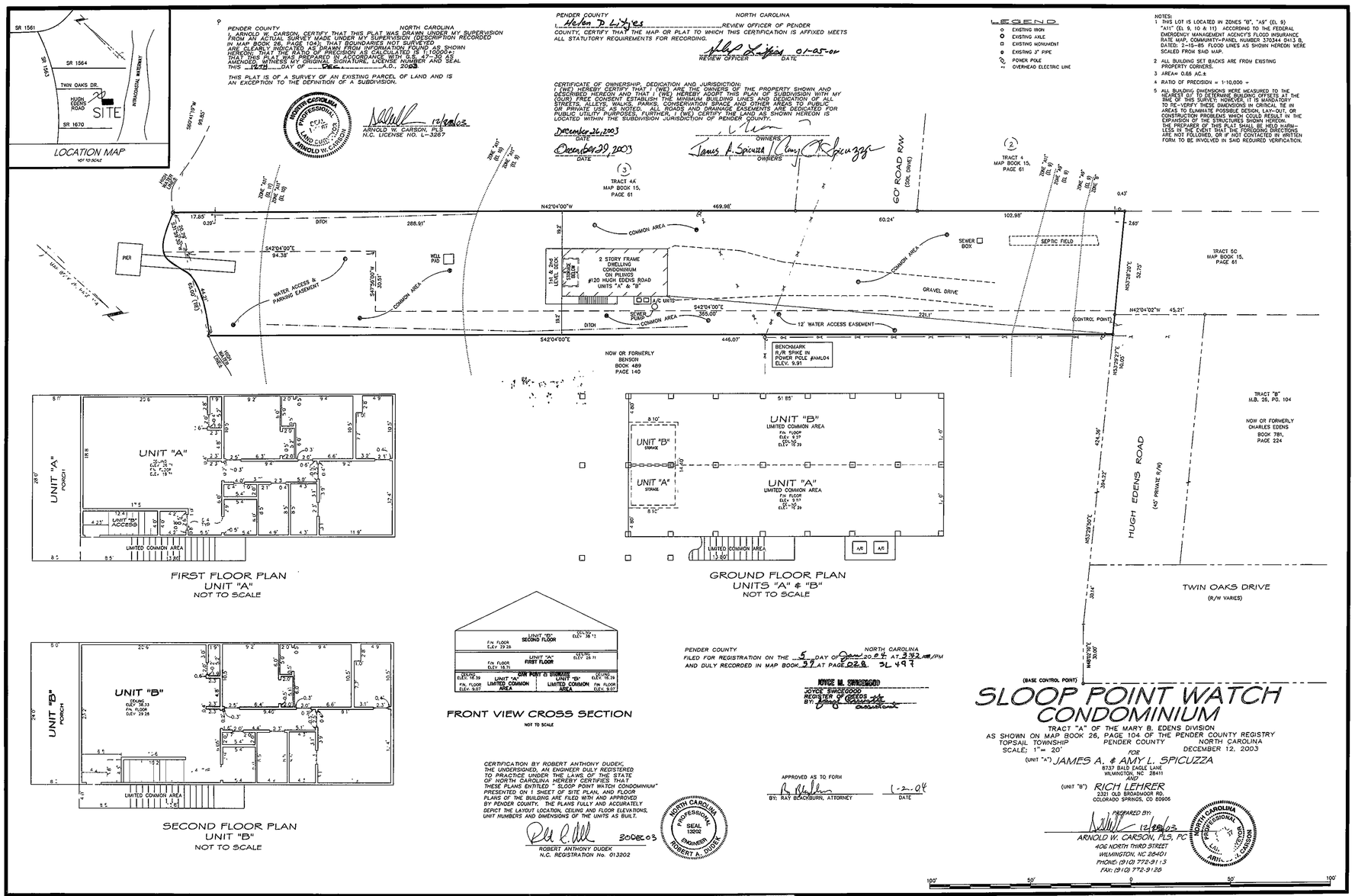
NORTH CAROLINA - PENDER COUNTY: The foregoing (or annexed) certificate of Jenisha F. Bonicelli * is certified to be correct. This 5 day of Jan, A.D. 2004

JOYCE M. SWICEGOOD - Pender County Register of Deeds

By: Sabrina D. Green Deputy/~~Assistant~~ Register of Deeds

* Mary E. McAllister

EXHIBIT 4



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MB 37 PG 028 SL 497

CASH ONLY IF ALL CheckLock™ SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING

ROUNTREE LOSEE LLP
ATTORNEYS AT LAW AND PROCTORS IN ADMIRALTY
2419 MARKET STREET
WILMINGTON NC 28403
(910) 763-3404

FIRST-CITIZENS BANK & TRUST CO
315 Market Street
Wilmington, NC 28401
66-30/531

65579

07/28/2022

PAY TO THE ORDER OF Pender County Planning Department $ **300.00

Three hundred and 00/100********** DOLLARS

PROTECTED AGAINST FRAUD

Pender County Planning Department

MEMO Chang/Sloop Point HOA

⑈065579⑈ ⑆053100300⑆003532136228⑈

ROUNTREE LOSEE LLP		65579
07/28/2022	**Pender County Planning Department**	
	Application Fee - 2022-00154	300.00

Operating - New	Chang/Sloop Point HOA	300.00

INVOICE (00027972)
FOR PENDER COUNTY

BILLING CONTACT
Stephen Coggins
Rountree Losee LLP
2419 Market St
Wilmington, Nc 28403

INVOICE NUMBER	INVOICE DATE	INVOICE DUE DATE	INVOICE STATUS	INVOICE DESCRIPTION
00027972	08/12/2022	08/12/2023	Due	NONE

REFERENCE NUMBER	FEE NAME	TOTAL
SUP-2022-00036	Special Use Permit - General	$300.00
	SUB TOTAL	$300.00

TOTAL **$300.00**

REMITTANCE INFORMATION

Pender County
P.O. Box 1519
805 S. Walker St.
Burgaw, NC 28425
Burgaw: 910-259-1202

RECEIPT (TRC-027075-12-08-2022)
FOR PENDER COUNTY

BILLING CONTACT
Stephen Coggins
Rountree Losee LLP
2419 Market St
Wilmington, Nc 28403

Reference Number	Fee Name	Transaction Type	Payment Method	Amount Paid
SUP-2022-00036	Special Use Permit - General	Fee Payment	Check #65579	$300.00
			SUB TOTAL	**$300.00**

TOTAL **$300.00**

LAND OWNERS WITHIN 500 FEET OF 120 HUGH EDENS LANE

Jenkins, Robert A 311 Pelican Walk Hampstead NC 28443	Jeffrey L. Snider 319 Pelican Walk Hampstead NC 28443
Marvin A. Edens c/o Neva Bartholomew Chapel Hill NC 27514 Re: 321 Pelican Walk	Adam Winstead 1228 Watauga Street Raleigh NC 27604 Re: 120A Hugh Edens Lane
Brian C. Walsh 120B Hugh Edens Lane Hampstead NC 2844	John T. Blakeney 338 Windsong Road Wilmington NC 28411 RE: 114 Hugh Edens Lane
Phillip Ezra Mills III P.O. Box 904 Hampstead NC 28443 Re: 712 Lewis Lane	Phillip and Courtney Holt 690 Lewis Road Hampstead NC 28443
Glenn M. Lewis 668 Lewis Road Hampstead NC 28443	Doris Ann Seabolt 5126 Russell Road Durham NC 27712 Re: 615 Lewis Rd SW
Pecan Grove Plantation HOA, Inc. 611 Lewis Road SW Hampstead NC 28443	Seafood Market and/or Resident 579 Lewis Road Hampstead NC 28443
Mark Lewis 668 Lewis Road Hampstead NC 28443	Reginald G. Walker, IV 32 Oak View Lane Hampstead NC 28443
Bradford Karwoski 62 Oak View Lane Hampstead NC 28443	Tawes Adam P.O. Box 67 Hampstead NC 28443 Re: 305 E. Island View
Tymeshia Nycz 303 E. Island View Drive Hampstead NC 28443	Sandra Pfeifer 312 E. Island View Drive Hampstead NC 28443
Barry A. Devries, et al. 316 E Island Drive Hampstead NC 28443	William B. Jones 321 E Island Drive Hampstead NC 28443
Troy Sabatura 319 E Island View Drive Hampstead NC 28443	William W. Southmyd 317 E Island View Drive Hampstead NC 28443

LAND OWNERS WITHIN 500 FEET OF 120 HUGH EDENS LANE

Kristan A. Siemon 315 E. Island View Drive Hampstead NC 28443	Donald E. Berg, Tustee 4240 Bekeley View Drive Berkleley Lake GA 30096-3078 Re : Lot 123 Pecan Grove
Robert Thompson 311 E. Island View Drive Hampstead NC 28443	Timothy Bizzell 309 E Island View Drive Hampstead NC 28443
Michael Evans Scott 172 Longwood Drive Eden NC 27268 Re : 307 E. Island View Drive	New Belews Properties, Inc. 107 Ridge Road Hampstead NC 28443 Re : Lot 4 Oak View Lane
Custom Built Homes of the Carolinas 22019 HWY 17 N Hampstead NC 28433 Re: Lots 4 & 5 Oak View Lane	Viorel Verka 301 Willingham Road Morrisville NC 27560 Re: Lot 6 Oak View Lane
Andrew Lee Jones 1185 St. Johns Church Road Hampstead NC 28433 Re: Lot 1 Oak View Lane	Mark S. Haynes, Jr. 239 Bagley Avenue Wilmington NC 28409 Lot 3 Oak View Lane
Houston D. Meares, Jr. 301 Pelican Walk Hampstead NC 28443	Kevin B. Ennis 310 Pelican Walk Hampstead NC 28443
George K. Houck P. O. Box 451 Wrightsville Beach NC 28480 Re: Lot 1A & Part Tract 7	Carolyn Mathias 200 Pelican Walk Hampstead NC 28443
Daniel C. Johnson 201 Pelican Walk Hampstead NC 28443L	Daniel M. Ogden 363 Twin Oaks Drive Hampstead NC 28443
Elizabeth Lewis 408 Lewis Road Hampstead NC 28443	Sloop Point Watch HOA 120 Hugh Edens Lane Hampstead NC 28443
State of North Carolina 1321 Mail Service Center Raleigh NC 27699 Re: 613 Lewis Road SW	Sloop Pooint Marina Owners Association 6331 Oleander Drive Wilmington NC 28403 579 Lewis Road

Pecan Grove Plantation HOA, Inc. c/o Century 21 Wilmington NC 28403 Re: Open Space	

From: Mark Haraway <mharaway@pendercountync.gov>
Sent: Tuesday, July 12, 2022 10:37 AM
To: Steve Coggins <scoggins@rountreelosee.com>
Subject: RE: [External]RE: Hugh Eden's Boat Dock project; our file 2022-00154

Mr. Coggins,

If you opt to change nothing , in regards to the property, then you can continue to do what you have been doing. It is only when you add to, change or modify the property in question, that we would require code compliance. Hopefully this answers your question.

v/r

Mark Haraway
Fire Marshal
Pender County
910-259-1441
910-512-0967
mharaway@pendercountync.gov

From: Steve Coggins <scoggins@rountreelosee.com>
Sent: Tuesday, July 12, 2022 8:37 AM
To: Mark Haraway <mharaway@pendercountync.gov>; Greg Feldman <gfeldman@pendercountync.gov>; Justin Brantley <jbrantley@pendercountync.gov>
Cc: Julie Cavanaugh <juliec@rountreelosee.com>
Subject: [External]RE: Hugh Eden's Boat Dock project; our file 2022-00154

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning, good folks! Now that a couple of weeks have transpired since my email below to you, may I ask what is the status of responding to my inquiry? We look forward to hearing from you.
All the Best,
Steve

Stephen D. Coggins, PARTNER | ROUNTREE LOSEE LLP

Wilmington, NC, 2419 Market St. (28403), Box 1409 (28402)
O: 910.763.3404 C: 910.524.9515 F: 910.763.0080

From: Steve Coggins
Sent: Wednesday, June 29, 2022 1:15 PM
To: Mark Haraway <mharaway@pendercountync.gov>; Greg Feldman <gfeldman@pendercountync.gov>; Justin Brantley <jbrantley@pendercountync.gov>
Subject: RE: Hugh Eden's Boat Dock project

Good afternoon, good folks!
Question: ***If we elect to file the SUP application for a Community Boat Facility and we propose to do no improvements at all (i.e., do not even install a kayak launch or add a new floating dock, etc.), and we continue as before gaining access by either golf cart or walking on the existing easement, would anything further be required by the Fire Marshall?***
Thank you for your patience!
I look forward to hearing from you.
All the Best,

Steve

Stephen D. Coggins, PARTNER | ROUNTREE LOSEE LLP

Wilmington, NC, 2419 Market St. (28403), Box 1409 (28402)
O: 910.763.3404 C: 910.524.9515 F: 910.763.0080

From: Steve Coggins
Sent: Wednesday, June 22, 2022 3:50 PM
To: Mark Haraway <mharaway@pendercountync.gov>
Cc: Greg Feldman <gfeldman@pendercountync.gov>; Justin Brantley <jbrantley@pendercountync.gov>
Subject: RE: Hugh Eden's Boat Dock project

Fire Marshall Haraway, thanks for so promptly obtaining an interpretation on this with your Director. I was pleased to meet with you and Greg and Justin today, and I thank all three of you for your time.
I will discuss with my clients and be in touch soon.
In the meantime, please feel free to contact me with any questions or concerns.
All the Best,

Steve

Stephen D. Coggins, PARTNER | ROUNTREE LOSEE LLP

Wilmington, NC, 2419 Market St. (28403), Box 1409 (28402)
O: 910.763.3404 C: 910.524.9515 F: 910.763.0080

From: Mark Haraway <mharaway@pendercountync.gov>
Sent: Wednesday, June 22, 2022 11:07 AM
To: Steve Coggins <scoggins@rountreelosee.com>
Cc: Greg Feldman <gfeldman@pendercountync.gov>; Justin Brantley <jbrantley@pendercountync.gov>
Subject: Hugh Eden's Boat Dock project

Mr. Coggins,
After discussing this with my Director, we decided that since this a pre-existing project, you can make this a pedestrian sidewalk only; for access to the kayak ramp and post signage at the entrance from Hugh Eden's Lane, that reads, " Pedestrian Kayak walk only. No vehicular traffic. Private kayak launch." By doing this, you will alleviate the need under section 502, to maintain the launch area as a public area, which would require the 20' road access. I hope this helps you to move forward with your project.

v/r

Mark Haraway
Fire Marshal
Pender County
910-259-1441
910-512-0967
mharaway@pendercountync.gov

APPLICATION FOR SPECIAL USE PERMIT

THIS SECTION FOR OFFICE USE			
Application No.	SUP 2022-36	**Date**	8/10/2022
Application Fee	$ 300.00	**Invoice Number**	27972
Pre-Application Conference	6/22/2022	**Hearing Date**	9/19/2022

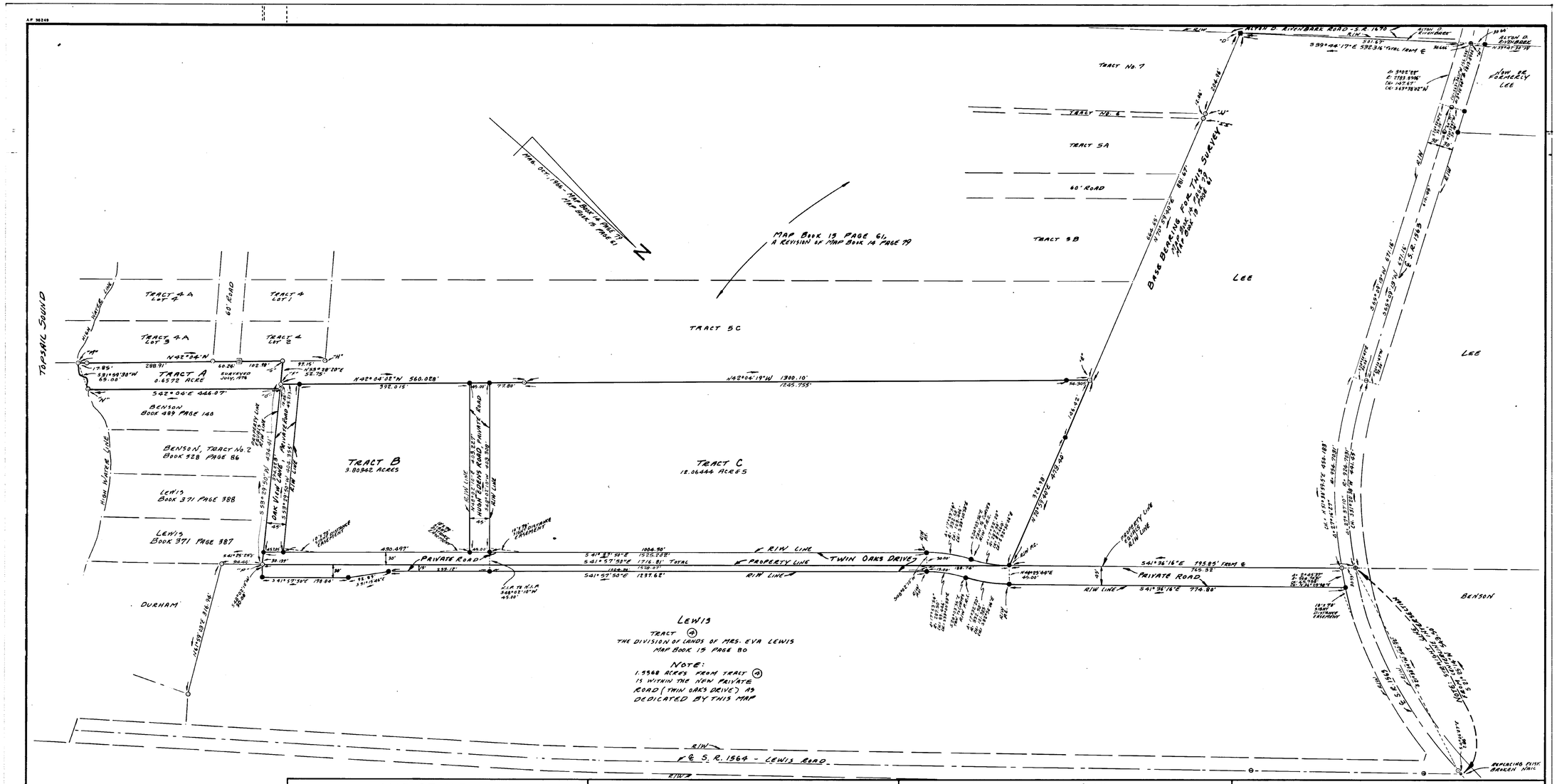
SECTION 1: APPLICANT INFORMATION			
Applicant's Name:	Stephen D Coggins, Rountree Losee LLP, on behalf of 21 easement holders (list attached)	**Owner's Name:**	Please see attached list
Applicant's Address:	2419 Market Street	**Owner's Address:**	Please see attached list Type text here
City, State, & Zip	Wilmington NC 28403	**City, State, & Zip**	
Phone Number:	(910)763-3404	**Phone Number:**	unknown
Email Address:	scoggins@rountreelosee.com	**Email Address:**	unknown
Legal relationship of applicant to landowner:	Applicant represents 21 dominant appurtenant easement owners. The list of easement owners is attached The servient estate owners are Adam Winstead, 1228 Wataugh St., Raleigh NC 27604/120A Hugh Edens Lane Hampstead, NC and Brian Walsh, 102B Hugh Edens Lane Hampstead, NC, 29443		

SECTION 2: PROJECT INFORMATION			
Property Identification Number (PIN):	4214-91-6387 A & B	**Total property acreage:** Total tract 0.66 Easement area 0.16	
Zoning Classification:	RP	**Acreage to be disturbed:** 0	
Water Provider:	Private Well Water	**Wastewater Provider:** Private Septic	
Project Address:	120 Hugh Edens Drive	**NAICS Code:**	N/A
Description of Project Location:	INTRACOASTAL WATERWAY		
Describe activities to be undertaken on project site:	Use of existing pier and dockage for Community Boating Facility per attached narrative. No construction or alterations involved.		

SECTION 3: SIGNATURES			
Applicant's Signature	Stephen D Coggins	**Date:**	7/29/2022
Applicant's Printed Name:	Stephen D. Coggins	**Date:**	
Owner's Signature	Betty Chang	**Date:**	6/9/2022
Owner's Printed Name:	Betty Chang, Owner and Agent for Sloop Point Duplex Owners	**Date:**	6/9/2022

NOTICE TO APPLICANT

1. Applicant must also submit the information described on the Special Use Checklist.
2. Applicant or agent authorized in writing must attend the public hearing.
3. Once the public hearing has been advertised, the case will be heard unless the applicant withdraws the application or unless the Board of Commissioners or other authorized person agrees to table or delay the hearing.
4. Applicant may wish to review the required findings for approval of a Special Use Permit found on page 1 of this application
5. Permit will become void after 12 months if a final zoning permit is not obtained, unless specifically requested at the time of public hearing.



MAP OF SURVEY
FOR
MARY B. EDENS

TOPSAIL TOWNSHIP PENDER COUNTY NORTH CAROLINA

SURVEYED AND MAPPED 1976, 1977, 1990, 1991 SCALE 1" = 100'

100' 50' 0' 100' 200' 300' 400'

JOHNIE C GARRASON, REGISTERED LAND SURVEYOR NO. L-1347
810 BLUEBIRD LANE
WILMINGTON, NORTH CAROLINA, 28409
(919) 791-1657

APPROVED
3/6/91
ZONING ... MENT

NAME(S) OF OWNER(S) AND / OR DEVELOPER(S): MARY B. EDENS
PERMANENT MAILING ADDRESS: 328 S E 1569 HAMPSTEAD N.C. 28443
TELEPHONE NUMBER: (919) 270-2814

CERTIFICATE OF OWNERSHIP.
"THE UNDERSIGNED HEREBY ACKNOWLEDGE(S) THAT THE LAND SHOWN ON THIS PLAT IS WITHIN THE SUBDIVISION REGULATION JURISDICTION OF _____ COUNTY AND THAT THIS PLAT AND ALLOTMENT IS MY (OUR) FREE ACT AND DEED".

DATE _____ OWNER'S SIGNATURE _____

N/A
PENDER COUNTY

LEGEND AND NOTES

- EXISTING STONE, NWM (SUBSURFACE)
- NEW CONCRETE MONUMENT
- EXISTING IRON PIPE
- NEW IRON PIPE
- EXISTING IRON STAKE (TOP ABOVE OR FLUSH WITH GROUND)
- NEW IRON STAKE (TOP ABOVE OR FLUSH WITH GROUND)
- EXISTING P.K. NAIL IN PAVEMENT
- NEW P.K. NAIL IN PAVEMENT
- EXISTING RAILROAD SPIKE IN PAVEMENT
- NEW RAILROAD SPIKE IN PAVEMENT
- EXISTING NAIL IN PAVEMENT
- NEW NAIL IN PAVEMENT
- EXISTING TACK IN PAVEMENT
- NEW TACK IN PAVEMENT
- (HLINE MARKED TREE
- + - NO PERMANENT POINT SET OR RECOVERED DURING THIS SURVEY
- —O— UTILITY POLE AND LINE
- W, W, W, W TYPICAL POINT DESIGNATIONS
- ——— S.R. ——— CENTERLINE OF STREET OR ROAD ETC
- ——— R/W ——— RIGHT OF WAY LINE
- ——— ——— CENTER OF RUN OF WATER COURSE
- ——— ——— ADJOINERS PROPERTY LINE OR AS NOTED
- ——— ——— PROPERTY LINE OF THIS SURVEY

ALL OTHER POINTS, ITEMS, OR VARIATIONS AS NOTED

(R) EXISTING CONCRETE MONUMENT

(1.9568) ACRES FROM THE LANDS OF MARY B. EDENS WITHIN THE NEW PRIVATE ROADS DEDICATED BY THIS PLAT.

ALIGNMENT LEGEND

P.O.T.	POINT ON TANGENT (INLINE)
P.O.S.T.	POINT ON SUBTANGENT
P.I.	POINT OF INTERSECTION
P.C.	POINT OF CURVATURE
P.T.	POINT OF TANGENCY
P.O.C.	POINT ON CURVE
P.R.C.	POINT OF REVERSE CURVE
P.C.C.	POINT OF COMPOUND CURVE
T.S.	TANGENT TO SPIRAL
S.C.	SPIRAL TO CURVE
C.S.	CURVE TO SPIRAL
S.S.	SPIRAL TO SPIRAL
S.T.	SPIRAL TO TANGENT
P.O.S.	POINT ON SPIRAL
Δ	CENTRAL ANGLE
D OR Dc	DEGREE OF CURVE
T OR Tc	TANGENT DISTANCE
L OR Lc	LENGTH OF CURVE
Ls	LENGTH OF SPIRAL
EXT OR Ec	EXTERNAL OF CURVE
Δs	SPIRAL ANGLE
CH.	CHORD
U	SPIRAL LONG TANGENT
V	SPIRAL SHORT TANGENT
R OR Rc	RADIUS OF CURVE
R OF 1°	CURVE 5729.5778513' OF ARC DEFINITION

NORTH CAROLINA PENDER COUNTY
I, JOHNIE C. GARRASON, REGISTERED LAND SURVEYOR NO. L-1347, CERTIFY THAT THIS MAP WAS DRAWN BY ME FROM AN ACTUAL SURVEY MADE BY ME, THAT THE BOUNDARIES AS SHOWN BY THIS MAP ARE THOSE SURVEYED FROM THE FOLLOWING REFERENCES: BOOK 229 PAGE 156. ADJOINERS REFERENCES AS SHOWN ON THE FACE OF THIS MAP.

THAT THE BOUNDARIES NOT SURVEYED ARE SHOWN AS BROKEN LINES PLOTTED FROM THE FOLLOWING REFERENCES: SAME AS ABOVE

THAT THE RATIO OF PRECISION AS CALCULATED BY LATITUDES AND DEPARTURES IS 1: 30,000
THAT THIS MAP WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED. WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEALS, 4TH DAY OF MARCH A.D. 19 91.

Johnie C. Garrason
JOHNIE C. GARRASON, REGISTERED LAND SURVEYOR NO. L-1347

NORTH CAROLINA SEAL OR STAMP
SEAL
L-1347
REGISTERED
NORTH CAROLINA
JOHNIE C. GARRASON

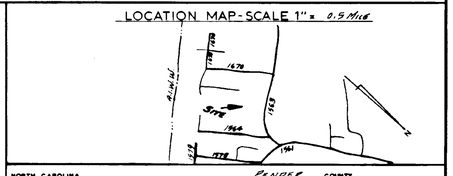
NORTH CAROLINA NEW HANOVER COUNTY
I, A NOTARY PUBLIC OF THE COUNTY AND STATE AFORESAID, CERTIFY THAT JOHNNIE C GARRASON, A REGISTERED LAND SURVEYOR, PERSONALLY APPEARED BEFORE ME THIS DAY AND ACKNOWLEDGED THE EXECUTION OF THE FOREGOING INSTRUMENT. WITNESS MY HAND AND OFFICIAL STAMP OR SEAL, THIS 4TH DAY OF MARCH 19 91.

Glenda G. Garrason
GLENDA G. GARRASON, NOTARY PUBLIC

MY COMMISSION EXPIRES THE 24TH DAY OF OCTOBER, 19 94.

SEAL OR STAMP
GLENDA G. GARRASON
NOTARY PUBLIC
NEW HANOVER COUNTY, N.C.

LOCATION MAP-SCALE 1" = 0.5 MILE



NORTH CAROLINA PENDER COUNTY
THE FOREGOING CERTIFICATE OF GLENDA G. GARRASON, NOTARY PUBLIC OF NEW HANOVER COUNTY, NORTH CAROLINA, IS CERTIFIED TO BE CORRECT; FILED FOR REGISTRATION ON THE 5 DAY OF MARCH, 19 91 AT 1:10 P.M. (A.M. P.M.) AND DULY RECORDED IN MAP BOOK 26 AT PAGE 104 SLIDE NUMBER _____.

JOYCE M. SWICEGOOD PENDER COUNTY REGISTER OF DEEDS
BY Joyce M. Swicegood

SURVEYOR'S DRAWING NO.
36-1-214

26-104

BK2295PG087

FILED

04 JAN -5 PM 3:42

JOYCE M. SWICEGOOD
REGISTER OF DEEDS
PENDER COUNTY, NC

Recorded and Verified
Joyce M. Swicegood
Register of Deeds
Pender County, NC

COVER SHEET

(Type of Document: Declaration of Condominium

Grantor: Richard Lehrer and James A. Spicuzza

Trustee (If applicable):

Grantee:

(Brief Description of property, if applicable):

Sloop Point Condominium

Return to: Ray C. Blackburn, Jr.
PO Box 895, Hampstead, NC 28443

116

DECLARATION OF CONDOMINIUM
OF
SLOOP POINT CONDOMINIUM, A CONDOMINIUM

THIS DECLARATION OF CONDOMINIUM ("Declaration") is made this 30th day of December, 2003 by RICHARD LEHRER of the State of Colorado and JAMES A. SPICUZZA of the State of North Carolina, ("Declarant"), pursuant to provisions of Chapter 47C of the North Carolina General Statues, entitled the "North Carolina Condominium Act".

RECITALS

Declarant is the owner of that certain parcel of real estate located in Topsail Township, Pender County, North Carolina, and more particularly described as follows:

See Exhibit "A" attached hereto and incorporated herein by reference.

together with all improvements now or hereafter constructed or located thereon, which consists of one building containing two (2) residential condominium units, sidewalks, driveways, parking areas and other improvements Declarant desires to submit the above real property and the improvements located thereon to the terms and provisions of the North Carolina Condominium Act, Chapter 47C of the North Carolina General Statutes, and desires and intends, by the filing of this Declaration to so submit said property and improvements.

NOW, THEREFORE, Declarant does hereby publish and declare that the real property described hereinabove and all improvements located thereon are held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to the following covenants, conditions, easements, uses, limitations, obligations, and restrictions, all of which are declared and agreed to be in furtherance of a plan for the division of said real estate into condominium units, and shall be deemed to run with the land and shall be a burden and benefit to Declarant, their successors and assigns, and any person or entity acquiring or owning an interest in the said real estate and improvements, and their grantees, successors, heirs, executors, administrators, devisees and assigns.

ARTICLE I
DEFINITIONS

SECTION 1 Act: "Act" shall mean and refer to N C G.S 47C as the same may be amended from time to time.

SECTION 2 Association: "Association" shall mean and refer to SLOOP POINT CONDOMINIUM OWNERS ASSOCIATION, INC, a corporation organized and existing under the Non-profit Corporation Act of the State of North Carolina pursuant to and in accordance with this Declaration, the By-Laws, and the North Carolina Condominium Act.

SECTION 3 Building: "Building" shall mean and refer to a structure containing condominium units located upon the land.

SECTION 4 By-Laws: "By-Laws" shall mean and refer to the By-Laws of the Association, which are incorporated herein by reference, and all amendments to such By-Laws which may from time to time be adopted.

SECTION 5 Common Elements: "Common Elements" shall mean and refer to all portions of the condominium other than the units, as more particularly described in Article V, Section 1 of this Declaration.

SECTION 6. Commons Expenses: "Common Expenses" shall mean and refer to expenditures made by or financial liabilities of the Association, together with any allocations to reserves, pursuant to and in accordance with this Declaration, the By-Laws and the North Carolina Condominium Act, as defined in N C G S. 47C-1-103(8).

SECTION 7. Condominium: "Condominium" means real estate portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions.

SECTION 8. Condominium Documents: "Condominium Documents" shall mean and refer to this Declaration, the Articles of Incorporation for SLOOP POINT CONDOMINIUM OWNERS ASSOCIATION, INC and the rules and regulations governing the use of the Property, as amended and supplemented from time to time, and all attachments and exhibits thereto and a plat prepared by Arnold Carson, Professional Land Surveyor, and filed of record with the office of the Register of Deeds for Pender County, North Carolina.

SECTION 9. Declarant: "Declarant" shall mean and refer to their successor in fee ownership of all remaining Units unsold to purchasers or as otherwise defined in N C G S 47C-1-103(8).

SECTION 10. Executive Board: "Executive Board" shall mean and refer to the governing body, also known as the Board of Directors , from time to time of the Association as constituted in accordance with this Declaration, the Articles of Incorporation of the Association, the By-Laws and the North Carolina Condominium Act.

SECTION 11. Land: "Land" shall mean and refer to the real property subject to this Declaration, exclusive of any improvements located thereon or incorporated therein.

SECTION 12. Limited Common Elements: "Limited Common Elements" shall mean and refer to those portions of the common Elements allocated by the Declaration or the terms of the North Carolina Condominium Act for the exclusive use and benefit of one or more but fewer than all of the Units, as more fully described in Article V, Section 2, herein below, and as depicted on the Plans.

SECTION 13 Mortgage: "Mortgage" shall mean and refer to a mortgage or deed of trust constituting a lien on a unit.

SECTION 14 Mortgagee: "Mortgagee" shall mean and refer to the owner and holder of a Mortgage.

SECTION 15 Owner; Owners: "Owner' shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Unit but shall exclude those persons or entities having an interest in any Unit as merely security for the payment or performance of an obligation "Owners" shall mean and refer to all or a portion of such record owners collectively.

SECTION 16 Plans: "Plans" shall mean and refer to the plans and specifications of the Buildings and Property utilized by Plantation Inc. in the construction of the Condominium.

SECTION 17 Property: "Property" shall mean and refer to the Land, the Buildings and all other improvements and structures located on the Land, all easements, rights and appurtenances belonging or appertaining to the Land, and all articles of personal property intended for common use m connection therewith.

SECTION 18 Unit: "Unit" means a physical portion of the condominium designated for separate ownership or occupance, the boundaries of which are described pursuant to N.C.G.S. 47C-2-105(a)(5).

SECTION 19 Declaration: "Declaration" means any instruments, however denominated, which create a condominium, and any amendments to those instruments.

SECTION 20. Development Rights: "Development Rights" means any right or combination of rights reserved by a Declarant in the Declaration to add real estate to a condominium, to create units, common elements, or limited common elements within a condominium, to subdivide units or convert units into common elements, or to withdraw real estate from a condominium.

SECTION 21 Special Declarant Rights: "Special Declarant Rights" means rights reserved for the benefit of a declarant to complete improvements indicated on plats and plans filed with the Declaration (Section 47C-2-11), to maintain sales offices; management offices, signs, advertising the condominium, and models (Section 47C-2115), to use easements through the common elements for the purposes of making improvements within the condominium or within real estate which may be added to the condominium (Section 47C-2-116), to make the condominium part of a larger condominium (Section 47C-2-121), or to appoint or remove any officer of the Association or any Executive Board Member during any period of Declarant control (Section 47C-3-103(3)).

In addition thereto, those definitions set forth in N.C.G.S. 47C-1-103 are incorporated herein by reference, and the terms defined therein shall have the meanings set forth therein when used m this Declaration or the Condominium Documents unless expressly defined otherwise m this Declaration or unless it is plainly evident from the context that a different meaning is intended.

ARTICLE II
DESIGNATION OF CONDOMINIUM

The land on which the Buildings and other improvements are located is located in Pender County, North Carolina, and is particularly described herein, which land is subjected to the terms of the North Carolina Condominium Act by this Declaration. The name of the Condominium is SLOOP POINT CONDOMINIUM, A CONDOMINIUM. Reference to the plat showing such condominium prepared by Arnold Carson, Professional Land Surveyor, and recorded in the office of the Register of Deeds for Pender County is hereby made for a more particular reference.

ARTICLE III
DESCRIPTION OF BUILDINGS

SLOOP POINT CONDOMINIUM shall consist of one (1) building containing two (2) residential condominium units. The units will contain approximately 1150 square feet each.

ARTICLE IV
DESCRIPTION OF UNITS

There are a total of two (2) Units in the building constituting SLOOP POINT CONDOMINIUM The location of the building is shown on Exhibit "B" attached hereto and incorporated herein by reference. The designation of the units,

locations, identifying numbers, number of rooms and immediate common elements to which each has access, are also shown on the plans, to which reference is hereby made for a more particular description.

Each unit consists of all the space bounded horizontally and vertically by its perimeter walls, floors and ceilings. Each unit includes those portions of the Buildings within such boundaries (with the exception of those items specifically listed below) and the space so encompassed. All lath, furring, wallboard, plasterboard, plaster, paneling, ties, wallpaper, paint, fleshed flooring, and other materials constituting any

part of the finished surfaces thereof are a part of the unit, and all other portions of such walls, floors, or ceilings are part of the common elements.

If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated exclusively to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements. Subject to the provisions of the immediate preceding paragraph, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of that unit.

Any shutters, awnings, window boxes, door steps, stoops, decks, porches, balconies, patios, and all exterior doors and windows or other fixtures designated to serve a single unit but located outside the unit's boundaries are limited common elements allocated exclusively to that unit.

All windows and doors within the walls enclosing a unit shall be a common element of that unit, but the authority and responsibility for maintenance and painting, together with control over the exterior of the building or from any common element, shall remain with the Association. Replacement of any broken glass in a window that is a common element of a unit shall be the sole responsibility and expense of the owner or owners of that unit. Routine maintenance and repair of all lath, furring , wallboard, plasterboard, plaster and sub flooring beneath, above, and/or beyond the finished surfaces of the perimeter walls, floor and ceding of each unit shall be the sole responsibility of the unit owners, although such materials are part of the common elements.

ARTICLE V
COMMON ELEMENTS

SECTION 1 Common Elements: The Common Elements include all portions of the condominium that are not part of the Units and as are more particularly described in N.C.G.S. 47C-2-102.

(a) The Land;

(b) All improvements located upon the Land that are not part of the Units, including all foundations, columns, girders, beams, supports, wells, roofs, corridors, lobbies, stairs, fire escapes, and entrances and exits of the buildings;

(c) The yards, gardens, sprinkler systems, parking areas, and driveways; and

(d) Installation of central services for the furnishing of utilities and components of the heating and air conditioning systems that serve the Common Elements or serve more than one Unit.

SECTION 2 Limited Common Elements: The Limited Common Elements shall be composed of the following:

(a) Those portions of any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lying partially within and partially outside the designated boundaries of a Unit serving exclusively that Unit shall be Landed Common Elements allocated exclusively to that Unit.

(b) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, decks, and all exterior doors, windows, skylights designed to serve a single Unit, but located outside the Unit's boundaries, shall be Limited Common Elements allocated exclusively to that Unit; and

(c) Any portions of the heating, ventilating, and air conditioning systems, including fans, fan cod units, heating elements, return air trills and thermostats, whether located inside or located outside the designated boundaries of a Unit, shall be Limited Common Elements allocated exclusively to the Unit that they serve.

(d) Such other areas designated as limited common areas in the plans.

The cleanliness and orderliness of the Limited Common Elements shall be the responsibility of the individual owners or Owner having the right to the use and enjoyment of such Limited Common Elements, but the responsibility for maintenance, painting, repair and replacement, together with control over the exterior decoration of the Limited Common Elements, shall remain with the Association. Notwithstanding any other provision of the By-laws or the Unit Ownership Act, the obligations for maintenance, repair, or replacement of any portions of the heating, ventilating and air conditioning systems that are Limited Common Elements shall be the sole responsibility of the Owners of the Units to which such Limited Common Elements are allocated. References herein to Common Elements shall includes Limited Common Elements unless the contents clearly indicates otherwise. The allocation of use of Limited Common Elements to the Units as provided for in this Declaration shall not be altered without the unanimous consent of the Owners.

SECTION 3. Undivided Interest of Owners in Common Elements: Except for minor variations due to rounding the sum of the undivided interest in the Common Elements and Common Expense liabilities allocated at any time to all the Units shall each equal One Hundred (100%) Percent. The percentage of undivided interest in the Common Elements that is allocated to each Unit is Fifty (50%) Percent.

ARTICLE VI
PURPOSES FOR WHICH BUILDING AND UNITS ARE INTENDED TO BE USED AND RESTRICTIONS ON USE

SECTION 1 Unit Use: All Units shall be used for residential purposes only.

SECTION 2 Nuisance: No obnoxious, offensive or unlawful activity shall be conducted within any Unit, or on or about the Common Elements, nor shall anything be done thereon or therein which may be or which may become an annoyance or nuisance to the other Owners.

SECTION 3 Prohibitions and Use of Common Elements: The Common Elements shall not be used for storage of supplies, personal property or trash or refuse of any kind except common trash receptacles placed at the description of the Executive Board. Stairs, entrances, sidewalks, yards, driveways and parking areas shall not be obstructed in any way. In general, no activity shall be carried on nor conditions maintained by an owner either in his Unit or upon the Common Elements which despoils the appearance of the Property.

SECTION 4 Shrubbery: No Owner shall plant or permit to remain on the Property any type of hedge, shrubbery or other plantings except with prior written

permission of the Association.

SECTION 5 Parking: No Owner or employee, agent or invitee of any Owners shall park, store, or keep any vehicle except wholly within those portions of the Common Elements designated for such use by the Association.

SECTION 6 Regulations: Reasonable regulations governing the use of the Property may be made and amended from time to time by the Executive Board.

SECTION 7 Hazardous Activities: Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance on the Common Elements or any Unit.

SECTION 8 Signs: No signs, flags or banners of any kind shall be displayed to the public view from any Unit or from the Common Elements.

SECTION 9 Declarant's Use of Units: Any provision of the Declaration or the North Carolina Condominium Act to the contrary notwithstanding, Declarant shall have the right to utilize any unit or Units owned by it as a model Unit(s) or sales offices, and to erect and maintain a sign or signs on the Property for the purpose of advertising Units owned by it for sale or lease These rights shall exist so long as Declarant is a Unit Owner.

ARTICLE VII

SERVICE OF PROCESS

Keith Calder is hereby designated to receive service of process in any action which may be brought against or in relation to the Condominium. His place of business is 1025-A Lake Park Blvd., Carolina Beach, 28928.

ARTICLE VIII
SLOOP POINT CONDOMINIUM OWNERS ASSOCIATION, INC

SECTION1 Organization of Association: A nonprofit North Carolina corporation known and designated as SLOOP POINT CONDOMINIUM OWNERS ASSOCIATION, INC. has been organized to provide for the administration of the Property, and the Association shall administer the operation and maintenance of the Property and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation, the By-Laws, and the North Carolina Condominium Act. Every Owner shall be required to be and shall automatically be member of the Association by virtue of his ownership interest in a Unit.

SECTION 2 Powers; Lien for Assessment: In the administration of the operation and management of the Property, the Association shall have and it is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and collect assessments in the manner provided in Article X hereto and to the By-Laws, and to adopt, promulgate and enforce such rules and regulations governing the use of the Units and Common Elements as the Executive Board may deem to be in the best interests of the Association in accordance with the By-Laws. Any sum assessed by the Association remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on the Unit with respect to which such sum was assessed upon filing in accordance with N.C.G.S. 47-C-116, and shall be enforceable by the Association in accordance with N.C.G.S. 47C-3-116.

SECTION 3 Period of Declarant Control: The Executive Board shall be appointed by the Declarant until the earlier occurs (i) one hundred twenty (120) days after conveyance of Units, to which one hundred (100%) percent of the total percentage of the ownership appertain, or (u) two years after the Declarant ceases to offer any Units for sale in the ordinary course of business. The owners of Unites A and B will serve as co-chairmen of the Executive Board.

ARTICLE IX
EASEMENTS AND PROPERTY RIGHTS

SECTION 1 Easements of Owners and Executive Board with Respect to Common Elements: Each Owner shall have a perpetual non-exclusive easement in common with all other Owners to use all pipes, chutes, wires, ducts, cables, conduits, public utility lines, and other Common Elements located in any of the other Units and serving his Unit. Each Unit shall be subject to a perpetual nonexclusive easement in favor of all other Owners to use the pipes, chutes, wires, ducts, cables, conduits, public utility lines, and other Common Elements serving such other units and located m such Unit. The Executive Board, or any person authorized by it, shall have the right of access to each Unit and to the Limited Common Elements to the extent necessary for performance by the Association of its obligations of maintenance, repair or replacement of the Common Elements.

SECTION 2. Encroachment Easements: If any portion of the Common Elements row encroaches upon any Unit, or if any Unit now encroaches upon any other Unit or upon any portion of the Common Elements, or if such Encroachment shall occur hereafter as a result of the settling or shifting of the Building(s), there shall exist a valid easement for the Encroachment and for the maintenance of same for so long as the building(s) shall stand. In the event the Building(s), any Unit, or any portion of the Common Elements shall be partially or totally destroyed by fire or other casualty or as a result of the condemnation or eminent domain proceedings, and shall thereafter be rebuilt, Encroachment of part of the Common Elements upon any Unit or upon any portion of the Common Elements due to such rebuilding shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as the Building(s) shall stand.

SECTION 3. Granting of Easements by Executive Board: The Executive Board may hereafter grant easements for utility purposes for the benefit of the Property including the right to install, lay, maintain, repair and replace water lines, pipes, ducts, sewer or cable television wires, cables and equipment, electrical conduits, and wires over, under along and or any portion of the Common Elements; and each Owner hereby grants the Executive Board an irrevocable power of attorney to execute, acknowledge and record in the name of each Owner such instruments as may be necessary to effectuate the foregoing.

SECTION 4 Emergency Access: In case of any Emergency originating in or threatening any Unit or the Common Elements, regardless of whether the Owner is present at the time of such emergency, the Executive Board, or any other person authorized by it, shall have the right to enter any Unit for the purposes of remedying or abating the cause of such emergency and making any other necessary repairs rot performed by the Owners, and such right to entry shall be immediate.

SECTION 5. Easement for Ingress and Egress and Reservation of Alienable Easements by Declarant: Ingress and egress is reserved for pedestrian traffic over, through and across sidewalks, paths, walks and lanes as the same from time to time may exist upon the Common Elements and facilities; and for vehicular traffic over, through and across all streets as from time to time may be paved and intended for such purposes, for all Unit Owners in SLOOP POINT CONDOMINIUM, A CONDOMINIUM, their guests, invitees and lessees, the Association, the Declarant, their successors and assigns.

SECTION 6 Alterations: Units may be altered pursuant to N.C.G.S. 47C-2-211, provided each of the following conditions are met:

(a) Before commencing any alteration of the Unit the Owner of such Unit shall notify the Association;

(b) The materials and construction methods used in altering the Units must be substantially the same as the materials and construction methods used for existing walls in the Building.

(c) No work shall be performed which would materially and adversely affect the structural soundness and integrity of the Building or any portion thereof.

(d) The Owner of the Unit being altered shall have the sole responsibility for payment of all costs and all work performed, and for assuring that all work is performed in a workmanlike

manner. The Owner of the Unit shall indemnify and hold the Association and all other Owners harmless from and against any and all loss, cost or damage arising out of such alteration.

SECTION 7. Conveyance of or Lien Against he Common Elements: While the Property remains subject to this Declaration and to the provisions of the North Carolina Condominium Act, no conveyance of, or liens of any nature shall arise or be created against the Common Elements except with the written consent of all the Owners and the Mortgagees. Every agreement for the performance of labor or the furnishings of materials to Common Elements whether oral or in writing must provide that it is subject to the right to file a mechanic's lien or other similar lien by reason of labor performed or material furnished is subordinated to this Declaration and to the liens of assessments for Common Expenses provided for in Article VIII, Section 2 of this Declaration. Provided, however, that nothing in this Section shall be construed to limit the right of any Owner to convey or to encumber his undivided interest in the Common Elements as an appurtenance to and in connection with the conveyance or mortgaging of his unit. This provision shall exclude any property owners or individuals who have been previously granted the use of water rights and rights facilities, both present and future, that run with this property. With the exclusion of the Edens family, all property owners who have been granted said rights shall be responsible for paying a pro-rata share of any expenses incurred in maintaining said water rights facilities.

SECTION 8 Nature of Interest in Unit: Every Unit, together with its allocated interests in the Common Elements, shall for all purposes be and it is hereby declared to be and to constitute a separate parcel of real property and the Owner thereof shall be entitled to the exclusive fee simple ownership and possession of his Unit subject only the covenants, conditions restrictions, easements, uses, limitations, obligations, rules, regulations, resolutions and decisions adopted pursuant hereto and as may be continued herein and in the accompanying By-Laws and in the minutes of the Executive Board of the Association.

SECTION 9 Intent: It is the intent of this Article IX to permit alterations within Units Further, the intent of this Article IX is to prevent the subdivision of or relocation of boundaries between adjoining Units.

ARTICLE X
ASSESSMENTS

SECTION 1 Taxes: Every Unit, together with its allocated interest in the Common Elements shall be separately assessed and taxed by each assessing authority for all types of taxes authorized by law, Each Owner shall be liable solely for the amount taxed against his individual Unit.

SECTION 2 Common Expenses: Each Owner shall contribute a percentage of allocated interest in the Common Element, all in accordance with the definition of Common Expenses set forth m Article I, Section 1.5 hereinabove; the By-Laws, and the provision of the North Carolina Condominium Act.

Due dates for payment of such Common Expenses shall be established by the Executive Board and shall be collected at least quarterly.

SECTION 3 Common Surplus: The term "Common Surplus" means and refers to all funds and other assets of the Association, including excess of receipts of the Association from assessments, rents, profits and revenues from whatever source over the amount of Common Expenses. The Common Surplus shall be owned by the Owners in

the same proportion that the undivided interest in Common Elements appurtenant to each Owners Unit bears to the total of all such appurtenant interest in the Common Elements; provided, however, that said Common Surplus shall be held by the Association m the manner and subject to the terms, provisions and conditions of this Declaration imposing certain limitations and restrictions upon the use and distribution thereof. Except for termination of the Condominium, any attribution or distribution of Common Surplus which may be made from time to time shall be made to the then Owners in accordance with their percentage interests in Common Surplus as declared herein.

SECTION 4 Assessments in General: The Association shall be empowered to levy assessment against the Owners of Units within the Condominium for the payment of expenditures made by the Association for purposes of providing liability insurance, payment of taxes, maintenance of recreation and other facilities located within the Condominium. Any such assessments that remain unpaid by the Owner of any Unit shall constitute a lien on the Unit of the Owners. It shall be further provided that upon default by the Association m the payment to the governmental authority entitled thereto to any ad valorem taxes levied against the Common Areas, which default shall continue for a period of six (6) months, each Owner of a Unit in the Condominium shall become personally obligated to pay the tax assessing governmental authority a portion of such taxes or assessments m any amount determined by dividing the total taxes and/or assessments dues by the percentage of ownership of each Unit Owner in the Condominium. If such sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien on the Unit of the then Owner, his heirs, devisees, personal representatives and assigns, and the taking or assessing governmental authority may either bring an action at law against he Owner personally obligated to pay the same or may elect to foreclose the lien against the property of the Owner.

ARTICLE XI
INSURANCE

SECTION 1 Property Insurance: The Executive board shall obtain and maintain at all times insurance on the Building and all other improvements upon the Land, and all personal property included m the Common Elements m an amount, after application of deductibles, equal to the replacement value of the Property at the time such insurance is purchased and at the time of each renewal thereof, exclusive of the cost of the Land, excavation, foundations, streets and parking facilities and other items normally excluded from property policies, provided, that such insurance may be written on a co-insurance basis of not less than ninety percent (90%). The policies evidencing such coverage shall insure against all risks of direct physical loss including fire and extended coverage perils; shall contain clauses providing for waiver of subrogation against any Owner or member of his household and any Owners employees or agents; shall contain the standard condominium endorsement, and a Replacement Cost Endorsement providing for repair and replacement of the Building and all other improvements located upon the Land from the insurance proceeds; substantially modified without at least thirty (30) days' prior written notice to all insured, including all Mortgagees; and shall provide that no act or omission by any Owners, unless acting within the scope of his authority on behalf of the Association, will preclude recovery upon such policy. All such polices shall provide that adjustment of loss shall be made by the Executive Board as insurance trustee. All policies shall comply with N.C.G.S. 47C-3-113. Each policy shall provide for the issuance of certificates or mortgage endorsements to Mortgagees.

SECTION 2 Public Liability Insurance: The Executive Board shall be required to obtain and maintain to the extent obtainable, public liability insurance in such limits as the Executive Board may, from time to time, determine, covering each member of the Executive Board, the managing agent, if any, and each Owner with respect to liability arising out of ownership, maintenance or repair of the Common Elements, provided, however, that in no event shall the amounts of such public liability insurance ever be less than $500,000 00 per person and $1,000,000 00 per occurrence against liability for bodily

injury, including death resulting therefrom, and $50,000 00 per occurrence against liability for damage to property, including loss of use thereof, occurring upon, in or about, or arising from or relating to, the Property or any portion thereof. Such insurance shall include endorsements covering cross liability of the Owners as a group or a single Owner. The Executive Board shall comply with the requirements set forth in N.C.G.S. 47C-3-113 (a) and (d)(1) through (4). Any party previously granted use of the common elements shall pay a pro-rata share of the public liability insurance costs.

SECTION 3 Fidelity Coverage: The Executive Board shall be required to obtain fidelity coverage against dishonest acts on the part of all persons responsible for handling funds belonging to or administered by the Association. The fidelity insurance policy must name the Association as the named insured and shall be written in an amount not less than the estimated maximum funds, including reserve funds m the custody

of the Association or its duly authorized agent, as the case may be, at any given time, during the term of each bond. In no event, however, may the aggregate amount of such bonds be less than a sum equal to three (3) months' aggregate assessments on all Units plus the amount of all reserve funds. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. The fidelity insurance policy shall also provide that it may not be canceled or substantially modified (including cancellation for non-payment of premiums) without at least thirty (30) days prior written notice to the insured and all Mortgagees.

SECTION 4 Other Insurance Policies: The Executive Board shall be authorized to obtain such other insurance coverage, including workman's compensation, as the Executive Board shall determine from time to time desirable or necessary.

SECTION 5 Premiums: Premiums upon insurance policies purchased by the Executive Board shall be paid by the Executive Board and charged as a Common Expense.

SECTION 6 Distribution of Insurance Proceeds: All insurance policies procured by the Executive Board shall provide that all losses shall be adjusted with and all proceeds shall be payable to the Executive Board as insurance trustee. The sole duty of the Executive Board as insurance trustee shall be to receive such proceeds as are paid and to hold the same m trust for the purposes set forth herein and for the benefit of the Owners and their Mortgagees in the following shares:

(a) Proceeds on account of damage to the Common Elements shall be held in undivided shares for each Owner and his Mortgagee, if any, each Owner's share to be the same as such Owners allocated interest in the Common Elements

(b) Proceeds on account of damage to Units shall be held in the following undivided shares:

(1) When the damage is to be restored, for the Owners of damaged Units in proportion to the cost of repairing the damage suffered by each Owners, which cost shall be determined by the Executive Board.

(2) When the damage is not to be restored an undivided share for each Owner, such share being the same as each such Owners allocated interest in the Common Elements.

(c) In the event a mortgage endorsement or certificate has been issued with respect to a Unit, the share of the Owners shall be held in trust for the Mortgagee and the Owner as their respective interest may appear.

(d) Proceeds of insurance policies received by the Executive Board as insurance trustee shall be distributed to or for the benefit of Owners in the

following manner.

(1) If it is determined, as provided in Article XI I herein below, that the damaged property with respect to which the proceeds are paid shall not be distributed to the owners and their lien holder, if any, as their interest may appear. Notwithstanding the provisions of this subsection, Section 47C-2-118 governs the distribution of insurance proceeds if the condominium is terminated.

(2) If the damage for which the proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the costs thereof Any proceeds remaining after payment of such repair costs shall be distributed to the beneficial Owners and their Lien holder, if any, as their interest may appear.

SECTION 7 Insurance obtained by Owners: It shall be the responsibility (but not the obligation) of each Owner to obtain at his own expense such additional fire and casualty and extended coverage insurance upon his personal property, public liability insurance, and such other insurance coverage as he may desire.

ARTICLE XII
DUTY TO REPAIR OR RECONSTRUCT

SECTION 1 Reconstruction and Repair: In the event of damage to or destruction of the building as a result of fire or other casualty, unless (1) the condominium is terminated, (2) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (3) the Unit Owners decide not to rebuild by an eighty percent (80%) voted, including one hundred percent (100%) approval of Units not to be rebuilt or Owners assigned to Limited Common Elements not to be rebuilt, the Executive Board shall arrange for the prompt repair and restoration of the damaged or destroyed Building not including any decoration or covering for walls, ceiling, or floors, or furniture, furnishings, fixtures or equipment unless the subject insurance policy covers a portion or all of such loss, in which the Executive Board shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration m appropriate progress payments and in accordance with the provision of Section 11.6(d)(2) of this Declaration. Any payment shall constitute a Common Expense. Any Reconstruction or repair shall be in accordance with the Plans or as the Executive Board; shall otherwise approve.

SECTION 2 Obligations of Owners: Each Owner will, at his sole cost and expense, keep and maintain his Unit in good order and repair in accordance with the Plans or as the Executive Board shall otherwise approve, and will make no structural addition, alteration or improvement to his Unit without the prior written consent of the Executive Board, except as authorized in Article IX, Section 6 of this Declaration. Upon the failure of any Owner to so maintain his Unit, the Executive Board shall be authorized to maintain, repair or restore such Unit, and the cost thereof shall be charged to such Owner and constitute a lien on the Unit until paid.

ARTICLE XIII
UNITS SUBJECT TO CONDOMINIUM DOCUMENTS

All present and future Owners, tenants, and occupants of the Units shall be subject to and shall comply with the provisions of this Declaration, the By-Laws and any rules and regulations as may be adopted in accordance with the By-Laws, as said Declaration, By-Laws, and rules and regulations may be amended and supplemented from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Unit shall constitute an agreement that the provisions of this Declaration, the By-Laws and any rules and regulations which may be adopted are

accepted and ratified by such Owners, tenant or occupant, and an agreement that such provisions shall be deemed and taken to be covenants running with the Land and shall bind any person having at any time any interest or estate m such Units as though such provisions were made a part of each and every deed of conveyance or lease.

ARTICLE XIV
AMENDMENT TO AND SUPPLEMENT OF DECLARTION

Except as is otherwise specifically authorized herein, this Declaration may be amended only by the vote of Owners of Units to which unanimous of the ownership of the Association is allocated, together with the consent of their respective Mortgagees, cast in person or by proxy at a meeting duly held in accordance with the provisions of the By-Laws. Any amendment which amends or alters the percentage of allocated interests of any Unit m the Common Elements, increases the number of Units, changes the boundaries of any Unit, creates or increases special declarant rights or changes the use to which any Unit is restricted shall require the written approval of all Owners, together with the consent of all their respective Mortgagees. No amendment to the Declaration shall be effective until executed on behalf of the Association by an officer designated for that purpose or, in the absence of designation, by the president of the Association, and

recorded in the Office of the Register of Deeds of New Hanover County, North Carolina. No amendment to this Declaration shall be adopted or passed which shall impair or prejudice the rights and priorities of any Mortgagee without the consent of such Mortgagee. No amendment to this Declaration shall be adopted or passed which shall impair or prejudice the rights of Declarant provided for m the Condominium Documents, without the Consent of Declarant.

ARTICLE XV
TERMINATION

The Condominium may be terminated only in strict compliance with N.C.G.S. 47C-2-118, as the same may be amended from time to time.

ARTICLE XVI
RIGHTS RESERVED TO MORTGAGEES

SECTION 1 Rights of Mortgagees to Examine Books and Records: Any Mortgagee, and any insurer or guarantor of a loan secured by a Mortgage, shall have the right to examine, during normal business hours and upon reasonable notice, the books and records of the Association, including copies of the Condominium Documents, as amended, and the financial statements of the Association, and to be furnished, upon written request, at least one copy of the annual financial statement and report of the Association, such annual statement and report to be furnished within ninety (90) days following the end of each fiscal year.

SECTION 2 Mortgagees Rights to Notice: If any Mortgagee, or any guarantor or insurer of a loan secured by a Mortgage, has served written notice of its desire to receive notices under this Article XVI, Section 2 upon the Association by certified mail, return receipt requested, addressed to the Association and sent to its address stated herein, identifying the Mortgage that it holds, guarantees, or insures, which notice designates the place to which notices are to be given by the Association to such party, then such party shall have the right to receive from the Association prompt written notice of the following:

(a) Default under any of the terms or provisions of the Condominium Documents by any Owner owning a Unit encumbered by a Mortgage held, insured or guaranteed by such party.

(b) Any loss or damage to condemnation or taking of the Common Elements or any loss or damage to or condemnation or taking of a Unit

encumbered by a Mortgage held, insured or guaranteed by such Mortgagee.

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

(d) Any proposed action by the Association, the Executive Board, or the Owners, which under the terms of the Condominium Documents requires the consent of all or any portion of the Mortgagees.

ARTICLE XV
EMINENT DOMAIN II

SECTION 1. Taking of a Unit: If a Unit is acquired by eminent domain, or it a part of a Unit is acquired by eminent domain leaving the Unit Owner with a remnant of which may not practically or lawfully be sued for any purpose permitted by this Declaration, the award must compensate the Unit Owner of his Unit and its interest in the Common Elements, whether or not any Common Elements are acquired. Unless the condemner acquires the right to use the Unit's interest in Common Elements, that Unit's allocated interests are automatically reallocated to the remaining Units in proportion to the respective allocated interests of

those Units before the taking exclusive of the Unit taken, and the Association shall promptly prepare, execute and record an amendment to the Declaration reflecting the reallocations. Any remnant of a Unit remaining after part of a Unit is taken under this subsection is thereafter a Common Element.

SECTION 2 Taking of Part of a Unit: Except as provided in Article XVII, Section 1, above, if a part of a Unit is acquired by eminent domain, the award must compensate the Unit Owner for the reduction in value of the Unit and of its interest in the Common Elements, whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides (1) that Unit's allocated interests are reduced in proportion to the reduction in the size of the Unit, or on any other basis specified in the Declaration, and (2) the portion of the allocated interests divested from the partially acquired Unit is automatically reallocated to that Unit and the remaining Units in proportion to the respective allocated interests of those Units before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced allocated interests.

SECTION 3 Taking Part of Common Elements: If part of the Common Elements is acquired by eminent domain, the portion of the award not payable to Unit Owners under Article XVII, Section 1, must be paid to the Association. Unless the Declaration provides otherwise, any portion of the award attributable to the acquisition of a Limited Common Element must be apportioned among the Owners of the Units to which that Limited Common Element was allocated at the time of acquisition.

ARTICLE XVIII
MISCELLANEOUS PROVISIONS

SECTION 1 Invalidity: The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity and enforceability of the remainder of this Declaration, and in such event, all other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

SECTION 2 Waiver: No provisions contained in the Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

SFCTION 3 Captions: The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this

Declaration or the intent of any provision hereof.

SECTION 4 Conflict of Laws: It is the intent of the Declarant herein that SLOOP POINT CONDOMINIUM, A CONDOMINIUM shall comply with Chapter 47C of the General Statutes of North Carolina as if such development had been submitted to the provisions of that Chapter.

SECTION 5 Liberal Construction: The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan of condominium ownership as provided In the North Carolina Condominium Act. Throughout this Declaration wherever appropriate, the singular shall Include the plural and the masculine gender the feminine or neuter as the context permits or requires.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed and sealed this 30th day of Dec. 2003.

See Attached Signature and Notary Pages

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on this, the

day and year first above written.

JENISHA F. BONICELLI NOTARY PUBLIC STATE OF COLORADO

(SEAL)

Richard A. Lehrer

(SEAL)

Anna M. Lehrer

STATE OF COLORADO
COUNTY OF El Paso

I, Jenisha Bonicelli, a Notary Public in and for the aforesaid County and State, do hereby certify that Richard A. Lehrer and his wife, Anna M. Lehrer, personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and notarial seal this the 30 day of December, 2003.

Notary Public

My Commission Expires: 2/13/05

(SEAL)

James A. Spicuzza

(SEAL)

Amy L. Spicuzza

STATE OF NORTH CAROLINA
COUNTY OF Pender

I, Mary E. McAllister, a Notary Public in and for the aforesaid County and State, do hereby certify that James A. Spicuzza and his wife, Amy L. Spicuzza, personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and notarial seal this the 22 day of January, 2004.

Notary Public

My Commission Expires: 11-12-2005

OFFICIAL SEAL
Notary Public, North Carolina
County of Pender
MARY E. McALLISTER
My Commission Expires

NORTH CAROLINA - PENDER COUNTY: The foregoing (or annexed) certificate of Jenisha F. Bonicelli *, is certified to be correct. This 5 day of Jan, A.D. 2004
JOYCE M. SWICEGOOD - Pender County Register of Deeds
By: Sally D. Green Deputy/~~Assistant~~ Register of Deeds
*Mary E. McAllister

EXHIBIT A

TO DECLARATION OF CONDOMINIUM
SLOOP POINT CONDOMINIUM, A CONDOMINIUM

Unit #	Interest in common elements	percentage of common expense	votes in association
A	50%	50%	1
B	50%	50%	1

BK2295PG084

FILED

04 JAN -5 PM 3:42

JOYCE M. SWICEGOOD
REGISTER OF DEEDS
PENDER COUNTY, NC

Recorded and Verified
Joyce M. Swicegood
Register of Deeds
Pender County, NC

COVER SHEET

(Type of Document: Deed of Easement

Grantor: Richard A. Lehrer and wife, Anna M. Lehrer and James A. Spicuzza and wife, Amy L. Spicuzza

Trustee (If applicable):

Grantee: Owners of Lots 1A &B, 2A & B, 3A & B, 4A & B, 5A & B, 6A & B 7A & B, 8A & B, 9A & B, 10A & B, and Lot 11, Sloop Point Duplexes

(Brief Description of property, if applicable):

Sloop Point Duplexes

Return to: Ray C. Blackburn, Jr.
PO Box 895, Hampstead, NC 28443

3

PENDER COUNTY

DEED OF EASEMENT

THIS DEED OF EASEMENT, made as of 30 December 2003, by and between Richard A. Lehrer and wife, Anna M. Lehrer, and James A. Spicuzza and wife Amy L. Spicuzza, herein called Grantor, and the owners of lots 1A and B, 2A and B, 3A and B, 4A and B, 5A and B, 6A and B, 7A and B, 8A and B, 9A and B, 10A and B, and 11 Sloop Point duplexes, herein called Grantee. (The designation Grantor and Grantee, as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine, or neuter as required by context);

WITNESSETH:

RECITALS:

R1. Grantor is the owner of a 2 undivided interest in Tract A as shown on a map entitled Map of Survey for Mary B. Edens recorded in map Book 26 at page 104 of the Pender County Registry, by virtue of a deed recorded in Book 1969 at page 312 of the Pender County Registry.

R2. The owners of lots described in a deed recorded in Book 36 at page 48 and/or Book 35 at Page 69 of the Pender County Registry.

R3. The owners of lots described in Book 35 at page 76, and/or Book 35 at page 69 of the Pender County Registry.

R4. Grantor has agreed to grant to each Grantee a perpetual easement, appurtenant to the lots owned by each of the Grantees, for the use of a boat launching/landing ramp and access to the Atlantic Intracoastal Waterway, together with the use of any pier or dock placed on said property by Grantor. Said easement shall be located per Grantor, and others may construct a boat launching/landing ramp facility and pier/dock on said premises.

NOW, THEREFORE, in consideration of the premises and other good valuable considerations, the receipt, sufficiency and adequacy of which are hereby acknowledged, Grantor gives, grants, bargains and conveys to each of the Grantees and his hei and assigns the right and privilege on ingress, egress and regress to and from boat launching/landing facilities to be constructed for semi-private use on Tract A as shown on the map entitled Map of Survey for Mary B. Edens recorded in Map Book 26 at Page 104 of the Pender County Registry together with the right and privilege to use the pier/dock constructed on said site as an accessory to the boat launching/landing facility and as access to the Atlantic Intracoastal Waterway. This grant shall be appurtenant to and run with the title to the lots described in Book 36 at page 48, Book 35 at page 76 and book 35 at page 69 of the Pender County Registry.

Said easement is conveyed subject to a maintenance obligation for said facilities. Each person or entity acquiring an easement of right of way hereunder shall bear a proportionate cost of maintaining such amenities, including the pier/dock and the boat launching/landing facilities.

TO HAVE AND TO HOLD said easement of right of way to the Grantee in perpetuity.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on this, the day and year first above written.

JENISHA F. BONICELLI NOTARY PUBLIC STATE OF COLORADO (SEAL)

Richard A. Lehrer

Anna M. Lehrer

STATE OF COLORADO
COUNTY OF El Paso

I, Jenisha Bonicelli, a Notary Public in and for the aforesaid County and State, do hereby certify that Richard A. Lehrer and his wife, Anna M. Lehrer, personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and notarial seal this the 30 day of December, 2003.

Notary Public

My Commission Expires: 2/13/05

(SEAL)

James A. Spicuzza

(SEAL)

Amy L. Spicuzza

STATE OF NORTH CAROLINA
COUNTY OF Pender

I, Mary E. McAllister, a Notary Public in and for the aforesaid County and State, do hereby certify that James A. Spicuzza and his wife, Amy L. Spicuzza, personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and notarial seal this the 20 day of January, 2004.

Notary Public

My Commission Expires: 11-12-2005

NORTH CAROLINA - PENDER COUNTY: The foregoing (or annexed) certificate of Jenisha F. Bonicelli * is certified to be correct. This 5 day of Jan, A.D. 2004

JOYCE M. SWICEGOOD - Pender County Register of Deeds

By: Sabrina D. Green Deputy/~~Assistant~~ Register of Deeds

* Mary E. McAllister

LOCATION MAP
NOT TO SCALE

PENDER COUNTY NORTH CAROLINA
I, CHRISTOPHER I. GLOVER, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DESCRIPTION RECORDED IN MAP BOOK 26, PAGE 104); THAT BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION FOUND AS SHOWN HEREON; THAT THE RATIO OF PRECISION AS CALCULATED IS 1:10000+; THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED. WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL THIS _____DAY OF _____A.D., 20____.

THIS PLAT IS OF A SURVEY THAT CREATES A SUBDIVISION OF LAND BUT IS AN EXCEPTION TO THE DEFINITION OF A SUBDIVISION ACCORDING TO THE PENDER COUNTY SUBDIVISION ORDINANCE.

C. I. Glover 9/18/02
CHRISTOPHER I. GLOVER, PLS
N.C. REGISTRATION NO. L-4090

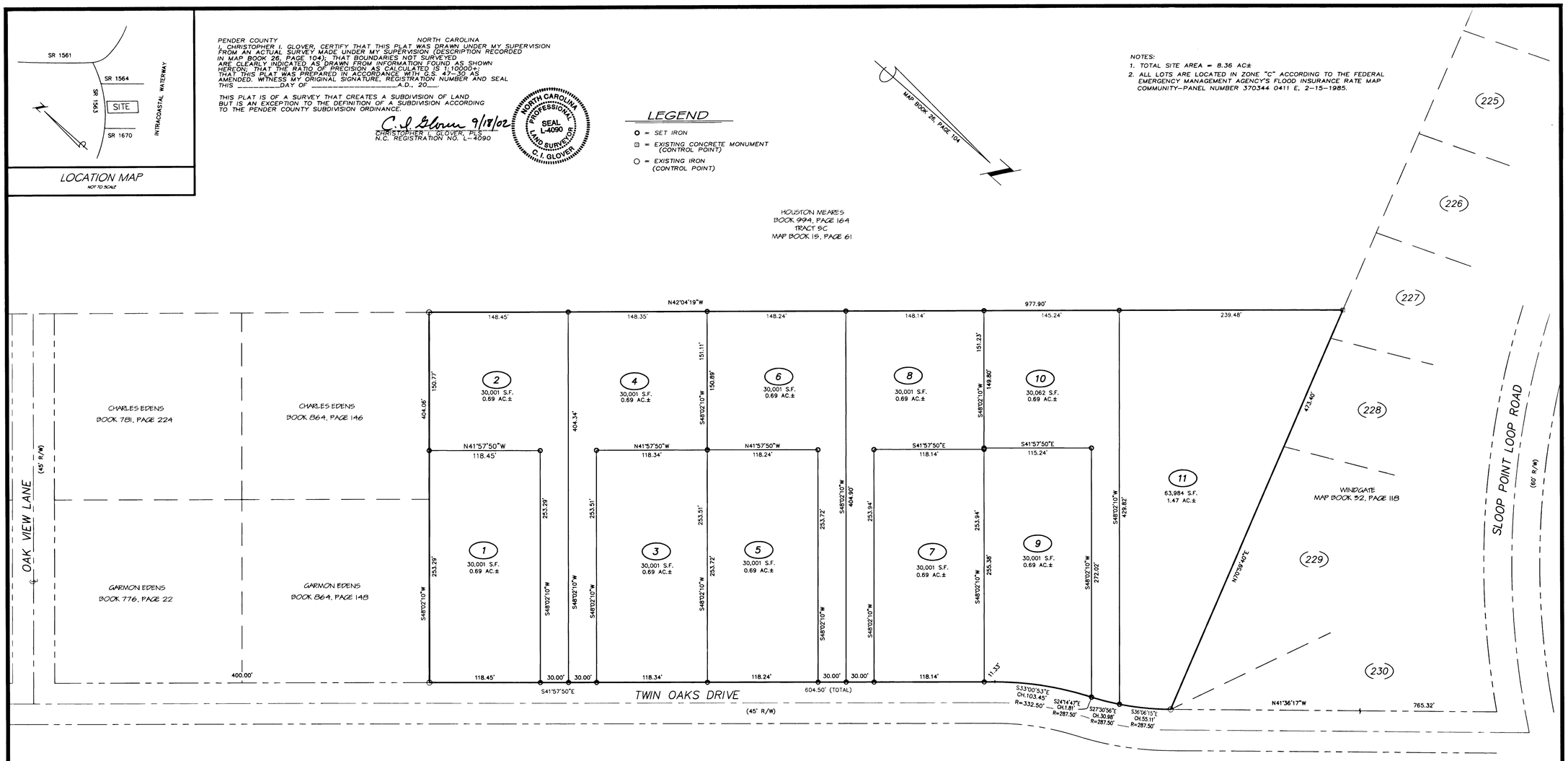
NORTH CAROLINA PROFESSIONAL SEAL L-4090 LAND SURVEYOR C. I. GLOVER

LEGEND

- O = SET IRON
- ⊡ = EXISTING CONCRETE MONUMENT (CONTROL POINT)
- ○ = EXISTING IRON (CONTROL POINT)

MAP BOOK 26, PAGE 104

NOTES:
1. TOTAL SITE AREA = 8.36 AC±
2. ALL LOTS ARE LOCATED IN ZONE "C" ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY'S FLOOD INSURANCE RATE MAP COMMUNITY-PANEL NUMBER 370344 0411 E, 2-15-1985.



PENDER COUNTY NORTH CAROLINA
FILED FOR REGISTRATION ON THE 24 DAY OF September 2002 AT 11:15 AM
AND DULY RECORDED IN MAP BOOK 35 AT PAGE 069 SL 475

JOYCE M. SWICEGOOD
JOYCE SWICEGOOD
REGISTER OF DEEDS
BY: Christie Mooney Rost.

PENDER COUNTY NORTH CAROLINA
I, Helen P. Litjes, REVIEW OFFICER OF PENDER COUNTY, CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

Helen Litjes 09-24-02
REVIEW OFFICER DATE

SLOOP POINT DUPLEXES

DIVISION OF TRACT C AS SHOWN ON MAP BOOK 26, PAGE 104 OF THE PENDER COUNTY REGISTY
TOPSAIL TOWNSHIP PENDER COUNTY NORTH CAROLINA
SCALE: 1"= 50' AUGUST 29, 2002

FOR
PLANTATION, INC
NORTH FOURTH STREET
WILMINGTON, NC 28401

PREPARED BY:
C. I. Glover 9/18/2
ARNOLD W. CARSON, PLS, PC
406 NORTH THIRD STREET
WILMINGTON, NC 28401
PHONE: (910) 772-9113
FAX: (910) 772-9128

NORTH CAROLINA PROFESSIONAL SEAL L-4090 LAND SURVEYOR C. I. GLOVER

CERTIFICATE OF APPROVAL OF THE PENDER COUNTY PLANNING DEPARTMENT
9/18/02 NA
DATE PLANNING DIRECTOR

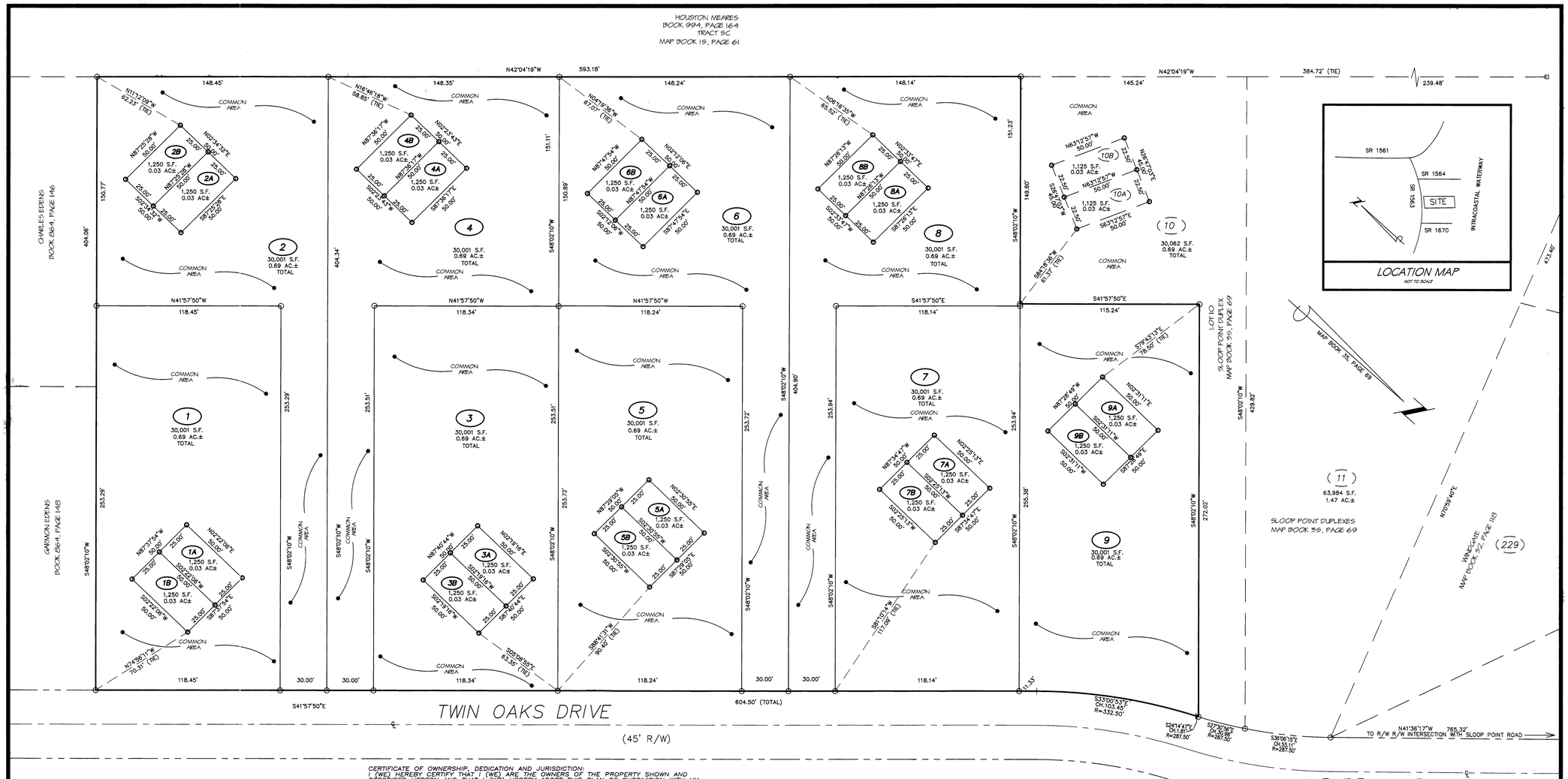
CERTIFICATE OF OWNERSHIP, DEDICATION AND JURISDICTION:
I (WE) HEREBY CERTIFY THAT I (WE) ARE THE OWNERS OF THE PROPERTY SHOWN AND DESCRIBED HEREON AND THAT I (WE) HEREBY ADOPT THIS PLAN OF SUBDIVISION WITH MY (OUR) FREE CONSENT ESTABLISH THE MINIMUM BUILDING LINES AND DEDICATION OF ALL STREETS, ALLEYS, WALKS, PARKS, CONSERVATION SPACE AND OTHER AREAS TO PUBLIC OR PRIVATE USE AS NOTED. ALL ROADS AND DRAINAGE EASEMENTS ARE DEDICATED FOR PUBLIC UTILITY PURPOSES. FURTHER, I (WE) CERTIFY THE LAND AS SHOWN HEREON IS LOCATED WITHIN THE SUBDIVISION JURISDICTION OF PENDER COUNTY.

9.23.02 Mary Edens
DATE OWNERS

100' 50' 0 100' 200' 300'

slooppointduplexes.dwg

SL 475 MB 35 PG 069



PENDER COUNTY NORTH CAROLINA

I, ARNOLD W. CARSON, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DESCRIPTION RECORDED IN MAP BOOK 26, PAGE 104); THAT BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION FOUND AS SHOWN HEREON; THAT THE RATIO OF PRECISION AS CALCULATED IS 1:10000+; THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED. WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL THIS 20TH DAY OF MAY A.D., 2003

THIS PLAT IS OF A SURVEY THAT CREATES A SUBDIVISION OF LAND BUT IS AN EXCEPTION TO THE DEFINITION OF A SUBDIVISION ACCORDING TO THE PENDER COUNTY SUBDIVISION ORDINANCE.

5/20/03
ARNOLD W. CARSON, PLS
N.C. REGISTRATION NO. L-3267

NORTH CAROLINA PROFESSIONAL SEAL L-3267 LAND SURVEYOR ARNOLD W. CARSON

CERTIFICATE OF OWNERSHIP, DEDICATION AND JURISDICTION:
I (WE) HEREBY CERTIFY THAT I (WE) ARE THE OWNERS OF THE PROPERTY SHOWN AND DESCRIBED HEREON AND THAT I (WE) HEREBY ADOPT THIS PLAN OF SUBDIVISION WITH MY (OUR) FREE CONSENT ESTABLISH THE MINIMUM BUILDING LINES AND DEDICATION OF ALL STREETS, ALLEYS, WALKS, PARKS, CONSERVATION SPACE AND OTHER AREAS TO PUBLIC OR PRIVATE USE AS NOTED. ALL ROADS AND DRAINAGE EASEMENTS ARE DEDICATED FOR PUBLIC UTILITY PURPOSES. FURTHER, I (WE) CERTIFY THE LAND AS SHOWN HEREON IS LOCATED WITHIN THE SUBDIVISION JURISDICTION OF PENDER COUNTY.

DATE	OWNERS
7/2/03	Joseph May
7/2/03	Paula Doherty
7/2/03	Thomas J. Zehringer
7/2/03	Kathryn A. Zehringer
7/2/03	Eric A. Litvak Cecilia A. Litvak
7/2/03	Dianne Tingirides
7/2/03	James J. LaBlue Linda M. LaBlue
7/2/03	Gordon H. Beckhart
7/2/03	Kamran Sadri Taneda Sadri
7/2/03	Gregory B. Blair

OWNERS

LEGEND

- ○ = SET IRON
- ⊡ = EXISTING CONCRETE MONUMENT (CONTROL POINT)
- ○ = EXISTING IRON

State of North Carolina
County of Pender

I, Jerry Timmons, a Review Officer of Pender County, certify that the map or plat to which this certification is affixed meets all statutory requirements for recording.

7/3/03
Date
Review Officer

OWNERS

LOT	NAMES
1	JOSEPH MAY
2	PAULA DOHERTY
3	THOMAS J. ZEHRINGER AND WIFE, KATHRYN A. ZEHRINGER
4	ERIC A. LITVAK AND WIFE, CECILIA A. LETVAK
5	DIANNE TINGIRIDES
6	JAMES J. LA BLUE AND WIFE, LINDA M. LA BLUE
7	GORDON H. BECKHART
8	KAMRAN SADRI AND WIFE, TANEDA SADRI
9	GREGORY B. BLAIR

PENDER COUNTY NORTH CAROLINA
FILED FOR REGISTRATION ON THE 3 DAY OF July 2003 AT 3:50 ■/PM
AND DULY RECORDED IN MAP BOOK 36 AT PAGE 48 SL 486

JOYCE SWICEGOOD
REGISTER OF DEEDS
BY: Gail P. Green - Deputy

LOTS 1-9
SLOOP POINT DUPLEXES

AS RECORDED IN MAP BOOK 35,
PAGE 69 OF THE PENDER COUNTY REGISTY
TOPSAIL TOWNSHIP PENDER COUNTY NORTH CAROLINA
SCALE: 1"= 30' MAY 20, 2003

FOR
VARIOUS OWNERS
AS SHOWN HEREON
C.O. RAY C. BLACKBURN, JR.
P.O. BOX 895
HAMPSTEAD, NC 28443

5/20/03
ARNOLD W. CARSON, PLS, PC
406 NORTH THIRD STREET
WILMINGTON, NC 28401
PHONE: (910) 772-9113
FAX: (910) 772-9128

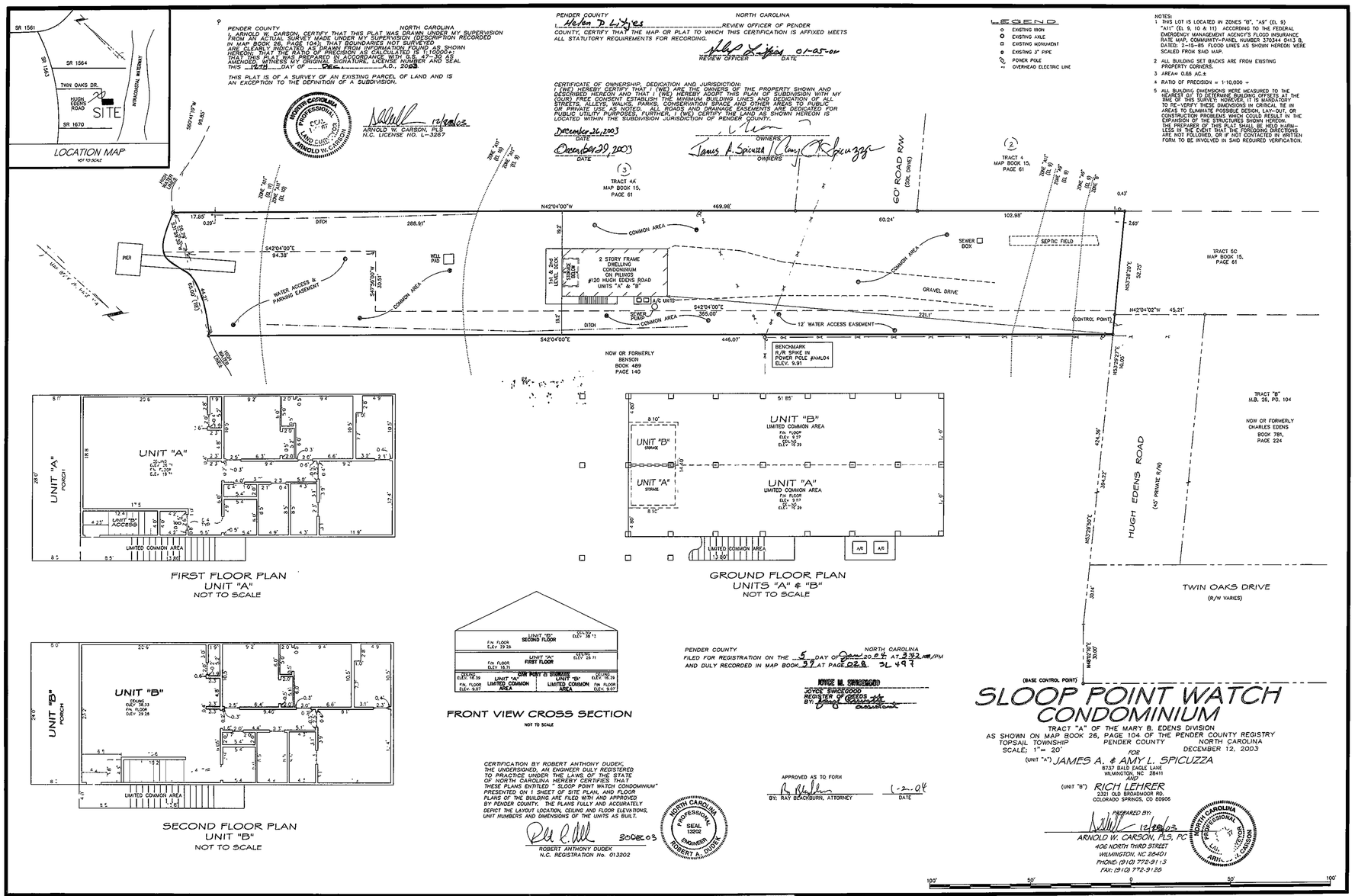
NORTH CAROLINA PROFESSIONAL SEAL L-3267 LAND SURVEYOR ARNOLD W. CARSON

100' 50' 0 50' 100'

NOTES:
1. TOTAL SITE AREA = 6.20 AC±
2. THIS TRACT IS LOCATED IN ZONE "C" ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY'S FLOOD INSURANCE RATE MAP COMMUNITY-PANEL NUMBER 370344 0411 E, 2-15-1985.

CC/AC
SLOOPPOINTDUPLEXUNITS30.DWG

SL 486 MB 36 PG 048



PENDER COUNTY NORTH CAROLINA
FILED FOR REGISTRATION ON THE 5 DAY OF January 2004 AT 3:42 AM/PM
AND DULY RECORDED IN MAP BOOK 37 AT PAGE 028 SL 497

JOYCE M. SWEGGOOD
JOYCE SWEGGOOD
REGISTER OF DEEDS
BY: DEPUTY

CERTIFICATION BY ROBERT ANTHONY DUDEK, THE UNDERSIGNED, AN ENGINEER DULY REGISTERED TO PRACTICE UNDER THE LAWS OF THE STATE OF NORTH CAROLINA HEREBY CERTIFIES THAT THESE PLANS ENTITLED " SLOOP POINT WATCH CONDOMINIUM" PRESENTED ON 1 SHEET OF SITE PLAN, AND FLOOR PLANS OF THE BUILDING ARE FILED WITH AND APPROVED BY PENDER COUNTY. THE PLANS FULLY AND ACCURATELY DEPICT THE LAYOUT LOCATION, CEILING AND FLOOR ELEVATIONS, UNIT NUMBERS AND DIMENSIONS OF THE UNITS AS BUILT.

30DEC03
ROBERT ANTHONY DUDEK
N.C. REGISTRATION No. 013202

NORTH CAROLINA PROFESSIONAL SEAL 13202 ENGINEER ROBERT A. DUDEK

APPROVED AS TO FORM
BY: RAY BLACKBURN, ATTORNEY 1-2-04 DATE

SLOOP POINT WATCH CONDOMINIUM

TRACT "A" OF THE MARY B. EDENS DIVISION
AS SHOWN ON MAP BOOK 26, PAGE 104 OF THE PENDER COUNTY REGISTRY
TOPSAIL TOWNSHIP PENDER COUNTY NORTH CAROLINA
SCALE: 1" = 20' FOR DECEMBER 12, 2003

(UNIT "A") JAMES A. & AMY L. SPICUZZA
8737 BALD EAGLE LANE
WILMINGTON, NC 28411
AND
(UNIT "B") RICH LEHRER
2301 OLD BROADMOOR RD.
COLORADO SPRINGS, CO 80905

PREPARED BY:
12/12/03
ARNOLD W. CARSON, PLS, PC
406 NORTH THIRD STREET
WILMINGTON, NC 28401
PHONE: (910) 772-9113
FAX: (910) 772-9126

NORTH CAROLINA PROFESSIONAL SEAL L-3267 LAND SURVEYOR ARNOLD W. CARSON

CC/TB
TRACT4-CONDO-FM

MB 37 PG 028 SL 497