

**Minutes of the New Bern Planning & Zoning Board
March 6, 2012**

The regularly scheduled meeting of the New Bern Planning & Zoning Board was held in the City Hall Courtroom, 300 Pollock Street, on Tuesday, March 6, 2012 at 6:30 PM.

Planning & Zoning Board

Members present: Mr. Tim Tabak, Chair
Ms. Stevie Bennett
Mr. Jimmy Dillahunt
Ms. Tiffany Dove
Mr. Tripp Eure
Mr. Patrick McCullough
Mr. Kip Peregoy
Mrs. Dorothea White
Mrs. Velda Whitfield
Mr. Paul Yaeger

Members excused or absent: NONE.

Staff present: Mr. Michael Avery, AICP
Director, Planning & Inspections Department
Mr. Greg McCoy, CZO
Zoning Enforcement Officer

Prayer: A prayer for guidance was given by Mr. Avery.

Minutes: The minutes of the November 1, 2011 meeting were approved on motion by Mr. Peregoy, second by Mr. Eure, and unanimous vote by the board.

Chairman Tabak called the meeting to order. Roll call was taken and a quorum declared.

New Business

- A. Consideration of a request to initially zone 232.35+/- acres to R-8 Residential District (consisting of 37.51 acres) and A-5 Agriculture District (consisting of 194.84 acres).**

Chairman Tabak stated that the property is located on Old Airport Road, north of the intersection of West Thurman and Old Airport Roads. Mr. Avery summarized the application. The proposed R-8 Residential District and A-5 Agriculture District are consistent with adjacent zoning in the area. The initial zoning map was examined.

Ms. Bennett asked if the residential area would allow for more than 108 lots. Mr. Avery replied affirmatively.

Mr. Peregoy inquired as to when the property was annexed by the City of New Bern and if the city had plans to clean up the property. Mr. Avery replied the city approved the annexation in January. He also stated that as part of the annexation agreement, the owner of the farm has agreed to bring the property into compliance with the city's nuisance abatement ordinance by August 31, 2012. Ms. Bennett asked if the agreement was required for only the R-8 zone. Mr. Avery replied that the compliance agreement is required for the entire property.

Chairman Tabak asked Mr. Avery to describe both zoning areas including potential uses. Mr. Avery described the R-8 Residential District as the predominant zoning classification in that area. An R-8 zone allows for single family lots with 8000 square feet minimum, duplexes, and multifamily units. The A-5 Agriculture District has a standard minimum lot size of five acres and allows for continuation of agricultural and residential uses. The R-8 and A-5 zones do not allow for business or industrial uses. Mr. Tabak inquired if hunting was allowed in the A-5 zone. Mr. Avery responded that the A-5 area does not allow hunting.

Mr. Dillahunt inquired if the A-5 area could be eventually zoned for residential. Mr. Avery replied affirmatively. Chairman Tabak asked if there is a threshold that would require more access points to the area for traffic. Mr. Avery stated that when a subdivision hits the 200 unit mark, the area would then require a traffic impact analysis.

Applicant Comments: Mr. John Thomas of Thomas Engineering stated that he is representing NAD Development LLC for the R-8 zoning and Mr. John Hardee for the A-5 zoning.

Public Comments: No public comments were given and the public comment segment was closed.

Board Comments: Mr. Dillahunt asked if there had been any comments from the agriculture sector. Mr. Avery replied there had not been. Mr. Dillahunt asked if the A-5 area contained most of the flood zone. Mr. Avery replied affirmatively.

Mrs. Whitfield questioned where the area was in proximity to the airport and possible traffic impact. Mr. Avery stated that the area is separated from the airport and outside any flight zones and therefore would not create any issues. Mr. Thomas stated that the airport is north of the development.

Chairman Tabak asked if in the future there were any plans to improve Old Airport Road. Mr. Avery responded that there had been discussions with a County Commissioner who represents that area but not NC DOT. Mr. Peregoy stated that NC DOT does have an existing right-of-way for the area near West Thurman Road.

Mrs. White asked about the proposed approximate time frame to develop the A-5 area. Mr. Thomas replied that the proposed 108 lots would be developed in approximately two years. The remaining lots in the area are anticipated to be developed in four to five years. Mrs. White also asked if the area will consist mainly of multifamily or single family units. Mr. Thomas answered that there is currently no multifamily units planned.

Chairman Tabak asked to have the master site plan explained. Mr. Thomas stated that there are approximately 230+/- proposed lots planned and many acres that will not be developed due to wetlands.

Motion was made by Mr. McCullough, second by Mr. Eure, and unanimous vote of the board to recommend initial zoning of 232.35+/- acres to R-8 Residential District and A-5 Agriculture District.

B. Consideration of a subdivision general plan for Hardee Farms Phase One, a proposed 108-lot residential planned unit development (PUD) subdivision.

Mr. Avery summarized the application stating that the proposed subdivision is located adjacent to the Brices Crossing subdivision at the southern terminus of Weathersby Drive, 2000 feet west of the intersection of West Thurman and Old Airport Roads. The master site plan was examined.

The primary concern is the impact of traffic on the Brices Crossing subdivision. Mr. George and city staff recommend that the construction of Bettye Gresham Lane to Old Airport Road be completed by the developer to provide additional access to the subdivision. A compromise has been reached between the developer and the City Engineer to complete this improvement under the City of New Bern Code of Ordinances.

Ms. Bennett inquired as to whether all of the proposed lots would be single family. Mr. Thomas responded affirmatively. Ms. Bennett also asked if Mr. Hardee owned any of the land along Bettye Gresham Lane so as to complete the recommended street improvements. Mr. Thomas responded that NAD Development LLC would be responsible for the street improvements and currently does not own the land between the subdivision and Bettye Gresham Lane.

Mr. Peregoy asked how the city would enforce these recommended street improvements by the developer. Mr. Avery replied that the improvements could be a condition on the approval of the subdivision or a requirement that the right-of-way be secured prior to the development taking place.

Chairman Tabak inquired as to how much of Bettye Gresham Lane is not owned by NAD Development LLC. Mr. Thomas replied that beyond the NAD Development LLC property line, the developers do not own any of the land further along the street. Mr. Thomas approximated that it is another 1000+ feet before the street reaches Old Airport Road.

Ms. Bennett explained that the property line appears to stop at the wetlands. She asked what enforcement would be put in place to keep the development from encroachment. Mr. Thomas stated that through the permitting process with the Division of Water Quality of NC and the Corps of Engineers, the development includes restricted covenants where the wetlands cannot be filled or encroached upon.

Applicant Comments: Mr. Thomas explained the master site plan starting with phase one of the subdivision. He read aloud the city ordinance for streets to estimate traffic flow in and out of

Brices Crossing. Mr. Thomas also stated that Brices Crossing has several points around the subdivision where streets and utilities were previously stubbed out for further development. All of the roads in Brices Crossing are sub collector roads. When the Hardee Farms subdivision is completely developed, there will be a total of three outlets to Old Airport Road.

Mr. Thomas stated that Mr. Jordan Hughes, City Engineer on February 21, 2012 approved the plans for water, sewer, and streets. At that time, there were not any comments about street improvements along Bettye Gresham Lane being required after a maximum of 65 lots were developed. Mr. Thomas presented the Departmental Review Comments from the February 9, 2012 meeting. These comments recommended the street improvements but do not require them.

Mr. Thomas presented a completed traffic study at Brices Crossing from March 1, 2012. He summarized the existing and available trips on streets in the area. Mr. Yaeger commented that most of the traffic would take the shortest route along Judge Manly Drive. The new development would likely increase the traffic on Judge Manly Drive to the city ordinance threshold of 800 trips.

Mr. Thomas examined the site plan for the proposed 108 lots. He pointed out the connections to Weathersby Drive and Bettye Gresham Lane. It was originally planned for Bettye Gresham Lane to be a collector road with a traffic circle. Mr. Thomas stated that this improvement would take three to four years after initial development. NAD Development LLC does not have the ability or the authority to make these improvements at this time. An agreement with Mr. Hardee must be made first.

Mr. Thomas followed up by presenting approved permits from the State of North Carolina and the City of New Bern for several items. He stated that other developments near the intersection of Old Airport Road and West Thurman Road have not agreed to contribute to any recommended street improvements.

Mr. Peregoy inquired who owned West Thurman Road. Mr. Avery responded that it was owned by NC DOT, the City of New Bern, and Mr. Hardee. Ms. Bennett inquired as to who maintains the roads in Brices Crossing. Mr. Avery responded that it is the City of New Bern's responsibility.

Mr. Peregoy commented that on the master site plan there were proposed lots on a cul-de-sac at the end of Bettye Gresham Lane but on the subdivision plan the lots were not shown. Mr. Thomas responded that Mr. Hardee decided he did not want to sell any waterfront lots.

Mr. Peregoy also noticed that the proposed rights-of-way were 51 feet but the new city street guidelines required 61 feet. Mr. Thomas replied that a PUD is allowed to vary that length. Mr. Avery confirmed this statement and added it is based upon approval from the Director of Public Works, Director of Public Utilities, and the City Engineer.

Chairman Tabak asked what the economic threshold is for the lots on the other side of Bettye Gresham Lane. Mr. Thomas replied it would be roughly the same number lots to be approved in the future.

Mr. McCullough inquired if there was enough room for a 61 foot right-of-way. Mr. Thomas responded affirmatively.

Public Comments: Mr. Al McClendon, Brices Crossing Homeowners Association, stated a concern with access to the site via Judge Manly Drive. According to the Hardee Farms Subdivision Phase One site plan, there would only be one way in and out of the subdivision for approximately 200 homes.

Mr. Fred Dettinger, 2916 Weathersby Drive, commented that the developer of Hardee Farms and the developer of Brices Crossing are two different entities and that the agreements for Brices Crossing do not cross over to Hardee Farms. NAD Development has opted for the least costly route through Brices Crossing instead of a direct route along Bettye Gresham Lane. Secondly, Mr. Dettinger stated that the traffic study completed by Thomas Engineering is also presumptuous and incomplete. Thirdly, the safety of Brices Crossing will be put into jeopardy by construction traffic. Mr. Dettinger asked for a mandate to be added into the passage of the subdivision that requires all construction traffic to flow along Bettye Gresham Lane.

Mr. Wendell Smith, 2959 Judge Manly Drive, stated that he rents at this address. He is concerned that even though increase in traffic could be sustained in the area, the impact would be negative to the family environment established in Brices Crossing and to future buyers and renters. Mr. Smith asked what the hours of operation for the construction would be. Mr. Thomas replied that he was not certain. Mr. Smith also stated concerns regarding Mr. Hardee's unusual behavior and the assumption that the development would be further expanded.

Ms. Evelyn Gibbons, 2923 Judge Manly Drive, stated that Brices Crossing is a quiet family neighborhood. An increase in traffic would affect the established environment and safety of the children in the area. She commented that there was no logical reason why Bettye Gresham Lane should not be developed to ease this burden.

Mr. Andrew Callaway, 2957 Judge Manly Drive, asked if the traffic was increased along Judge Manly Drive, would property owners be required to give up some of their property to widen the road. Chairman Tabak responded that this would be commented on in the near future.

Mr. Brian Stevens, 2954 Judge Manly Drive, commented that if phase one was the only portion to be completed, both Hardee Farms and Brices Crossing would have only one access point to Old Airport Road. He also commented that the traffic study was only based on one day and incomplete. Mr. Stevens was concerned with the clean up from any construction traffic through the Brices Crossing subdivision and questioned why Mr. Hardee had not granted access to Bettye Gresham Lane for NAD Development LLC.

Mr. Scott Schmitz, 2912 Weathersby Drive, has concerns regarding the safety of children in the Brices Crossing area with increased traffic flow. Mr. Schmitz agreed with Mr. Yaeger that Judge Manly Drive would be the most widely used route to Old Airport Road and the traffic study did not take this into account. He agreed that Bettye Gresham Lane should be required to be a thoroughfare for any construction traffic.

Ms. Noel Faulkner, 119 Derby Park Avenue, has family that lives in the Brices Crossing neighborhood that she takes her children to visit. She stated concerns with child safety if there is an increase in traffic.

There were no other public comments and the public comment segment was closed.

Board Comments: Chairman Tabak asked how many extra vehicles there would be per house during the construction of the subdivision. Mr. Avery replied there would be an increase but could not give an approximate number. Mr. Thomas added it had been agreed at the Departmental Review meeting that the heavy construction traffic would be using Bettye Gresham Lane. Mr. Hardee did not want to open up Bettye Gresham Lane for use by all due to a safety issue with an old mine. Chairman Tabak inquired as to the approximate distance between the mine and the road and if it was possible to install a barbwire fence around the mine. Mr. Thomas described the distance on the master site plan. He responded that he could not answer regarding the fence since that is controlled by Mr. Hardee.

Mr. Eure asked Mr. Thomas to point out the three cul-de-sacs on the master site plan and inquired if there was any discussion of using the cul-de-sacs to connect outside the subdivision. Mr. Thomas replied there had not been a discussion about this.

Ms. Bennett inquired if the agreement between Mr. Hardee and the developers to use Bettye Gresham Lane was in writing. Mr. Thomas replied that he did not know. Ms. Bennett requested that this be put into writing and that the developer construct a commercial sign outside of Brices Crossing routing construction traffic to Bettye Gresham Lane. Mr. Thomas responded affirmatively to construction of a sign and added that Thomas Engineering would monitor subcontractors. Ms. Bennett also expressed concerns about paying for road repair in Brices Crossing if heavy construction traffic were to route through the area.

Ms. Bennett asked the board if a requirement for a written agreement between Mr. Hardee and NAD Development LLC to use Bettye Gresham Lane for construction traffic could be imposed. Chairman Tabak responded that a motion could be made.

Mrs. Whitfield inquired if the traffic study had taken into consideration the heavy equipment that would be needed for construction. Mr. Thomas responded the study had not due to the fact heavy equipment would access the subdivision via Bettye Gresham Lane.

Mr. Eure expressed concerns regarding the board giving a recommendation for phase one of Hardee Farms and not a recommendation of the master site plan. Mr. Avery responded that in this case the developer requested approval of the 37.51 acre tract and staff asked the developer to come back with a master site plan which will be reviewed for approval at a later point in time.

Mr. Peregoy agreed that a written agreement was needed to enforce the use of Bettye Gresham Lane by heavy construction vehicles.

Mr. Yaeger stated that he would like Bettye Gresham Lane to be deeded to the developers to ensure that it stays open for heavy construction and any Hardee Farms subdivision traffic. Mr. Eure agreed.

Motion was made by Mr. Eure, second by Mr. Peregoy, and unanimous vote of the board to table the item with the requirement of a written agreement for heavy traffic to use Bettye Gresham Lane and a plan for all phases of development.

Chairman Tabak mentioned the concern with the discussion between all parties including NAD Development LLC, Mr. Hardee, and Brices Crossing Homeowners Association and the safety during construction.

Mr. McCullough requested that Mr. Jordan Hughes, City Engineer, attend the next meeting to speak on behalf of his recommendation. Mr. Peregoy concurred.

There being no further business, the meeting was adjourned.

Tim Tabak, Chairman

Mike Avery, Acting Secretary