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2 **Minutes of the New Bern Planning & Zoning Board**
3 **May 7, 2013**
4

5 The regularly scheduled meeting of the New Bern Planning & Zoning Board was held in the City
6 Hall Courtroom, 300 Pollock Street, on Tuesday, May 7, 2013 at 6:30 PM. Mr. Bernard George
7 conducted a 5:30 PM board workshop on Land Subdivision Control prior to the regular meeting.
8

9 **Members present:** Mr. Tim Tabak, Chair
10 Mr. Kenneth Peregoy, Vice-Chair
11 Ms. Stevie Bennett
12 Mr. Jimmy Dillahunt
13 Ms. Tiffany Dove
14 Mr. Bill Stamm
15 Ms. Velda Whitfield
16 Ms. Dorothea White
17 Mr. Paul Yaeger
18

19 **Members absent:** None
20

21 **Members Excused:** Mr. Patrick McCullough
22

23 **Staff present:** Mr. Bernard George, AICP
24 Planning Division Manager
25
26 Mr. Kevin Robinson, AICP
27 City Planner
28

29 Chairman Tabak called the meeting to order. Roll call was taken and a quorum declared.
30

31 **Prayer:** A prayer for guidance was given by Mr. George.
32

33 **Minutes:** Minutes from the March 5, 2013 meeting were discussed and approved.
34
35

36 **New Business**
37

38 **A. Consideration of a revised subdivision general plan for Rivershore, a proposed**
39 **72.14 acre, 52-lot residential planned unit development (PUD). The proposed subdivision is**
40 **located at the intersection of Riverside Drive and Sandy Point Road and is further**
41 **identified in Craven County Tax Book 2, Page 36, as Lot 3001. (Ward 1)**
42
43

44 **Staff Comments:** Mr. George introduced the application for the Rivershore Development
45 General Plan. It is a proposed 73.14-acre, 52 lot residential plan unit development located in the
46 A5-F and R-10 Districts. Mr. George pointed out several lots in the A-5F District that included

47 some wetlands. The development's general plan was presented to the board in June 2012, at
48 which time the board had concerns about specific lots that included wetlands. In addition, the
49 board heard from several neighborhood residents who voiced serious concern about the potential
50 negative environmental impacts of the proposed development. As a result of those concerns, the
51 board conditionally approved the general plan with revisions. There were 6 lots along Rivershore
52 Drive that were removed as a condition of subdivision approval due to the concerns noted
53 previously. The present plan has been further revised and the developer has obtained all required
54 federal and state permits including Erosion and Sedimentation Control, 404 Wetlands,
55 Stormwater Quality, and Neuse River Buffer approval. Mr. George noted he has spoken with the
56 Corps of Engineers' representative responsible for permits in the area, verifying the proper
57 permits have been obtained. Staff recommended approval of the revised general plan.

58
59 Chair Tabak requested Mr. George discuss the changes between the previously submitted plan
60 versus the one being presented during this meeting. During his summary Mr. George advised
61 there have been several revisions made to the number and location of lots in this proposed
62 development.

63
64 Vice-Chair Peregoy questioned the letter from Mr. Nichols in the packet, regarding duration in
65 the ordinance for approval of the general plan, noting final plat is typically one year. Mr. George
66 advised the NC General Statute allows for a two-year vested period for permits. It also allows for
67 a vested period up to five-years for a phased development plan. The four-phase development is
68 scheduled to be completed in five-years. If not completed in the five-year vested time frame, the
69 developer then could request an extension for up to six-months.

70
71 **Applicant Comments:** Mr. John King, attorney representing the property owners, advised
72 manager Chris Bass, surveyor Howard Nichols, and the engineer are in attendance as well.

73
74 Mr. King noted there was some previous concern regarding the conservation easement. He has
75 drafted an easement based on requirements from the Army Corps of Engineers regarding
76 protecting the 37-acre wetland area, which he submitted for review and consideration.

77
78 Road maintenance was discussed and noted as a previous concern. Bayside Drive will remain a
79 private street which will be maintained by the Homeowners Association and will be noted in the
80 covenants as such. The City will not be responsible for maintenance.

81
82 Mr. King noted that the adjoining owners' information had been added to the plan as requested.

83
84 Chair Tabak questioned who would hold the conservation easement. Mr. King advised this
85 easement has been created based on all requirements provided by the Army Corp of Engineers.
86 The easement would be held by the owners of the properties, ensuring no development on this
87 land in the future.

88
89 Mr. King provided the board with a packet of information, including permits, declaration of
90 restricted covenants providing street maintenance, sample conservation easement, and revised
91 general plans.

Utilizing the plans, Mr. King discussed the placement of homes, advising the homes in this area would be raised in compliance with floodplain regulations. Sample photos of the type of homes to be built were shown, noting the parking and storage provided underneath the home.

Member Stevie Bennett asked if there was anything stated in the covenants prohibiting the ability to have living space on the ground floor. Mr. King advised there may be something in the flood insurance that would require no living space on flood level, as well as in the City of New Bern's Ordinances.

Member Dorothea White referenced the development schedule showing June 2013-June 2018 timeline and questioned the different phases and the time frames for each. According to Mr. King the first phase will include the lots on Rivershore Drive, as these lots are located on an existing public street and will require no infrastructure. The remaining three phases and time frames were discussed in detail.

Ms. Bennett questioned if Watercress Drive was an existing road or still needed to be put in. Mr. King advised it would need to be constructed and would be a public street. Ms. Bennett questioned the street going to the cul-de-sac. Mr. King advised this street will also be public and would be constructed to the City standards and maintained by the City as well. Ms. Bennett confirmed the only private drive in this development would be Bayside.

Public Comments - Opposed

Mr. Greg Pearson, 429 Riverside Drive: Mr. Pearson provided photographs recently taken. All referenced Riverside Drive, which showed a substantial amount of water standing due to winds that blew through that day. Essentially the water would be immediately in front of the proposed homes, as well as on the proposed lots. Mr. Pearson advised he viewed the plat that was previously shown. The plat has a 15' setback from the right of way, which he considers to be small coupled with a 1,350 square foot dirt pad. He further noted past that point on most of these lots, there will be no usable land; it will be marshland. Therefore the usable space on most of these lots will be 1/10 of an acre. In Mr. Pearson's opinion, the area is not substantial enough for home sites. He was concerned there are no provisions for boats or trailers on the home sites, as is so common in this area. With so little usable space, combined with an average of two cars, it would seem the street right of way may be infringed upon. The properties will have sewer service provided by the City of New Bern, but homes will be on a pump system. Mr. Pearson noted these tanks must be buried underground providing a challenge for installation and maintenance.

Vice-Chair Peregoy asked Mr. Pearson what his side of the street looked like at the time these photographs were taken. Mr. Pearson advised he lives directly across the street from the area shown in the photographs. He noted half of his yard had water in it. He has a half acre lot with no marsh area, but in the area closest to the street the water was close to 3" deep.

Member Velma Whitfield asked Mr. Pearson how often the water washes over the road. Mr. Pearson advised the road was raised a few years ago, so it has improved; but on average 3-4 times per year there is water across the road.

Ms. Whitfield asked if Mr. Pearson's home is in a flood zone. He advised it is, as are all the other existing homes in that area including the proposed homes.

Member Bill Stamm asked Mr. Pearson what is the highest elevation in the area. He stated Bayside has the highest elevation estimated at 4'. He noted his home is at 2' elevation.

Dr. Joe Starr, 419-425 Riverside Drive, owns lots along Riverside Drive plus two homes:

Dr. Starr reiterated what Mr. Pearson said, advising there is constant water and flooding due to the wind shifts and river tides. He has concern about the accessibility of the homes during high waters despite being elevated. Other concerns were the owners' limited ability to utilize their driveways and the open area under the proposed homes.

Mr. Alex Starr, 419-425 Riverside Drive, son of Dr. Starr: Mr. Starr showed a photo previously shown by Mr. Pearson, noting the importance that the water standing was not from a storm but rather from wind and river tides. He provided another photo showing a raised air conditioning unit at approximately 10' that had been knocked down due to high water.

Ms. Kathleen Bailey, 417 Riverside Drive: Ms. Bailey advised the way she found out about this development was witnessing and subsequently speaking with a man who was bulldozing trees in the area following Hurricane Irene. She called the City of New Bern who discovered the man did not have permits to do any site work in this area. The photograph she provided showed the tree line that the man was taking down, and noted it is their buffer/screen from the wind. The photograph also shows her driveway with water covering more than half of it. She has concerns the developer will not follow the regulations. She questions the permits provided by the Corps of Engineers, as the area seemingly is not fit for development. She was told, when purchasing her land, that the area now in question could never be development because it was federally protected wetlands.

Ms. Whitfield asked Ms. Bailey if she could do it all over again with the experience she has, would she purchase her home now. Ms. Bailey said she would raise her house if she could, but loves it and wants to maintain the integrity of the area.

Mr. Spencer Bailey, 417 Riverside Drive: Mr. Bailey advised the lowest level of his home is 3.1' above flood plain. He advised at times his family has to park on an adjoining street as their driveway is inaccessible. Their property is located across the street from the proposed development on Riverside Drive, which at any given time has more water consistently than their property.

Ms. Ann Williams, 187 Bayside Drive: Ms. Williams advised she has lived in this area for 42 years. While growing up in this area, flood water in the home was a normalcy. Her father's house had to be torn down after he passed due to the foundation being unstable because of the constant water. She has concern about the parking issues this development will cause, as there will be many times the homes will be inaccessible by vehicle. She has concern about the potential of debris from the new homes washing down and damaging surrounding homes.

184 *Mr. Pete Rouse, 408 Sandy Point:* Mr. Rouse had concerns about filling in the land which could
185 displace water and natural flow. The environmental effects may be detrimental on his home and
186 other homes in the area.

187
188 **Public Comments – Supporting**

189 Attorney John King spoke recognizing the hazards of living with hurricanes and wind and water.
190 He again noted the homes would be built to the required standards of safety. He felt some of the
191 homes being built may provide a wind buffer for the existing homeowners and therefore could be
192 beneficial to the neighbors.

193
194 Mr. Janowski, site engineer, advised there will be infill on the proposed lots. Chair Tabak
195 questioned how much fill. Mr. Janowski advised enough that the standing water shown in the
196 previous photographs will not be an issue. Mr. Janowski advised he was a part of a recent flood
197 study in Goldsboro on a part of the Neuse River with homes, buildings and berms in which the
198 results showed no change in flooding. This study was done on a much larger area than the
199 proposed development. Therefore they are certain their development will not impact the area
200 negatively.

201
202 Chair Tabak asked if there will be provisions made for potential parking issues from a safety
203 standpoint if emergency vehicles are needed. Mr. Tabak questioned where the vehicles will go if
204 unable to access their property. Mr. Janowski could not provide a solution.

205
206 Member Stevie Bennett asked how much feet of infill will be put on each lot. Mr. Janowski
207 advised an individual design has not been done on each lot, but estimated approximately 3-4' of
208 fill dirt. The property owner will have input on how the shape of their lot is created and will be a
209 part of determining how much fill is used.

210
211 Mr. George advised in a flood plain there are regulations on how much fill can be brought into
212 an area based on the effects of the flood plain. He suggested consideration be made to the
213 elevation of the open area under the home.

214
215 Member Kip Peregoy agreed with Mr. Janowski on the limited effects the infill will have, but
216 had concerns with the flow of water in and through the area in question. Mr. Janowski advised
217 each lot will be different depending on the placement of the home footprint, the land elevation,
218 and floor plan each homeowner may choose.

219
220 Member Jimmy Dillahunt questioned what size the private road will be. Mr. Janowski advised
221 the existing Bayside Drive is currently 20' wide. Mr. Dillahunt voiced concern with the roadway
222 washing out, as happens on Highway 12 at the Outer Banks. Mr. Janowski advised there are an
223 erosion control plan and a stormwater management control plan. Mr. Dillahunt asked if Mr.
224 Janowski has met with all the neighbors in the area to discuss the erosion control and stormwater
225 management plans. Mr. Janowski advised he has not.

226
227 Mr. Dillahunt questioned if the developer has. Attorney Jay King advised the Rivershore Drive
228 neighbors appear to be the only residents contesting the development.
229

Mr. John King commented on Mr. Janowski's previous statements on flooding, noting the right-of-way is 60', while the paved area narrows to about 20'. Mr. King advised he was out in the area and viewed the standing water and did not feel it impeded the right-of-way at all.

Ms. Bennett questioned the setbacks, noting the Land Use Ordinance does not allow any boat or trailer to be parked past the front of their home. She also questioned the proposed length of the driveway. Mr. King advised from the street to the right of way will be 20', beyond that would be another 23' to the home, plus the additional space located under the home, which he feels is sufficient for parking.

In reference to the sewer tanks that must be buried, Ms. Bennett asked how far one would have to go before reaching water level. Due to the fact there are wetlands, Mr. Janowski advised about 12" down is water. The tanks, therefore, would not be buried in this land, but rather in the fill that is brought in for each lot.

Board Comments: Mr. Peregoy asked if Mr. George was at the technical review meeting, and if so, what was discussed regarding flooding and drainage, noting 2-pages of conditions from Chief Building Inspector Johnny Clark. Mr. George advised it was acknowledged that the area is flood prone. Mr. William Prescott from the Corps of Engineers noted that the drainage is not a problem in and of itself, due to the area being so low and the availability of wetlands for drainage retention. During the review meeting, Mr. Prescott advised the east side of Riverside Drive would drain into the marshlands, and development on this side would not impact the west side of Riverside Drive. According to Mr. Prescott, the amount of fill that will go in, 1/10 of an acre or 4,000 square feet, is minimal and will have little to no impact on flooding in the area.

Mr. Peregoy noted his biggest issue is this is a PUD development, and without it being this, the development wouldn't even be considered. Within the PUD, there are two separate types of communities being developed, with the main area not being an issue, but the 9 lots proposed on Rivershore are. Mr. George advised the reason for the subdivision's two zoning classifications is to protect the wetlands area.

Mr. Dillahunt asked for the stipulations that had been placed on the plan as a result of departmental Review. Mr. George advised the stipulations, including names, conservation easement and maintenance easement, have been met. But he requested if the Board approves the request, that it be approved on condition of City approval of the owners' private maintenance agreement which has not been reviewed yet.

Ms. Bennett asked if Bayside Drive is currently a dirt road. Mr. George advised it is, and was originally constructed for access to the homes built along the river. In speaking with property owners there has not previously been a maintenance agreement for this road, but the City has started providing services to homes on the road.

Mr. Peregoy asked if there are fire hydrants on Bayside Drive. It was determined a line was included.


275 Chair Tabak asked what type of considerations the board should have in making a decision, if all
276 the City requirements have been met. Mr. George advised that additional conditions could be
277 placed on the permit to ensure the safety and accessibility of city emergency vehicles. He noted
278 much of City of New Bern is in flood plain areas. Severe flooding from natural disasters are
279 prime issues in this area, along with safety and right-of-way encroachment. Mr. George advised
280 when he was visiting the area recently, there were 1'- 2' of water on Rivershore Drive; so
281 regardless of the number of homes on this road, the residents will all be in the same situation
282 during certain times of flooding.
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284

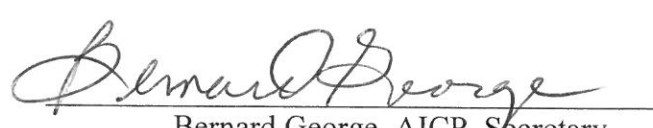
285 **Motion:** Board member Jimmy Dillahunt motioned to approve the request based on the
286 conditions recommended by the City to include the elevation of the lots be substantial so at a
287 minimum they are level with the road and the maintenance agreement for Bayside Drive be
288 approved by the Public Works Director. Motion was seconded.
289

290 Member Stevie Bennett noted she still has safety issue concerns. Flooding, fire, and accessibility
291 are all things she is concerned with. Member Dillahunt advised there must be an evacuation plan
292 in place for all subdivisions. Ms. Bennett still has concerns with emergency vehicles getting into
293 the area. Mr. Peregoy also noted the differences between an evacuation plan versus a fire and
294 accessibility. He has concerns about safety as well.
295

296 Chair Tabak requested Mr. George take a roll call vote on the motion to approve with
297 stipulations. Motion passed with conditions, with eight (8) Yes's, one (1) No (Ms. Bennett).
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299

300 There being no further business, the meeting was adjourned.
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302

303
304
305

Tim Tabak, Chairman
7/2/13


Bernard George, AICP, Secretary