

**Minutes of the
City of New Bern Planning & Zoning Board
November 2, 2021 – 5:30 P.M.
Development Services Conference Room – 303 First Street.**

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2 The regular meeting of the New Bern Planning and Zoning Board was held in the Development
3 Services Conference Room, 303 First Street, on November 2, 2021 at 5:30 pm
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5 **Members Present:** Don Black, Chair
6 Travis Oakley, Vice Chair
7 Raymond Layton
8 Anne Schout
9 Margie Dunn
10 Pat Dougherty
11 Sonny Aluzzo
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13 **Members Excused (E)/ Absent (A):** Marcus Simmons (A)
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16 **Staff & Counsel Present:** Jeffrey Ruggieri, Director of Development Services.
17 Nadia Abdul-Hadi, Planner II.
18 Jaimee Bullock-Mosely, Assistant City Attorney.
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20 **1. Roll Call**
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22 Staff Member Nadia Abdul-Hadi delivered the roll call of all members and quorum declared with
23 seven (7) members present.
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25 **2. Approval of Minutes**
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27 **A. October 5, 2021**
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29 Chairman Black asked the Board if they had reviewed the minutes and if there were any changes
30 that members would like to address. Hearing none he asked for a motion to approve: **Ms. Schout**
31 **made a motion to approve the meeting minutes from October 5, 2021 as presented, the**
32 **motion was seconded by Mr. Layton. A roll call was taken, and the motion passed**
33 **unanimously (7-0).**
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35 **3. New Business**
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37 **A. Stars & Stripes 4F, LLC./Thomas Engineering, P.A., are requesting**
38 **subdivision final plan approval for “Tyler, Home on the Lake Phase**
39 **Five, A Planned Unit Development” a 54-lot residential planned unit**
40 **development (PUD). This section of the multi-phase development is**
41 **located on a combined 11.49+/- acres in the R-10A Residential District.**

42 **The site is located to the south of Gracie Farms Road and to the east of**
43 **Washington Post Road (Ward 5).**

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45 **Staff Comments:** Jeffrey Ruggieri presented the proposed 54-lot subdivision. Mr. Ruggieri stated
46 that the plan had received preliminary plan approval. Mr. Ruggieri presented site-specific details
47 and explained that city staff had analyzed the subdivision through site plan review and can confirm
48 that it meets all the requirements of the Land Use Ordinance, therefore staff are recommending
49 approval.

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51 **Board Discussion:** Chairman Black asked if any members of the board had any questions,
52 hearing none, Chairman Black proceeded to ask the applicant if he wished to address the board.
53 John Thomas of John Thomas engineering stated that he had nothing to add. Chairman Black
54 proceeded to ask if there was any public who wished to comment on the project, hearing no
55 public comment Chairman Black asked that a motion be made. **Mr. Dougherty made a motion**
56 **to recommend approval of the final plan as presented, the motion was seconded by Ms.**
57 **Schout. A roll call was taken, and the motion passed unanimously (7-0).**

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59 **B. A. Sydes Construction, Inc./Thomas Engineering, P.A., are requesting**
60 **subdivision final plan approval for “Monitor Cape Phase One at**
61 **Bluewater Rise, A Planned Unit Development” a 52-lot residential**
62 **planned unit development (PUD). This section of the multi-phase**
63 **development is located on a combined 17.55+/- acres in the R-8**
64 **Residential District. The site is located to the north of County Line**
65 **Road and to the west of Old airport Road (Ward 3).**

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67 Chairman Black stated he was under the impression that there were water flow issues in the area
68 but that it was his understanding that the City of New Bern was in the process of getting an
69 easement constructed. Chairman Black asked when the city expected the easement to be
70 completed. Mr. Layton stated he would like to go on the record to ask if a staff review could be
71 presented before proceeding to a board discussion.

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73 **Staff Comments:** Jeffrey Ruggieri presented the proposed 52-lot final subdivision application.
74 Mr. Ruggieri stated that the plan had received preliminary plan approval. Mr. Ruggieri presented
75 site-specific details and explained that city staff had analyzed the subdivision through site plan
76 review and can confirm that it meets all the requirements of the Land Use Ordinance, therefore
77 staff are recommending approval.

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79 **Board Discussion:** Chairman Black asked when the easement would be completed, Mr. Ruggieri
80 responded that construction of the easement would begin by the end of 2021 or the beginning of
81 2022. Chairman Black asked for the size of the easement, Mr. Ruggieri stated that he was not
82 aware of the specifics regarding the easement and that issues regarding water flow and easements
83 were beyond the scope of the Planning and Zoning Board. Chairman Black asked Mr. Ruggieri if
84 he would state for the record that if the plans received approval as presented on 11.02.2021, that
85 the easement would be completed by the time foundations were laid, Mr. Ruggieri stated that he
86 would stipulate for the record that the plans as presented met the requirements of City of New
87 Bern’s Land Use Ordinance. Chairman Black stated that he had heard from the fire marshal directly

88 that the flow rates for water in that area were 30% below what is needed for the fire department.
89 Mr. Layton stated that water flow issues are not in the purview of the Planning and Zoning Board,
90 Chairman Black stated that he disagreed as he believed it to be a matter of public safety. Mr.
91 Ruggieri stated that he had spoken with the fire chief recently and he said that water flow was
92 adequate in the area, Chairman Black responded that he had been told that water flow was not
93 adequate. Ms. Bullock-Mosely stated she would like to remind the board they were presented with
94 a final plat, and by law the board is required to consider the plat against the requirements in the
95 City of New Bern Land Use Ordinance, Ms. Bullock-Mosely added that by taking into account
96 considerations that are not noted in Section 15-79 "Major subdivision approval process" the board
97 would be breaking the law. Chairman Black stated that he would propose that the applicant remove
98 his application at this time, he added that while he wanted to approve these plans, he wanted to
99 make sure that it would be safe for the people that would be living in the homes. Chairman Black
100 stated that perhaps if this item was tabled then Mr. Ruggieri would have more time to gather further
101 information about the easement. Chairman Black stated that the City of New Bern has a bad fire
102 in its history and that he would not like to see another such event in the future. Mr. Layton asked
103 what the Planning and Zoning Board's obligation time-wise to take action on the item as the
104 application had already been received and presented, Mr. Ruggieri responded that the board would
105 have to take action within 60-days or the plans would receive an automatic approval. Mr. Ruggieri
106 added that he would not have any further information for the board in another 30-days, Mr. Layton
107 responded that this was to be expected and as a result he did not think that tabling the item would
108 be helpful to the board nor to the applicant in this situation. Mr. Layton stated that he believed the
109 board needed to act on this item tonight in the way of approving or denying the plan as it would
110 be unfair to the applicant to stall the process any further through the action of tabling the item.
111 Chairman Black stated that he disagreed that tabling the item would not be useful as he recalled
112 that at the July meeting of the Planning and Zoning Board meeting a further phase of Derby Park
113 was tabled and that the extra time gave the developer and the city more time to work out any issues,
114 Mr. Layton responded that this was a different circumstance, adding that as it stands, Monitor Cape
115 Phase One at Bluewater Rise, meets all of the requirements of the Land Use Ordinance. Chairman
116 Black reiterated that he believed the issue at hand to be an issue of public safety, Mr. Ruggieri
117 stated that public safety had already been considered by the public safety staff, e.g. the fire
118 department and the police department, Mr. Ruggieri stated that he had spoken to the fire
119 department many times and they had told him that water flow rates in this area were not a matter
120 of concern to the fire department at this time. Mr. Layton stated that if there was a true water flow
121 issue, he did not necessarily disagree with Mr. Black, however he did not believe this to be the
122 case and as such stated he felt that a decision needed to be made on this item tonight. Chairman
123 Black stated that by tabling the item staff could have more time to gather more information for the
124 board, Mr. Layton responded that he did not agree with that statement. Chairman Black asked the
125 representative for the applicant, Mr. John Thomas, if he was aware of issues with the water flow
126 rate in the area, Mr. Thomas responded that he did not know what the board was talking about.
127 Mr. Thomas added that this project had been through many permitting processes before coming to
128 the Planning and Zoning Board, and at each permitting step they received approval. Mr. Thomas
129 stated that while he is aware of some long-range plans to increase the water flow to the area, any
130 easement would be outside of the boundaries of the subdivision before the board tonight. Chairman
131 Black informed Mr. Thomas that the board had been informed by the fire department that water
132 flow rates were inadequate in the Bluewater Rise area, Mr. Thomas responded that if water flow
133 was an issue, he would have been the first to know as he is in regular contact with city staff. Mr.

134 Thomas added that he believed another 30 days would be an unnecessary delay to this approval.
135 Ms. Bullock-Mosely suggested to the board that if they wanted to considering tabling the item then
136 they should do so in a way that could provide an explanation for such action that can be found in
137 Section 15-79 of the Land Use Ordinance. Ms. Bullock-Mosely stated that it is the job of the board
138 to apply the law as it is written currently, not how they wish for it to be written in the future. Vice-
139 Chair Oakley asked Mr. Ruggieri in his professional opinion if he believed if water flow could be
140 an issue in the future for this area, Mr. Ruggieri responded that if the necessary improvements
141 were not made along the way then at some point water flow would be an issue, Mr. Ruggieri added
142 that the city has been working on this development for the past 7 years, and that Mr. Thomas has
143 been working with the city engineer, Mr. Hughes, long before this project reached the Planning
144 and Zoning Board, to prevent water flow rates from becoming an issue. Mr. Ruggieri stated that
145 this subdivision would not create any unsafe conditions for any departments within the city as they
146 have been on top of things for many years. Mr. Aluzzo asked what if the development reaches
147 completion faster than what the city expected, Mr. Ruggieri responded that the city is already
148 ahead of that as the development is in fact growing quicker that what was initially expected. Ms.
149 Dunn stated that the board needs to trust that the city is doing what they need to do, Ms. Schout
150 responded that, that is hard to do. Ms. Schout stated that the board see nothing wrong with Mr.
151 Thomas' proposed development, but that the problem the board has is with the city, as the
152 information that the board was presented with from the fire department, suggested that water flow
153 rates are inadequate in the Bluewater Rise area. Ms. Schout stated that what she is looking for is
154 reassurance from the city that there is adequate water flow in the area to prevent a nasty fire. Mr.
155 Thomas stated that the scientific models he has run through the state in getting his permits do not
156 present the same information that the board is concerned with. Mr. Oakley stated that he believed
157 for the sake of the applicant, the application before the board tonight should be acted upon, but
158 that perhaps before the next phase comes along staff could gather some further information
159 regarding a timeline for improvements to the water flow rates in the area. Mr. Aluzzo stated that
160 the board would be in the exact same position the next time a phase comes along for approval as
161 it will meet the code and therefore will need to be approved. Ms. Schout stated that at this point
162 everything is in the hands of the city and staff's ability to get the easement in. Mr. Ruggieri stated
163 that construction of the easement was due to begin by the end of 2021 or beginning of 2022, Ms.
164 Schout asked how long construction would take, Mr. Ruggieri responded that he did not know
165 how long construction of the easement would take. Mr. Dougherty stated that earlier in 2021 Mr.
166 Hughes came in and stated that the city had ample water capacity and adequate water flow, Mr.
167 Dougherty added that this was later contradicted by the fire department. Mr. Dougherty stated that
168 working in real estate he loves that there is new development, however he wants to make sure they
169 are safe. Mr. Layton stated that the conversation of water flow rates is a conversation for a different
170 meeting and that the board should determine whether or not the application before the board meets
171 the standards set forth in the Land Use Ordinance. Mr. Layton stated that before the Planning and
172 Zoning board receives an application it has already gone through departmental review, and that
173 the fire department is on of the departments that reviews the project, Chairman Black responded
174 that while he was aware of this, the departmental review committee were not aware of how quickly
175 this development would be built out. Mr. Layton stated that he would be prepared to make a motion
176 if Chairman Black was ready to call for one. Chairman Black asked Ms. Bullock-Mosely that
177 hypothetically if there was a disaster in the future and the plans were approved by the Planning
178 and Zoning Board, if the Planning and Zoning Board members could be held personally culpable,
179 Ms. Bullock-Mosely responded that she could not give legal advice to board members in their

180 individual capacities but that if a board acting on behalf of a government fairly applies a law, there
181 are protections for that entity. Mr. Ruggieri announced that the fire chief, Mr. Boyd was on his
182 way over to address the concerns of the Planning and Zoning Board. Ms. Schout stated that she
183 felt the board should act on this item to allow Mr. Thomas to retire for the evening, and then the
184 board could freely ask Mr. Boyd questions without making the applicant wait. **Mr. Layton made**
185 **a motion to recommend approval of the final plan as presented, the motion was seconded by**
186 **Ms. Dunn. A roll call was taken, and the motion passed unanimously (7-0).**

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C. Approval of draft calendar for 2022 Planning and Zoning Board meetings.

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Board Discussion: Chairman Black asked if Mr. Aluzzo had the chance to review the calendar as presented, Mr Aluzzo responded that he had reviewed the calendar and he requests that the proposed August 2nd 2022 meeting be moved as to not create a conflict with National Night Out which is always the first Tuesday in August. Ms. Schout asked which day would be better for staff, Mr. Ruggieri responded that staff had no standing meetings on a Thursday evening. Chairman Black asked for a motion to be made adopting the proposed 2022 calendar with a change to the August meeting from Tuesday 2nd to Thursday 4th August 2022. **Mr. Aluzzo made a motion to recommend approval of the 2022 calendar with a change to the August meeting from Tuesday 2nd to Thursday 4th August 2022, the motion was seconded by Mr. Layton. A roll call was taken, and the motion passed unanimously (7-0).**

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Board Discussion: Chairman Black thanked Chief Boyd for coming at such short notice. Chairman Black explained the situation at hand regarding concerns about water flow rates in the Bluewater Rise area of the city. Chief Boyd stated that he would like to first thank the Planning and Zoning Board for being proactive. Chief Boyd stated that there is a fine line between what you need and being able to work with what you have. Chief Boyd stated that while water flow rates do not necessarily meet NFPA requirements, there is water out there and the water they have access to is not going to stop them from fighting fires, it just means the fire department will have to also utilize other options. Chief Boyd stated that as the development grows there will be a need to increase water flow rates, but as of right now there are no immediate concerns. Chief Boyd stated that the NFPA requirements are more of a guideline of what it would be ideal to have, Chairman Black asked if not meeting the NFPA guideline would affect peoples fire insurance, Chief Boyd responded that it would not. Chief Boyd stated that he would not put his neck out on the line if water flow rates were inadequate. Mr Aluzzo stated that the board just wanted to make sure that the water system never gets to a situation where it is inadequate, Chief Boyd thanked the board for their concerns and desire to be proactive but stated that the people living in that area do not have any less protection than anywhere else within the city limits. Ms. Dunn asked Chief Boyd how many more phases of Bluewater Rise could be completed without construction of an easement to close the loop, Chief Boyd stated that he did not have the specific water flow rates with him right now but added that he did not think there was going to be any issues just yet. Ms. Dunn asked what right now means. Chief Boyd stated that he thinks the rest of the development could be completed without any further water flow rate concerns. Ms. Schout asked Mr. Thomas how many more phases were yet to be developed,

226 Mr. Thomas explained to the board the status of the Bluewater Rise phases. Ms. Schout
227 asked Mr. Thomas is he was aware of any other developments coming down the pipeline
228 on that side of the city, Mr. Thomas responded that he did not know of any that would be
229 within the city limits but that there may be some in Craven County that would be on the
230 county water system. Mr. Layton asked Chief Boyd if a development gets to the Planning
231 and Zoning Board, can the board assume that it has already been reviewed by the fire
232 department. Chief Boyd confirmed that the fire department reviews projects as they go
233 through departmental review, which comes before the Planning and Zoning Board stage.
234 Chief Boyd Stated that if the fire department had not seen where a second line would be
235 coming in to service the area, the fire department would have had concerns at the
236 departmental review stage, but since this line was in the works the fire department did not
237 have concerns. Chairman Black stated that he just wanted to make sure the board was
238 approving plans that are as safe as reasonably possible.

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240 **4. Adjourn**

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242 **Hearing no further discussion amongst the Board, Chair Black entertained a motion to**
243 **adjourn. Mr. Layton moved to adjourn; Mr. Dougherty seconded the motion. A roll call was**
244 **taken, and the motion passed (7-0).**

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247 The meeting was adjourned at 7.00 pm.

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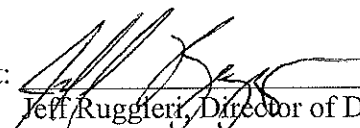
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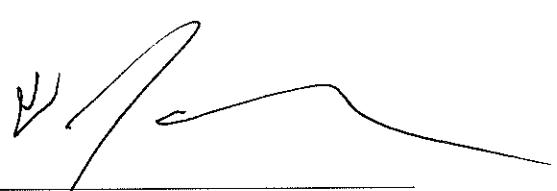
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Attest: 
Jeff Ruggieri, Director of Development Services



Don Black, Chair