

MINUTES  
OAK ISLAND TOWN COUNCIL  
PUBLIC HEARINGS & REGULAR MEETING  
NOVEMBER 13, 2018 – 6 P.M.  
COUNCIL CHAMBERS - OAK ISLAND TOWN HALL

Present: Mayor Cin Brochure, Mayor Pro Tempore Loman Scott, Council Members John W. Bach, Sheila M. Bell, Charlie K. Blalock and Jeff Winecoff, Assistant Manager/Town Clerk Lisa P. Stites, MMC, and Town Attorney Brian Edes.

Mayor Cin Brochure called the meeting to order at 6 p.m. Council member Charlie Blalock gave the invocation and led the Pledge of Allegiance to the flag.

PUBLIC HEARING I: Mayor Brochure said the purpose of the Public Hearing was to receive citizens' comments on a request for a Special Use Permit to grant vested rights for a phased development plan for a Planned Unit Development known as Pine Forest, Parcels 1870000403, 1870002303, 20400051, 18700023, and 20300017.

Mr. Edes spoke about the quasi-judicial hearing and that it would be conducted in a manner to ensure procedure and substantive due process. Mr. Ede said that Council could only consider competent evidence from witnesses sworn under oath. Each witness would be subject to cross-examination and exhibits would be entered subject to approval. Hearsay is generally excluded. Mr. Edes said they also needed to make sure everyone would be fair and impartial. He asked Council members if any of them had any personal contact with the applicant about the application, if any had one-on-one communication with the staff about the application, visited the site or had any financial interest related to the subject property; none indicated they had.

Ms. Stites administered the oath to all those who indicated they intended to speak.

Planning and Zoning Administrator Jake Vares said the applicant was Equity Associates LLC to apply for a Special Use Permit (SUP) to obtain vested rights. The property is a large tract on N.C. 211. There are varying land uses, including residential, mixed-use, commercial and conservation, and setbacks included in the phased development plan. This plan is more general, and Council will see more specific plans in the future when preliminary plats are submitted; those plans will lay out utilities, discuss parking, etc. Anything in the application that is codified would be preserved if vested rights are granted. Mr. Vares said that all of the required notifications had been issued. Mr. Vares said that there was a modification to the map provided by the applicant; a few street stubs to allow connectivity to a parcel to the north, which is required by our ordinances. Mr. Edes said that map was received, along with the staff report included in the agenda packet (pages 1-11), as Exhibit 1, without objection.

No one asked to cross-examine staff.

Councilor Bach asked if the application had been sent to department heads for review; Mr. Vares said it had not been sent to them yet. The Town's Technical Review Committee would review future plans in greater detail, as had been done for the first phase. Councilor Bach also asked about the developer's coordination with NC Department of Transportation to mitigate traffic congestion. Mr. Vares said that NCDOT would have to do a detailed traffic analysis. As to a question about whether any traffic analysis had been done for this specific project, Mr. Edes said that unless Mr. Vares could answer from his own personal knowledge, those questions should be directed toward the applicant.

Elaine Jordan, attorney for adjacent property owner Reata Real Estate, asked about the statement in the application that the use will not substantially injure the value of adjoining or abutting property. Ms. Jordan read from the application (page 6), and asked if that determination was made before it was made known to Mr. Vares that the adjacent property owners had access across the property. Mr. Vares said that it was.

Mark Brambell, for Equity Investments, said that what was here tonight was the Planned Unit Development (PUD) for the second phase of the project, for the remaining 1500-plus acres. The first phase consisted of about 500 acres, and was approved at 5 units per acre. This phase will have 2 units per acre. The same standards have been used for this second phase. This phase includes 42 percent open space, which does include 457 or so acres of wetlands and 200-plus acres of uplands. He said that this is the lowest density development he has ever put forth to a Council.

Mr. Edes showed Mr. Brambell page 6 from the agenda packet Ms. Jordan referenced earlier; he asked Mr. Brambell if this was what the applicant had stated, not staff. Mr. Brambell said that was correct. Mr. Edes noted for Council that the information in the application on the criteria being met came from the applicant, not staff.

Councilor Bach asked about page 8, specifically, the amount of open space. Mr. Brambell said that 42 percent of the development will be open space. Councilor Bach also asked about the commercial development and mixed-use areas. Mr. Brambell said for the area adjacent to Midway Road, they were looking at development in five-eight years and it was hard to say what that development would be. Mr. Brambell said that Brunswick County was lacking something similar to Mayfaire, not that this development would be just like that, but that was something that was lacking here. He said at the bottom of Midway Road, there would be the traditional box store development, restaurants, etc. The mixed-use development would have different commercial development. Councilor Bach asked if that would be more “boutique” type commercial, and Mr. Brambell agreed. Councilor Bach asked about the density in the first phase; Mr. Brambell said that was what was approved, and that it was the minimum setback, though it doesn’t mean that’s how many units would be built. Councilor Bach said that higher density didn’t seem to fit with the overall design. Mr. Brambell said that higher density in a smaller area actually allows for more open space.

Ms. Jordan asked Mr. Brambell what his position was with the development company. Mr. Brambell said he was a consultant. Answering another question from Ms. Jordan, Mr. Brambell confirmed that he was not an appraiser. Ms. Jordan asked if there were two mixed-use areas in the first phase, near Midway Road; Mr. Brambell said yes. Ms. Jordan asked Mr. Brambell if they were asking for mixed-use development closer to the road in this phase. Mr. Brambell said that there were two small areas of mixed-use adjacent to Midway Road approved in the first phase and that this phase also included two areas of mixed-use development to Midway Road. Ms. Jordan asked if there was another area of mixed-use development in the interior of the property; Mr. Brambell said that was correct. Ms. Jordan asked if the public would be invited to those mixed-use areas. Mr. Brambell said that the mixed-use toward Midway Road would be used by the public, but that the interior piece could be neighborhood commercial; that could include a pharmacy or other uses geared toward the residents there.

Ms. Jordan asked about the statement on the application about the wetlands on the perimeter, saying there was not much else on the application about the effect on adjacent properties. Mr. Brambell did not agree, and said that these were the lowest impacting uses allowed on the property. This is the back part of the project, which is why the density is lower; the higher-density development is closer to the road. Ms. Jordan asked if they would allow access across the private roads for the adjacent property owners. Mr. Brambell said that would be assuming the adjacent property owners had legal right to access, and that he

would defer to his attorney. Ms. Jordan said then the answer is that he doesn't know one way or the other. Mr. Brambell said he would defer to his attorney.

Mr. Edes asked Ms. Jordan to state her question again for the record. Ms. Jordan asked if the applicant would be providing legal access across the private streets to the adjacent property owners. Sam Franck, attorney for the application, objected as to relevancy. Ms. Jordan said that is was relevant as what was being discussed was a SUP, access for the adjacent property owners, private streets and the impact to adjacent properties. Mr. Edes asked if the adjacent property she referenced was developed; Ms. Jordan said it was not. Mr. Edes asked Ms. Jordan if she understood this application to include street stubs that abut the adjacent property that would allow for interconnectivity. Ms. Jordan said that she understood that the street stubs were proposed, but there is also a condition that is attached to it, and the existing street system does not provide for access across the street system. She said that was the issue. Mr. Edes said if the question is, is there any existing access without any future contingencies. He said he didn't want to ask her question for her but that this question may be relevant and he would allow that question to go forward. Mr. Franck objected on the basis that it called for a legal conclusion.

Mr. Edes said that he would ask a few questions that he thought would clarify things.

Mr. Edes said there were two properties to the north of the development that are not owned by the applicant, and asked Mr. Brambell if that was correct; Mr. Brambell said it was. Mr. Edes asked Mr. Brambell if, to his knowledge, there was any agreement between the applicant and either of the adjacent property owners to the north with respect to this applicant, the next parcel and the next parcel. Mr. Brambell said that he found out about this last week and that he did not know. Mr. Franck said he would reserve his opportunity to speak; Mr. Edes said his objection was noted for the record.

Ms. Jordan presented a packet of proposed exhibits (labeled R-A through R-I), and copies were distributed to the Council; the applicant had already been given a copy. Ms. Jordan said she represented Reata Real Estate. She explained what was highlighted on Exhibit A, the map that was submitted with the original application from Equity Investments (not as revised and provided with Exhibit 1). Ms. Jordan spoke about an existing road through the properties to the north. Ms. Jordan said that they didn't have a problem with the project generally, except that their strong opinion is that they have access across this property. Ms. Jordan said it was the only access to their property and that they are just trying to preserve their right for access across this private street system. She suggested that the Special Use Permit should include a reasonable and appropriate condition that access across the private streets be provided for adjacent landowners. Exhibit R-B is the County GIS map for the area. Exhibit R-C is also a GIS map that shows the entire length of the access road. Exhibit R-D is a collection of three photographs of the road used to access the Reata property. She said the pictures show that the road is not a "wagon trail." Exhibit E is a recorded plat of the Reata property, showing the ingress/egress easement. Exhibit R-F is also a map, which shows the "old tram road" and shows an access to the property; this was recorded in 1992. The remaining exhibits are also photographs (older aerial photographs, back to 1956) which show the access road. She said the road was well defined, not a cart path. She said that from an historical basis, that was their access road, and this plan could cut off access, which would injure the value of the adjacent properties. Ms. Jordan said they were asking for a condition to be put on the SUP that would protect their access. She also said that she thought good land use planning would call for that. Ms. Jordan also spoke about the road, and the direction it takes, and said the concept plan for Pine Forest would change the location of it. She said if the Town approves this plan, it would change the legal access to the Reata property. She said that her client would accept a change in location of the road, as long as they are allowed to cross the private street system. Ms. Jordan referred to the Town's Unified Development Ordinance (UDO), which states in 10.61.1.3 that access for adjoining property shall be considered in planning for the street system. Under 10.2.6 in the UDO, it says where necessary to provide access, or to

permit the reasonable future subdivision of adjacent land, rights-of-way and improvements shall be extended to the boundary of the development. Ms. Jordan said that the UDO allows for this reasonable and appropriate condition. Ms. Jordan said that the School of Government and lots of other authorities, even Ward & Smith, would say that reasonable and appropriate conditions for a SUP are perfectly legitimate. Ms. Jordan said that the fact that this is a private street system is a concern. Ms. Jordan said that if it were a public street system, it wouldn't cause as much concern. Ms. Jordan said that at Ocean Ridge, they were required to provide access to the Williamson tract, Pointe West in Holden Beach had to provide access for other owners to get to the ocean. Ms. Jordan said that if the SUP were approved without the condition, it would cause substantial harm to the adjacent property owners. Ms. Jordan said for good land use planning, in accordance with the UDO and since this is their recorded and historical access that has been there a long time, they believe they have the legal right to ask Council to impose the condition that allows access to adjacent landowners across the private streets.

Mr. Franck restated his objection for the record; he objected to Council's consideration of any testimony that was not relevant, was based on hearsay or was delivered by a party without standing.

Mr. Franck asked Ms. Jordan if her client's property was in the Town of Oak Island; Ms. Jordan said it was not. Mr. Franck asked Ms. Jordan if Council had the authority to establish an easement over his client's property; Ms. Jordan said that she believed that was a legal conclusion that Mr. Edes might be better equipped to answer. Mr. Franck said that it was a legal conclusion, but that she had testified that Council's granting of approval tonight would eliminate their legal rights, so it was well within the confines of what she had testified to already. Ms. Jordan said that it was a legal conclusion, but that her belief was that the Town did have the authority to impose a reasonable and appropriate condition. Mr. Franck restated his question, asking if Council had the authority to grant an easement over the applicant's property for the benefit of their property. Ms. Jordan said she was not asking the Town to grant access; she was asking the Town to impose a condition on the SUP that would provide them with access across the private streets included in the plan. Mr. Edes said that the question was whether Ms. Jordan believed the Town of Oak Island had the right to grant her client an easement; Ms. Jordan said that she thought the Town had the right to impose a condition that provides for access across the private streets. She said she didn't think that was an easement but it was a condition of the SUP. Mr. Edes asked Ms. Jordan if she believed Council could impose a condition on any approval that would create an easement over their property in favor of her client. Ms. Jordan said she believed they already had an easement so that the Town did not need to grant an easement. She said that the Town, in approving the SUP could impose a condition of access across the private roads. She said under good land use planning, that is something that is allowed. Mr. Edes said he understood her argument and testimony, but the question was whether the Town had the legal authority to create an easement over the applicant's property in favor of her client. Ms. Jordan said that she didn't know that the Town had the ability to create an easement; she believed that Town had the ability to allow access by adjacent owners or other owners.

Mr. Franck said that Ms. Jordan had testified that were the Town to grant approval that it would eliminate her client's access. He asked if the Town had the authority, by granting a zoning approval, to eliminate their claimed legal right to access across her client's land. Ms. Jordan said she wasn't sure she said "eliminate," though she did say it would cause problems. She said that changing the location of the road would eliminate that road. Ms. Jordan said because they have the legal right, the Town can't change that, and that was the problem with approving the SUP, because it is something different than what the legal rights are. Mr. Franck asked if any approval from Council would impact any claimed legal access they claim across the applicant's property. Ms. Jordan said it could. Ms. Jordan said that the applicant's vested rights could interfere with their legal rights to access. Changing the location of the road could create problems. She said that she thinks there are issues with approval tonight of something that is inconsistent with their access.

Referring to Exhibit R-E, Mr. Franck asked if the exhibit depicted the subject property or an easement over the subject property. Ms. Jordan said it did not. Mr. Franck said Ms. Jordan testified that they had been using the private road through his client's property and asked how long they had been using it. Ms. Jordan said that she called it a road, not a private road, and said it had been used since they had owned it, so at least since 2005, and before that as well. She said that no one challenged her when she went out there Sunday or when they had recently sent out timber crews. Asked if she thought it was a public road, Ms. Jordan said she believed that more people than just the applicant had access to use the road. She also said that she did not know what the "old county road" notation on one of the maps meant. Mr. Franck asked if that referred to the entire road or just a section of it; Ms. Jordan said she did not know.

Mr. Franck asked Ms. Jordan if she was aware of other agreements to establish private access across the applicant's land; Mr. Jordan said that she believed there were deeds that referred to a "neighborhood road" but she does not have all of that information. Mr. Franck asked to clarify that she did not have any information about any other agreements to establish a right of access; Ms. Jordan said that there may be additional evidence included in deeds in reference to neighborhood roads but that she had not had the opportunity to gather it all.

Mr. Franck referred to the exhibit again, and said it referenced an ingress/egress easement across another piece of property, not the subject property. He asked Ms. Jordan who owned that piece of land. Ms. Jordan said it was now owned by Southern Diversified. Mr. Franck asked if there were any business relationship between Reata and Southern Diversified? Ms. Jordan said there was not.

Addressing Ms. Jordan, Councilor Bach said that her argument was that this would cause harm to property owners and asked what the impact would be. Ms. Jordan said that was hard to tell as the property was not developed; it is 232 acres with the possibility of future development. She said that impeding access would injure the value of the property. Councilor Bach asked what the usage factor was for the road. Ms. Jordan said that they use the road all the way to their property on a sporadic basis as the property is vacant. Parts of the road are used very often, she said. Councilor Bach asked if there was potentially additional evidence that her clients have a right to this road. Ms. Jordan said she believed there could be additional evidence. He said that if there was additional information available, he would like to see it.

Councilor Bell asked if there was a recorded easement through the applicant's property. Ms. Jordan said that that was what they were still looking for. They have the recorded easement showing it to the Southern Diversified property and a recorded map that shows it extending all the way. Councilor Bell asked if that was a surveyor's map; Ms. Jordan said it was. Councilor Bell asked if it were a County designated road, a public road, or if it was an assumed access to a land-locked parcel. Ms. Jordan said that she didn't know that it was County road per se; though the map says "existing County road" she does not know what it was. Councilor Bell said that was hand-written, and they couldn't be sure who wrote that or when it was written. Ms. Jordan said it was on the recorded map. She said she didn't want to say it was never a County road, but that she does not believe it was designated as a County road now.

Councilor Winecoff asked if the road fell into the property of Pine Forest; Ms. Jordan said that it did. Councilor Winecoff asked if the Town of Oak Island had any jurisdiction over her client's property or if that would fall under the County. Ms. Jordan said that she was not sure if the property was in the Town's ETJ or not. Ms. Jordan said that even if it would be in the County's jurisdiction, the access through Pine Forest was what was important and before Council tonight.

Councilor Blalock asked if there was any other access to the property other than this one; Ms. Jordan said there was not. Councilor Blalock asked if there was a State law or something that said that a piece of property that is isolated that the property owners have a right to access it. Ms. Jordan said that there are at least 10 different ways to create an easement.

Mayor Pro Tempore Scott said that it does bother him that the road does appear to have a name, that it says “existing county road” and it’s been like that since the 1950s, and that she just found out about this in the last 48 hours. Ms. Jordan said that she just found out about this plan within the last 48 hours. Ms. Jordan said it was last week that she received notice about Pine Forest’s plan. Mr. Edes asked Ms. Jordan if she was contending that the hearing was not properly noticed. Ms. Jordan said that she was not. Mayor Pro Tempore Scott asked Ms. Jordan if she had not had enough time to research this; she said she had not. Councilor Bach asked how much time she would need to complete her research. Mr. Edes said that tonight was the hearing, the law required a certain amount of notice and that Ms. Jordan had acknowledged that notice requirement had been met. Ms. Jordan said that she hoped that she could complete that in a month, and she didn’t see any time sensitivity for approval. She said that she thought a deferral would be appropriate, unless their request for a condition was granted.

Mayor Pro Tempore Scott asked if it would be legal to put this off for a month. Mr. Edes said that the hearing could be recessed, but the applicant would have an opportunity to speak to that.

Mr. Edes asked about Exhibit R-E, and the easement. He asked if the easement went across property other than the subject property that is the subject of the application: Ms. Jordan said that was correct. Mr. Edes asked where the easement ran to, and if she contended that was for the benefit of her client’s property. Ms. Jordan said it did, and referred him to Exhibit R-F, which showed that the access road came out on Midway Road. Mr. Edes asked if the easement depicted on the exhibit at some point runs into what is referred to as “old tram road” that is on the subject property. Mr. Franck disagreed and said the express easement document on R-E includes a metes and bounds description that ends at the northern property line of his client’s property. Ms. Jordan said that was accurate, but that they were saying the same thing. Mr. Edes said that there was a recorded easement that runs to the border of the applicant’s property; Ms. Jordan said that was correct. Mr. Edes asked if the easement connected to what Ms. Jordan referred to as “old tram road,” and Ms. Jordan said it did. Mr. Edes asked Mr. Franck if that was geographically correct. Mr. Franck said that the easement described on R-E ends at the northern boundary of his client’s property, and that the map submitted as R-F depicts a proposed right-of-way, that would abut the actual recorded easement that extends from the northern end of his client’s property through the Southern Diversified property. Mr. Edes asked Ms. Jordan to clarify that she had located a recording that had an easement identified, as is identified on R-E; Ms. Jordan said that was correct. Mr. Edes asked Ms. Jordan if she had been able yet to find a document that reflects an easement over the old tram road across the applicant’s property. Mr. Edes asked her if she had looked for such a document; Ms. Jordan said she had been doing a lot related to this situation and that she had started looking. Mr. Edes asked Mr. Franck if he had looked for a recording that would show an easement similar to what was depicted on R-E that would be applicable to R-F; Mr. Franck said he had and that he also obtained a title insurance policy for the subject property to review it and look for exceptions that there might be such a document. Mr. Edes asked Mr. Franck if he was able to locate any easement other than the one depicted on R-E; Mr. Franck said he had not. Mr. Edes asked Ms. Jordan if she understood that what was presented tonight was a conceptual plan; Ms. Jordan said she did. Mr. Edes asked Ms. Jordan if the condition stated that the approval was contingent on any development not interfering with any legally-recognized rights of ingress or egress, would that satisfy her client’s concern. Ms. Jordan said that she was not sure how they could do that; if their contention was that the access road is old tram road, basically, that was inconsistent with the SUP conceptual plan and she could see that creating some problems. Mr. Edes asked if she would agree that there is a dispute about whether that road is legally-recognizable; Ms. Jordan said that apparently Mr.

Franck believed there was not access. Mr. Edes again asked if the language he mentioned wouldn't satisfy her client. Ms. Jordan said that she didn't think so because the streets were private, interconnectivity and access to adjoining parcels was noted in the Town's UDO, and that she was concerned about the configuration being inconsistent with a potential legal access. Mr. Edes said this was a concept plan, not a site-specific plan; Ms. Jordan said that the concept plan still had to have some basics, and if the whole street system would have to be changed to accommodate the condition, then you really don't have the concept plan being approved. Mr. Edes asked if she would agree that she was asking the applicant to bear responsibility for ensuring access to her client's property if that legal right didn't already exist. Ms. Jordan said that they had to do this in many other situations (Ocean Ridge, Pointe West). With respect to Ocean Ridge Phase 5, Mr. Edes asked if it was her testimony that her client provided an easement to an adjacent property owner for ingress and egress; Ms. Jordan said that her testimony was that there was a condition imposed that they have to provide access in some area across the streets. Mr. Edes asked if they granted an easement; Ms. Jordan said there was no need to because the County imposed it as a condition. Mr. Edes asked if she was saying that access needed to be provided on private streets; Ms. Jordan said that was correct. Mr. Edes asked what documentation showed that condition was met; Ms. Jordan said it was just part of the approval. For Ocean Ridge Phase 4, Ms. Jordan said that a map had to be recorded to show where the road would be located. Ms. Jordan said that was a private road across property they owned. Mr. Edes asked if the applicant for this SUP hadn't offered to include road stubs to their property. Ms. Jordan spoke further about the Ocean Ridge property. Mr. Edes asked for this application, would the street stubs abut her client's property; Ms. Jordan said that it would connect to the Southern Diversified property. Mr. Edes asked what legal authority the Town would have to mandate that her clients had the right to go across the applicant's private streets. Ms. Jordan said that it could be a reasonable and appropriate condition of the permit approval. Mr. Edes asked Ms. Jordan if her client would not be satisfied with a condition that stated "provided no future development shall interfere with any legally-recognized easements or rights of ingress or egress." Ms. Jordan said that her concern was that the conceptual plan was inconsistent with that. Mr. Edes asked Ms. Jordan if she would agree that this Council was not the appropriate venue to adjudicate whether her client had a legally-recognized means of ingress or egress through adjacent private property; Ms. Jordan agreed.

Councilor Blalock asked if what she was asking for was access through the Pine Forest development; Ms. Jordan said that she believed they already had it. Councilor Blalock asked if the Pine Forest developers opposed this; Ms. Jordan said that they had had very limited discussion. Councilor Blalock asked if it would change things if both properties were in the Town; Ms. Jordan said she didn't think so. Councilor Blalock said what he had heard a lot of was "I don't know" and wondered how a decision could be made with so much unknown.

Councilor Bell asked Ms. Jordan if they had the legal right to access through Pine Forest, why should the Town need to impose a condition; Ms. Jordan said that it was because on the conceptual plan, the location had been changed, and because the roads were private. Councilor Bell asked if it was the legal right of Council to decide whether they have legal access through a piece of property. Mr. Edes said that Ms. Jordan had already testified that this would not be the appropriate venue to adjudicate the dispute between the two property owners as to whether one has a right to ingress and egress over the other one. Councilor Bell asked Ms. Jordan if a condition that anything that was legal would not satisfy her client; Ms. Jordan said she didn't think it could. She said that more research needed to be done regarding the legal issue. She asked why, from a land use planning position, the Town would not want to provide for traffic flow, connectivity, etc. She said if they weren't private streets, she didn't think they would have an issue.

Council took a recess from 7:32 p.m. to 7:44 p.m.

Kit Burgin, present for Southern Diversified, said that they access the property several times a year to manage timber. He said their concern is continued access to the property. He said at times they have asked permission from the landowner, or if the gate was open, they simply accessed the property. Mr. Edes asked if their access to the property was for logging activities. Mr. Burgin said it was a number of activities for forest management. Mr. Edes asked if he had testified that his clients had asked for permission to access the road, referred to as “old tram road” and how recently they had done so; Mr. Burgin said it was two months ago.

Mr. Franck said that Reata Real Estate has an access problem and that they are asking Town Council to solve it for them. He said it was not Council’s job to deal with their access issue and that there was nothing to do with Council’s approval of the SUP tonight that would have any impact on whatever claimed legal right they have to access. He said his client was ready to work with them with regard to whatever their legal right to access is. He said there was a path through his client’s property, and that they were aware of that. The rights of others to use it are in question. He said he had not identified any express easement on the public record that establishes a perpetual right to the type of access that Ms. Jordan was asking for. Mr. Franck said there was also not a connectivity issue here as the property was not in the Town of Oak Island, was not developed and there was no development plan proposed for it. If there were a public road that abutted his client’s property to the north, or there were an existing development, there would be a compelling topic to discuss interconnectivity, but there is not. Mr. Franck said he thought Council understood clearly that what this was about was the uncertainty of the access path for a neighboring landowner through our client’s property is an issue for them, and they are trying to get you to solve that problem for them. Mr. Franck said the condition Mr. Edes proposed was fine with his client. To the extent that there was an established legal right to enter their property, they would have to honor it, even if Council did not impose that condition. He said there was nothing Council could do with its approval that would disrupt a legal right to access or create a legal right of access.

Ms. Jordan asked Mr. Franck if he, himself, had done a title search of the applicant’s property; he said his firm had. She asked if they had done a title search on the Southern Diversified property or the Reata Real Estate property; he said, to his knowledge, they had not. She asked if they had done a 30-year search on the applicant’s property. Mr. Franck said that the title examination they did was based on an existing title search policy issued in 2014, and an update therefrom. Ms. Jordan said they hadn’t gone back to the 1950s; Mr. Franck said no, but said that her question implied there was no information in the 2014 policy. Ms. Jordan asked Mr. Franck if he was relying on a title policy that he had not introduced into the record; he said that was correct.

Councilor Winecoff asked if Pine Forest was in the Town of Oak Island; Mr. Franck said it was. Councilor Winecoff asked if the Town maintained any of the roads in Pine Forest; Mr. Franck said he did not believe so. Councilor Winecoff asked if another development using their roads would impact them, and what kind of impact study could be done. Mr. Franck said it would be open-ended. He said that use of the path to this point had been periodic use by logging trucks, but wondered what potential use would include -- a development with 300 units, logging trucks, construction equipment. The potential impact of imposing an access easement that does not exist today on their land would be substantial.

Mr. Brambell, for Pine Forest, said that Ms. Jordan and her client have used this opportunity to hijack what they were here for tonight, which was to approve this development permit. He said that this development nor any development would stop legal access across the property if it is proven. He said he was asking Council to approve the plan on its merits. He said that if Ms. Jordan and her client wanted to meet with his clients, he would ask if they would be willing to participate in the costs for building the roads. He said that this was a play to get something for nothing. He asked Council to approve the SUP.



Ms. Jordan asked if her client was willing to participate in the cost of building and maintenance of roads, would there be any issue with the condition they requested. Mr. Brambell said that once her client proved they had legal access, they would work with them.

Mr. Edes reviewed the testimony received and the exhibits entered.

**Councilor Bach made a motion to close the Public Hearing at 7:59 p.m. Councilor Winecoff seconded the motion and it passed unanimously.**

PUBLIC HEARING I ACTION: Mr. Edes reviewed the criteria that must be met for approval of the SUP. Mayor Pro Tempore Scott said it seemed like whichever way Council voted this would end up in court. Mr. Edes said that that may be, but that he did not think it was contested that this Council was not the proper venue to adjudicate legal right of access for ingress and egress. That was agreed to by one of the opponents to this application. Mr. Edes said in his opinion, this Council cannot grant an easement on private property; that is to be worked out between the private property owners. If a property is landlocked, he believed the North Carolina General Statutes addressed that situation and that's for a Superior Court to decide. If Council is inclined to approve the SUP, he strongly advised adding a condition that the approval does not authorize the applicant to in any way disturb, or interfere with or extinguish, a legally-established right of ingress or egress over the applicant's property. He said he thinks that addresses the concerns expressed.

Councilor Bach said that this dispute, while intriguing, was not to be resolved by this Council. He said that it hinges on whether a potential injury should be considered, and that was a slippery slope. Councilor Bach suggested tabling this until the parties have a chance to resolve this.

For the record, Mr. Edes asked Mr. Franck what his position was on tabling this matter. Mr. Franck said that they respectfully ask Council to consider this application tonight. He said tabling it would serve no purpose other than to potentially give the neighboring landowner who is trying to leverage a better right of access an angle to do so, and it would set Council up to have the same dialogue in a month. Mr. Franck said the question of access has nothing to do with Council's approval of the permit.

**Councilor Winecoff made a motion to approve the Special Use Permit for a phased development plan and to adopt the associated Findings of Fact and the condition that the approval does not authorize the applicant to in any way disturb, interfere with, extinguish, or otherwise impair any adjacent property owner's legally-recognized rights of ingress or egress over the applicant's property that is the subject of this application. Councilor Bell seconded the motion and it passed 4-1, with Mayor Pro Tempore Scott and Council members Bell, Blalock and Winecoff in favor and Councilor Bach opposed.**

PUBLIC HEARING II: Mayor Brochure said the purpose of the Public Hearing was to receive citizens' comments on a request to amend the Oak Island Unified Development Ordinance Section 10.19.6; to detail the parking requirements for multi-family dwellings and mainland side residential dwellings.

There were no public comments. **Councilor Blalock made a motion to close the Public Hearing at 8:07 p.m. Councilor Winecoff seconded the motion and it passed unanimously.**

PUBLIC HEARING II ACTION: Mr. Vares gave a brief explanation of the requested text amendment, saying it would create different parking requirements for single-family development and multi-family development on the mainland. Answering a question from Councilor Bach, Mr. Vares said that the maximum height limit on the mainland is 55 feet, with conditions.

Councilor Bach asked what other land use requirements are different between the island and the mainland, other than height limits. Mr. Vares said that houses were allowed to be larger on the mainland, the signage rules were different, etc. He said the needs and characteristics on the mainland are very different from an oceanfront property, or from a lot in the wooded section. Councilor Bach asked about how many fewer spaces there would be if the amendment were approved and asked what data was being used to make this recommendation. Mark Brambell, with the Pine Forest developers, said that apartment buildings typically don't use all the parking spaces. He said what was being presented tonight was the standard Brunswick County used. Councilor Bach asked if this was predicated on the occupancy rate. Mr. Brambell said it was a bit like a shopping mall at Christmas - occasionally there will be times when everyone shows up at once. He said there are a lot of factors which affect parking needs.

Mayor Pro Tempore Scott said that he thought our height and parking requirements had served us well and he thought we should keep them.

**Councilor Winecoff made a motion to adopt the amendments to Sec. 10.19.6 of the Unified Development Ordinance as presented and to adopt the associated plan consistency statement. Councilor Bell seconded the motion and it passed 3-2 with Council members Bell, Blalock and Winecoff in favor and Mayor Pro Tempore Scott and Councilor Bach opposed.**

PUBLIC HEARING III: Mayor Brochure said the purpose of the Public Hearing was to receive citizens' comments on a proposed amendment to the Oak Island Unified Development Ordinance text in Section 6.3.6. R-6MH Higher Density Residential District; to clarify the zoning district description to have it accurately match the permitted uses.

There were no comments. **Councilor Winecoff made a motion to close the Public Hearing at 8:19 p.m. Councilor Bell seconded the motion and it passed unanimously.**

Mr. Vares said this was staff initiated and that it was clerical in nature. He said that this amendment would make the definition match the language on the Table of Uses; it should have been changed with adoption of the UDO.

PUBLIC HEARING III ACTION: **Councilor Bell made a motion to approve the amendment to Section 6.3.6 of the Unified Development Ordinance as presented. Councilor Bach seconded the motion and it passed unanimously.**

PUBLIC HEARING IV: Mayor Brochure said the purpose of the Public Hearing was to receive citizens' comments on proposed amendments to Secs. 32-31.1, 32-72, and 32-76 (Vegetation).

Ms. Stites noted that Lee Butzin had provided comments in writing, and she would incorporate those into the Minutes.

Lee Butzin, 121 SE 21<sup>st</sup> Street, written comments provided as follows: *We have a stormwater problem. Through evapotranspiration and filtration, a wooded lot absorbs 90 percent of rainwater. To the extent that trees are cut, we reduce this 90 percent. An improved tree ordinance is a first step. Most Oak Islanders want an improved ordinance! Some builders already comply; all should.*

**Councilor Bell made a motion to close the Public Hearing at 8:21 p.m. Councilor Bach seconded and the motion passed unanimously.**

**PUBLIC HEARING IV ACTION: Mayor Pro Tempore Scott made a motion to approve the amendments to Secs. 32-31.1, 32-72, and 32-76 as presented, to adopt the associated plan consistency statement and to amend the Fee Schedule as presented. Councilor Bach and Councilor Blalock seconded the motion and it passed unanimously.**

**PRESENTATIONS, PROCLAMATIONS AND RECOGNITIONS**

1. End-of-season Beach Ambassadors Report – Skip Cox: This presentation will be rescheduled.
2. FY 2017-2018 Audit – Matt McLean with S. Preston Douglas & Associates: This presentation will be rescheduled.

**ADJUSTMENT/APPROVAL OF THE AGENDA**

Councilor Bell said the presentations would be scheduled for the December meeting. Councilor Bach removed Item 6, Approval of Adding Three Employees to the Public Works Department, from the Consent Agenda. **Councilor Bell made a motion to approve the Agenda as amended. Councilor Bach seconded the motion and it passed unanimously.**

**PUBLIC COMMENTS - GENERAL TOPICS & AGENDA ITEMS**

Gerald Hardee for the Beach Preservation Trust Fund Advisory Board: Mr. Hardee said their Board had three new members and one vacancy. The group is working on new projects. He encouraged everyone to take the survey the Beach Preservation Society recently published.

Karen Fullerton, 142 NW 13<sup>th</sup> Street: Ms. Fullerton gave an update on the Sergei Foundation Dog Games event held this past weekend. She said that it was a very successful event for the foundation and the community. She said she estimated more than 700 people attended, and said that people came from out-of-state to participate. There was good, positive feedback, and people were complimentary of Oak Island being dog-friendly. She said that she hopes this can be an annual event and that they can continue to partner in coming years.

Karl Busch, 2608 E. Yacht Drive, written comments provided as follows: *Congratulations and thank you to the Oak Island Town Council and Police Department for the recent installation of half a dozen stop signs on East Yacht Drive! For a long time, Yacht Drive has been one of the least safe roads on Oak Island – for pedestrians, bicyclists, dog walkers, and residents - even just backing out of your driveway or picking up the mail have become truly hazardous. While it is true that Yacht Drive will always be a major thoroughfare for east west travel on our island, it is also true that it will always be a neighborhood street for the residents who live along its picturesque path. Unlike Oak Island Drive, with drainage ditches, and without sideways, Yacht Drive is not a road designed for speed. With the recent piling of storm damage trees and materials along the side of the road it was made even more hazardous, and yet the abuse of the 35 mph did not stop; visitors, boaters, commuters, contractors, and yes even residents did not slow down, even when several were observed to careen into the damage piles leaving branches and debris in their wake. So, thank you to all who participated in making the decision to install the stop signs, your action has achieved the result intended, the number of overall vehicles and the number of speeders has been reduced, and all of us who use Yacht Drive as not just a thoroughfare can feel a little less like we may be risking our lives every time we walk to our mailbox. I can only hope the successful results of your decision are remembered next spring when the Barbee Bridge reopens.*

**COUNCIL REPORTS (MAYOR AND COUNCIL)**

Councilor Bach said he, Councilor Blalock and staff had met to discuss details for a Request for Proposals for paid parking. He also thanked Council for supporting the tree ordinance amendments and said he hoped it would result in the preservation of more trees.

Councilor Blalock said that he had been opposed to paid parking, but that he is willing to listen and to consider it if the numbers match.

Councilor Winecoff said that he had attended the NC BIWA conference today and that learned that there is grant money available for beach nourishment. He also said that it was possible municipal bond ratings could be affected in the future if municipalities do not have a plan for sea level rise.

#### REGULAR MEETING:

##### I. CONSENT AGENDA

1. Approval of Minutes
  - a. October 9, 2018 (Public Hearings & Regular Meeting)
2. Approval of Proposal from Andrew Consulting Engineers for Additional Construction Administration for Phase I of the Pier project
3. Approval of Resolution Declaring Certain Property Surplus and Authorizing its Disposal (2000 Spartan E-One Fire Engine)
4. Approval of Budget Ordinance Amendment to Transfer \$90,000 from Capital Reserves for the Purchase of Computer Equipment for Police Department Patrol Cars
5. Authorization for Purchase of Stormwater Equipment
6. ~~Approval of Adding Three Employees to the Public Works Department~~: removed from Consent Agenda.

**Councilor Bell made a motion to approve the Consent Agenda as amended. Councilor Blalock seconded the motion and it passed unanimously.**

##### II. ITEMS REMOVED FROM CONSENT AGENDA, IF ANY

Approval of Adding Three Employees to the Public Works Department: Councilor Bach said that it seemed we had enormous need, but he was concerned that we were looking at this outside of the whole budget. He said that he was troubled by that approach to the budget. Mr. Kelly said they had looked at the workloads over the last three years. There are more things that staff are expected to do, and the other option is to hire a contractor to get some of the work caught up. Councilor Bach said that he was objecting to the process, not the goal. Mr. Kelly said there are three people who are supposed to be dedicated to stormwater but are called upon to do other things for Public Works; hiring these employees will allow the stormwater employees to concentrate on stormwater work. Councilor Winecoff said that the worst thing you could do is let people go because there wasn't money to pay for them. He said that's where the Town was when he came into office. He also said that now we are to the point of being prosperous. He said our ditches need to be cleaned out, and if we wait until June or July, and we have another big storm, we'll be back in the same predicament. He said it was their duty to make sure we have staff to do the job. **Mayor Pro Tempore Scott made a motion to approve the additional positions and associated expenditures for three full-time employees in the amount of \$75,000 within the Public Works Department. Councilor Winecoff and Councilor Blalock seconded the motion and it passed unanimously.**

##### III. ADMINISTRATIVE REPORTS

1. Town Manager: Mr. Kelly said the Shallow Draft Inlet Permit application is still under review; it could be approved in January 2019. The Corps' Lockwood Folly Inlet dredging project bids were over budget, and the Corps is negotiating with one of the contractors. The dune monitoring requirement was completed. The post-storm surveys have been completed. The emergency dune mostly held, and it looks like we lost about half the dune volume; we will apply to FEMA for replacing that sand. We are talking with FEMA about the Sea Turtle project, and hope that project will happen next winter. Moffatt & Nichol has begun doing geotechnical work for the

master beach nourishment plan. Staff is working on RFPs for operations of the Pier Complex. Our stormwater engineer and Public Works Superintendent will be retiring soon. We are going to use a management consulting group for assistance in hiring for these positions and Police Chief. Mr. Kelly said he is working with the Interim Chief to evaluate operations, staffing, policies, equipment needs, vehicles, etc. Bringing back a Community Resource Officer is also being considered. Those evaluations should be completed by the end of January. The latest road paving recommendation study has been given to Council for review.

- a. Department Reports are attached and are hereby made a part of these Minutes.
2. Town Attorney: Mr. Edes did not have a report.

IV. OLD BUSINESS (none)

V. NEW BUSINESS (none)

**Councilor Bell made a motion to adjourn at 8:43 p.m. Councilor Blalock seconded the motion and it passed unanimously.**

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Cin Brochure, Mayor

Attested: \_\_\_\_\_  
Lisa P. Stites, MMC  
Assistant Manager/Town Clerk

*Clerk's Statement: Minutes are in compliance with the open meetings laws. The purpose of minutes per the open meetings laws is to provide a record of the actions taken by a Council or a Board and evidence that the actions were taken according to proper procedures. All actions of the Council are recorded in the official minutes. Not all portions of Town of Oak Island meetings are recorded verbatim in the official minutes, with general discussion items, reports, presentations, and public comments being paraphrased or summarized in many instances. Public comments in writing should be submitted to the clerk via hard copy, electronic mail, or other means so as to ensure an exact verbatim account. The Town of Oak Island provides full coverage of meetings on Government Channel 8 so that the Citizens and the Public may view and listen to the meetings in their entirety.*