



TOWN OF SOUTHERN SHORES  
**PLANNING BOARD REGULAR MEETING**

5375 N. Virginia Dare Trail, Southern Shores, NC 27949

Phone 252-261-2394 / Fax 252-255-0876

www.southernshores-nc.gov

**PITTS CENTER**

**Monday, October 16, 2023 at 5:00 PM**

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## MINUTES

1 **Call Meeting to Order**

2 Pledge of Allegiance

3

4 **Present**

5 Chairperson Andy Ward

6 Vice Chairperson Tony DiBernardo

7 Planning Board Member Collins

8 Planning Board Member Lawler

9 Planning Board Member Finelli (ETJ)

10 Planning Board Member (alternate) Michael Zehner

11 Town Attorney Lauren Arizaga-Womble

12

13 **Approval of Agenda**

14 **Motion** made by Vice Chairperson DiBernardo to approve the agenda as presented, Seconded by  
15 Chairperson Ward. The motion passed unanimously.

16

17 **Approval of Minutes – September 18, 2023 Meeting**

18 **Motion** made by Planning Board Member Collins to approve the minutes of September 18, 2023 as  
19 corrected, Seconded by Planning Board Member Lawler. The motion passed unanimously.

20

21 **Public Comment**

22 The following residents spoke in opposition to SUP-23-01, a Special Use Permit for a mixed-use  
23 group development of commercial and residential buildings at 6195 N. Croatan Hwy.

24

- Matthew Quick (for Matt Huband)

25

- Dixie Kirby -321 N. Dogwood Trail

26

- Robin Morgan-57 Deerpath

27

- Richard Filling-131 Crooked Back

28

- Elizabeth Ryan- 19 Spindrift

29

- Steve Hotchkiss-263 Hillcrest Drive

30

- Katie Morgan-101 Meadow Crossing, Colington

31

- Mike Magnum-8 Foxwood

32

- Andrea Windle-Village of Kitty Hawk

33

34 **Old Business**

35 SUP-23-01, a Special Use Permit application submitted by Cathleen M. Saunders, P.E. on behalf of  
36 Ginguite, LLC for a mixed-use group development of commercial and residential buildings at 6195 N.  
37 Croatan Hwy.

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41 Applicant's Representatives present: **Ashley Honeycutt Terrazas, Parker Poe (law firm)**  
42 **Michael W. Strader, Jr., P.E., Quible and Associates**  
43 **Erin Dunigan, SAGA**  
44

45 Ashley Honeycutt Terrazas with Parker Poe provided an opening statement to facilitate the special use  
46 permit process laid out in section 36-30 of the Town of Southern Shore zoning ordinance on behalf of  
47 the property owner.  
48

49 She stated the team of experienced professionals have been planning this project for a year and  
50 her first objective is to just give a 30,000-foot summary of the vision. This is a mixed-use project  
51 consisting of two buildings which include thirty-six apartments and approximately 16,000  
52 square feet of commercial space, both office and retail in a location that is zoned commercial.  
53 For commercial and multifamily use there is easy access from the highway, a multi-use path  
54 along the highway so folks can get to it by foot and bicycle, as well as adjacent to other  
55 commercial amenities along the North Croatan Highway. The idea for this this project is that it  
56 would be a quality development with a handful of luxury apartments, commercial amenities,  
57 and public spaces that can be enjoyed by any residents or visitors that want to come. There will  
58 be quality architectural materials, walking paths around the site, plazas, and patios for public  
59 gathering. Putting these building types, the commercial and the multifamily residential together,  
60 is more expensive than a purely apartment development, which would have been allowed here  
61 without that special use permit process. A purely commercial development at the outset  
62 would not have required the special use permit process. The applicant genuinely thinks that a  
63 mixed-use project is going to be a better project. Residential and commercial uses together in  
64 the development reduces vehicle miles traveled by residents as they can live, work, and use  
65 commercial amenities without driving. This very large investment using mixed use group  
66 development is not just outright permitted by right. A three-story apartment building or wings  
67 built 15 feet from the property line with no vegetative buffer are permitted by right on this  
68 property and have been for many years. The zoning ordinance amendment that that has been  
69 mentioned previously merely allows for these uses to be mixed into one project and that is  
70 what the Town Council will be called upon to decide. The second objective is to help the  
71 Planning Board get all the information about the project out into the open, so that they have all  
72 the relevant information that it needed to make a recommendation to the Town Council as  
73 required by section 36- 3002b. The type of development proposed is new for this area and it is  
74 understandably folks have a lot of questions about it and we want to be fully transparent. Many  
75 of the questions at the last meeting and sent to our team after the meeting were very technical  
76 questions about the plans, things that had already been reviewed by the town's technical  
77 review staff and several state agencies. Additional materials for the board's review were  
78 forwarded ahead of this meeting. This is not the last stage of review and technical scrutiny for  
79 this development. The town of Southern Shores development ordinance requires a laundry list  
80 of additional state and federal permits that the applicant must obtain prior to being able to  
81 build a development like this and page two of the staff report more specifically identifies and  
82 lists the additional permits that will be required. The applicant 100% agrees with these  
83 conditions. A list of the permits are as follows:  
84

- 85 ○ Soil Erosion Sedimentation Control Plan Permit for land disturbance over 1 acre from the  
86 NCDEQ;
- 87 ○ Stormwater Management Permit from the NCDEQ;
- 88 ○ NCDOT driveway permit and/or encroachment application for work in a State right-of-  
89 way;

- 90 ○ Modification to Permit No. WQ0017224 from the NCDEQ (tentative wastewater approval
- 91 received);
- 92 ○ CAMA Permit from the NCDEQ;
- 93 ○ Review and approval of potable water distribution system modifications or extensions by
- 94 the Dare County Water Dept. (tentative approval received);
- 95 ○ Receipts for payment of water connection fee from the Dare County Water Department;
- 96 ○ Water Main Extension Permit from the NCDEQ.
- 97 ○ Lot Disturbance/Stormwater Management Permit from the Town; and
- 98 ○ Approval from the Dominion Energy Transmission Group.

99

100

101 All these regulations protect the environment users of the development and neighboring  
102 property owners, and the applicant agrees with this condition, and they will go through that  
103 additional scrutiny and will obtain those permits at the next stage of the development review  
104 process before anything could be built. Even though the plan that this team submitted that was  
105 discussed last month did meet all those technical requirements of the zoning ordinance,  
106 including building dimensions setbacks, buffers, number of parking spaces, impervious surface  
107 requirements, storm water management, public utilities access, grading, wastewater, etc., the  
108 applicant's team heard the concerns from the board, from the community, and the  
109 representatives from the church. The applicant would like to propose an amendment, an  
110 amended plan to mitigate those concerns that Michael Strader from Quible and Associates will  
111 discuss. He will also answer follow-up technical questions received from the planning board.  
112 The applicant would ask for the board to consider the revisions and make its recommendation  
113 this evening.

114

115 Michael Strader introduced himself and provided a brief introduction to his qualifications. He  
116 stated these are the plans for the project and they stand behind them and designed the project  
117 in accordance with the local and state requirements.

118

119 Planning Board Member Zehner asked a procedural question, if the applicant was seeking just a  
120 use permit or site plan review approval as well? Michael Strader stated their understanding is a  
121 special use site plan.

122

123 Planning Board Member Zehner stated he is asking because it's not checked off on the  
124 application and the reason for asking is for the board's benefit and the public. If the applicant is  
125 just seeking a use permit, they may not lock themselves into the site plan, whereas if it's a use  
126 permit, they're going to have to come back for site plan review approval.

127

128 Planning Board Member Zehner felt that there were so many things that needed to be worked  
129 out and it may just be easier to separate the two. He further stated he thought it was important  
130 for the applicant to clarify. Michael Strader stated he asked that in the beginning but was told by  
131 staff that to review a special use permit it needed to have the site plan design package so that  
132 that use could be thoroughly reviewed.

133

134 Planning Director Wes Haskett stated the application is a brief one-page application with boxes  
135 to check. A special use permit goes through the Planning Board and Town Council through a  
136 quasi-judicial hearing, as does a site plan review if it wasn't a special use permit application, so  
137 he considers a special use permit application check on the application to be acceptable.

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Town Attorney Lauren Arizaga-Womble agreed that a special use permit review needs to have the site plan. She did not feel that use could be approved without knowing the site plan, and checking the one box special use permit is the appropriate box to check. She further stated she did not think that it could be separated out, both the Planning Board and the Town Council needs to know what the actual plan entails to issue a special use permit with or without additional conditions to meet the standards and the ordinance.

Planning Board Member Zehner stated the ordinance seems to describe that you have application submission requirements for use permit that are the same as for a site plan but that they're two distinct processes.

Applicant Attorney Ashley Honeycutt Terrazas presented a digital copy of the submitted application in which both the site plan review box and the special use box were checked. It was clarified that two boxes were checked.

Planning Director Haskett stated regardless of what is checked on the application, it is the same process.

Planning Board Member Zehner stated that at the last meeting the board shared concerns and are sharing concerns again at this meeting about the compliance of the site plan. There may be different questions that you can separate out for the use permit versus the site plan.

Applicant Attorney Ashley Honeycutt Terrazas stated the special use permit and site plan are both approved by the Town Council. The revisions that their team would like to talk about tonight would be amended conditions to review, and if acceptable to the Planning Board, the applicant will officially submit a full set before those are reviewed by the Town Council.

Chairman Ward asked to clarify if this was a preliminary site plan or an official site plan.

Applicant Attorney Ashley Honeycutt Terrazas stated what was submitted previously was a full sealed site plan and when this goes through this process, changes are made, and those changes will be made and then move on to the Town Council.

Michael Strader stated the applicant was in agreement with all conditions spoken about during the previous meeting, except for one. He asked the board to allow him to present the adjustments.

1. *Dominion Power line 70' easement-copy of application and written formal response.*

*Response: Please refer to the attached pdf containing a copy of the Dominion Encroachment Agreement application package that was submitted for review. Please refer to our July 31, 2023 response to Mr. Anlauf's 5. Transmission Line Easement comment. We met virtually with Dominion and obtained some assurance that the requested encroachments would be permissible. Dominion stated that they would reserve their final determination until after the Town review, at which point final plans*

185           *could be utilized to complete their review for issuance of an EA. This comes at the next*  
186           *stage of development.*

187  
188 Planning Board Member Finelli (ETJ) was surprised to see that this had not come up earlier but  
189 was pleased to see a formal application had been submitted to Dominion Power.

190  
191 Chairperson Ward clarified that there is still a lot of uncertainty with approval from Dominion  
192 Power.

193  
194           2.       *Access easement for Landing Trail (was not in the supporting deeds from*  
195           *applicant)*

196  
197           *Response: Landing Trail is located within the subject property, so the Applicant does not*  
198           *need an access easement. Rather SSL has an access easement to utilize Landing Trail,*  
199           *which is denoted in the submitted site plan as being recorded in P.C. F, SI 413-*  
200           *414. A copy of the recorded plat is attached for reference.*

201  
202 Chairman Ward stated that has to effect legally down the line and the board is opposed to any  
203 kind of access up Landing Trail and back to the West on the applicant's property.

204  
205 Vice Chairperson DiBernardo stated this was discussed at the prior meeting.

206  
207 Applicant Attorney Ashley Honeycutt Terrazas stated her applicant is the grantor of the access  
208 easement and Southern Shores Landing is the grantee, they (Southern Shores Landing) would  
209 have to terminate their access rights to this access drive that's not on their property.

210  
211 Michael Strader stated at the last meeting the applicant would also probably be amiable to  
212 more substantial changes as far as the access road (use of breakaway bollards). They would not  
213 just arbitrarily cut them off.

214  
215 Chairman Ward stated the plan shows this as a construction entrance and that is ludicrous to  
216 think that that little road would handle that kind of traffic. The board would most likely  
217 recommend another construction access as a condition.

218  
219           3.       *Review dimensional standards in the Mixed Use Group Development ordinance,*  
220           *specifically items U) and (k).*

221  
222           *Response: It is acknowledged that TOSS Ordinance Section 36-207(c)(11)(j). references a*  
223           *50 ft boundary from residential districts. It is further acknowledged that*  
224           *(k) in the same Section states that when a mixed-use group development abuts a*  
225           *residential zone, a buffer of dense vegetative planting or natural vegetation is required.*  
226           *It is important to understand that the eastern adjoining property is zoned Commercial*  
227           *(C). Therefore, based upon the TOSS Ordinance, no 50 ft boundary nor buffer of dense*  
228           *vegetation is required under the Ordinance. Under the plain language of these*  
229           *provisions, the use of the adjacent property is immaterial; only the zoning district of the*  
230           *adjacent property dictates buffers. Even the errant Town Zoning Map, which does not*  
231           *reflect the last zoning ordinance for the SS Landing site, Ordinance No. 2005-04-02 (see*  
232           *attached), that has been referenced during earlier conversations illustrated the*

233 residential (RS-10) zoning district approximately 190 ft further east of the eastern  
234 boundary. So even if this were the correct map, under the UDO zoning boundary  
235 interpretation rules in §§ 36-25 and 36-26, the SS Landing parcel is split-zoned (see  
236 below), with the General Commercial zone portion of the SSL development adjacent to  
237 the Ginguite project. This means that (j) and (k) setbacks and buffers are not technically  
238 required on this property line.

239  
240 i. "Boundaries indicated as parallel to or extensions of [platted lot lines] shall be so  
241 construed. Distances not specifically indicated on the official zoning map shall be  
242 determined by the scale of the map." UDO  
243 § 36-26(5).

244  
245 Applicant Attorney Ashley Honeycutt Terrazas stated even though it is not required, the  
246 applicant is trying to go above and beyond what is required.

247  
248 Chairperson Ward stated he reserves the right to circle back to this issue, as it is the meat of  
249 what is going on here tonight.

250  
251  
252 4. Review 36-207(d)(8) for buffer language.

253  
254 Response: Again, TOSS Ordinance Section 36-207(d){8} references a "residential zone,"  
255 not a residential use. Based upon the Ordinance, no buffer is required along the eastern  
256 boundary given that both parcels are commercially zoned.

257  
258 Even so, we have listened to the citizen concerns that we heard at the Planning Board  
259 meeting and have discussed in subsequent conversations with neighbors, and to more-  
260 closely align with the Town's Land Use Plan Goal 2, Policy 2, Action Item 2-b, and Policy  
261 26 are pleased to report that the Applicant has agreed to make significant revisions to  
262 the layout and design of the proposed development in order to accommodate neighbor  
263 requests regarding a natural buffer. These updates have already been well-received by  
264 the entities that have agreed to meet and discuss the project.

265  
266 It is important to acknowledge that "permitted uses" within a commercial zoning district  
267 such as a large retail store or even shopping center could be developed right up to the 15'  
268 minimum building setback line, and not be required to provide any buffer. But Ginguite,  
269 LLC would like to be good neighbors, while still being able to develop a unique mixed-use  
270 project that we have already invested so much in planning, and that is permitted on the  
271 site with a special use permit.

272  
273 This will be further discussed during the meeting.

274  
275 Chairman Ward asked Michael Strader to elaborate on paragraph two of number four.

276  
277 Vice Chairman DiBernardo asked what they meant by the natural buffer, are they leaving what is  
278 existing now. Michael Strader answered the existing natural vegetation.

280 Michael Strader stated the applicant reached out to All Saints Episcopal Church and the board at  
281 Southern Shores Landing, both had agreed to meet at different times. The applicant met with  
282 some folks from the church and walked the property, staked the property line so they could visibly  
283 see it, and invited others within the congregation to walk that line as well. The applicant got to  
284 hear firsthand what the real needs and wants were from the church and the applicant has made  
285 the adjustments. Unfortunately, Southern Shores Landing ended up canceling their meeting and  
286 as of now, have not been agreeable to meet.

287  
288 Chairperson Ward asked if there was anyone on the board of Southern Shores Landing that is  
289 employed by SAGA. Erin Dunigan with SAGA replied that Fred Vollat is employed by SAGA and has  
290 recused himself in this matter.

291  
292 Chairperson Ward relayed that the applicant met with the church and offered the buffer but has  
293 not met with the board of Southern Shores Landing, other than the SAGA employed individual.

294  
295 Applicant Attorney Ashley Honeycutt Terrazas stated the applicant has heard from many of the  
296 residents of Southern Shores Landing and adjustments have been made to the plans.

297  
298 Planning Board member McClendon inquired about maintaining the buffer and does that mean  
299 maintaining 15 feet of it or 50 feet of it. Michael Strader stated at the northern boundary the plan  
300 that's been submitted illustrated a planted row and infiltration basin but there have been  
301 adjustments made, which will be discussed.

302  
303

304 5. *Independent traffic study analysis progress with supporting documents.*

305  
306 *Response: It is acknowledged that NCDOT may require a traffic study, and the Applicant*  
307 *agrees to provide at the next stage of development and incorporate any improvements*  
308 *required by NCDOT. This was described further in July 31, 2023 responses 15 and 16 to*  
309 *Planning comments.*

310  
311 Planning Board Member Finelli (ETJ) has received confirmation from Caitlin Spear, NCDOT on  
312 October 9th that stated the development has been required to complete an independent traffic  
313 study. This seems to conflict with the applicant's statement that DOT "may" require.

314  
315 Michael Strader confirmed that NCDOT will require a traffic study as listed in the conditions.  
316 Applicant Attorney Ashley Honeycutt Terrazas stated the applicant is agreeable to change the  
317 "if" to "shall" be required.

318  
319 Chairperson Ward stated the language used "if required" was misleading when in fact "shall be  
320 required". He further asked Michael Strader to elaborate on an independent traffic study.

321  
322 Michael Strader stated it would be an engineering firm with licensed NC Traffic Engineers  
323 contracted and hired by the applicant to do a traffic analysis, but they do work closely with  
324 NCDOT.

325  
326 Vice Chairperson DiBernardo stated his only concern is the timing of the traffic study; February  
327 and July traffic is vastly different. He asked when the applicant hires a firm, will this information

328 be communicated to them? Michael Strader replied that it would have to be and NCDOT would  
329 not even acknowledge the study unless it was done during peak times.

330  
331 Planning Board Member Zehner stated NCDOT already have traffic counts. He recommended  
332 that the Planning Board not make a recommendation till the traffic study is produced and that  
333 the applicant pay for the cost of a third-party peer reviewer of that traffic study. If it is not this  
334 board, then it should be council not acting until the third-party peer reviewer of that traffic  
335 study is complete.

336  
337 Chairperson Ward asked Mr. Zehner how he felt about making that a condition. Planning Board  
338 Mmember Zehner stated it should be a recommendation to council to not take any action until  
339 the traffic study is produced and reviewed by a third party.

340  
341 Chairperson Ward stated it goes to council and that point it is a quasi-judicial hearing. Planning  
342 Board Zehner stated it is a piece of information as indicated in the Chairman's opening remarks  
343 that this board has as it takes to be satisfied that the applicants provided all the information. He  
344 felt the ordinance gives the latitude to require additional information beyond what is required.  
345 He further stated he thinks it needs to cover both the construction and operation stage so there  
346 is more information on the construction stage that needs to be provided. He recommended a  
347 construction management plan with some limits on construction traffic during weekends and  
348 peak hours. Planning Board Member Zehner further stated the challenge is this board and  
349 Council determining the appropriateness of the use permit request without knowing how  
350 traffic is going to be managed, what the volume impacts are, so we can't determine that  
351 without additional information.

352  
353  
354 6. *Provide updated covenant that replaced previous covenant (recorded*  
355 *12/02/2002) between Southern Coastal Associates (Blinken) and Boddie-Noell (Hayes)*  
356 *referencing 18,000 gallons per day or 50 single family equivalents [#5 in summary of*  
357 *deeds].*

358  
359 *Response: The Declaration of Protective Covenants and Restrictions recorded in Book*  
360 *1463, Page 391 on 12/02/2002 runs with said property by whomsoever owned, and shall*  
361 *be binding upon and inure to the benefit of the successors in interest of the Declarants. It*  
362 *remains applicable.*

363  
364 Chairperson Ward stated that the response was for the easement of 18,000 gallons per day and  
365 50 units but would like to see the replacement easement. Michael Strader had misunderstood  
366 Chairman's initial request but stated that covenant (not easement) information is within  
367 another question response. He stated there are different capacities.

368  
369 Vice Chairperson DiBernardo stated if it is a covenant, how do you change the covenant?  
370 Michael Strader stated that no one's proposing to change that Covenant. T the wastewater  
371 treatment plant has been purchased by an entity that the utility can allocate wastewater flows  
372 to users as long as they have that capacity within the plant. He further stated you do not need a  
373 covenant to allocate wastewater flow, but the owner of the utility was not always the owner of  
374 the subject parcel, so that was a way of at least dedicating 18,000 gallons per day to this subject  
375 parcel.



376

377 Chairperson Ward stated that 18,000 gallons a day it turned into 32,500 gallons per day  
378 somewhere along the line. The Utilities Commission approved that but it just seems a little bit  
379 odd that there's a covenant that says 18,000 gallons and 50 units and then there's nothing on  
380 there that replaces that covenant with other language that would allow more capacity.

381

382 Planning Board Member McClendon asked if all the 18,000 gallons a day contained on the  
383 wastewater treatment plants property? Michael Strader stated there is the lagoon in the front  
384 and then there is reuse, but he did not believe the plant has seen enough flow to utilize the  
385 reuse which is irrigation. The utility has an easement throughout all the common areas of the  
386 Southern Shores Landing property because all of that can be utilized for that irrigation Services  
387 piping.

388

389 Planning Board Member Lawler stated he thinks you are supposed to use the 3.26 acres for  
390 effluent compliant wastewater and if it is not in compliance you use the lagoon. The records  
391 indicate there has been months and months and months of out of compliant effluent from the  
392 wastewater plant. He stated he is aware it has been inspected but does not see any information  
393 that the spray irrigation area, which is the lawns around the individual houses within the  
394 development, has ever been used when it's supposed to be the primary effluent disposal area.

395

396 Planning Board Member Collins was concerned with contaminated water leaking. She stated  
397 she knows \$900,000 went into the plant to increase the capacity and everything but asked who  
398 does the testing of the water and how often? Is there something that can be done now to test  
399 the water and then again in about three months? Her biggest concern is what might be leaking  
400 and now we are talking about putting more homes there. She further stated, along the front of  
401 the creek it appears that there might be staggered air venting or water venting.

402

403 Michael Strader replied to Planning Board Member Collins by stating those were dry hydrants  
404 that were only if boat slips have been in place but that that's tied to domestic water and totally  
405 separate piping.

406

407 Planning Board Member McClendon stated as a follow up to Planning Board Member Collins  
408 point about testing, the Town of Nags Head has done a great deal of groundwater testing and  
409 the influence of septic systems on their local groundwater, it seems that the potential exists for  
410 some groundwater infiltration between Ginguite Creek and this wastewater pond, which is very  
411 concerning. Testing should be done before the development is started and any time after  
412 occupancy. Michael Strader agreed.

413

414 Michael Strader stated that there is a wastewater permit for the treatment facility and there is a  
415 responsible operator in charge now, there hadn't always been. There is testing as required by  
416 the permit, probably daily, and that does go to the State's Division of Water Quality, and they  
417 know when it is out of compliance.

418

419 7. *Wastewater concerns beyond capacity and willingness-to-serve letter,*  
420 *including: current ownership with documents/timelines; reasons for fines levied by NC*  
421 *Utilities Commission with documents; is WWTP functioning as designed per original*  
422 *permit; reason for WWTP on two separate parcels (combine into one parcel?); further*  
423 *Anlauf concerns will be discussed.*

424  
425 *Response: It should be acknowledged that GWWTP, LLC owns the land on which the*  
426 *WWTP is located, owns the WWTP, and is the official Permittee per NC DEQ DWR.*  
427 *Wastewater permits and capacities were transferred from the former Ginguite Woods*  
428 *Water Reclamation Association Inc (GWWRA) to GWWTP, LLC. Additionally, an*  
429 *application to transfer the current utility franchise name from GWWRA to GWWTP, LLC is*  
430 *ongoing with NCUC. It is our understanding that prior to acquisition by the new WWTP*  
431 *ownership, the facility was in poor condition and under emergency operation. If the*  
432 *facility had not been acquired and refurbished, the existing customers may not have*  
433 *sewer. The new WWTP ownership has already invested a substantial amount into the*  
434 *facility and continues to invest and improve the operations.*

435  
436 *a. The WWTP is permitted for 32,500 gpd and the current actual flows are*  
437 *approximately 6,000 gpd. Outstanding allocated flows not yet tributary to the WWTP*  
438 *include 2,000 gpd allocated to Michael Nash (which is no longer applicable and can be*  
439 *reallocated) and the 18,000 gpd (originally) allocated to Boddie-Noell and transferred to*  
440 *Ginguite, LLC with the purchase of the property. Based on review of the associated deeds*  
441 *and the WWTP restrictive covenants, this indicates that the plant has a remaining 6,500*  
442 *gpd for the owner of the plant to allocate. This amount (including the already allocated*  
443 *18,000 gpd) meets the site's current needs.*

444  
445 *b. The two parcels of land on which the existing WWTP facilities are located have*  
446 *not and are not proposing to be changed.*

447  
448 *c. The preliminary plan for wastewater has been reviewed by Town staff, and we*  
449 *sufficiently addressed all staff comments.*

450  
451  
452 Chairman Ward asked if Neil Blinken owned Ginguite Woods Water Reclamation Association Inc  
453 (GWWRA) and if GWWTP, LLC was Mr. Gupta's entity. Michael Strader replied that is correct.

454  
455 Chairman Ward reported that wastewater bills are made out to Mr. Blinken's entity but mailed  
456 to a Harbinger mailing address, which he speculates is Mr. Gupta's. He asked if Mr. Blinken  
457 owned any part of the wastewater treatment plant.

458  
459 Applicant Attorney Ashley Honeycutt Terrazas replied to Mr. Ward's question by stating the  
460 ownership is certainly not owned by Mr. Blinken and as far as we know, that it is now owned by  
461 the applicant and the applicant has invested almost a million dollars into it to make sure that  
462 Southern Shores Landing still has this sewer capacity as well and make it so that it can serve our  
463 development . Those changes that needed to be made are now maintaining it in a responsible  
464 fashion and it will be sufficient to serve the development.

465 Planning Board Member Collins read the conclusion of Mr. Joe Anlauf's (engineer) letter that the  
466 plant is in emergency management and asked for an explanation. Michael Strader stated the  
467 plant was in such poor condition the North Carolina Utilities Commission ended up having to  
468 assign an emergency operator, which that assigned operator (most likely Envirolink) had their  
469 own issues. The applicant purchased the wastewater treatment plant and has contracted with a  
470 responsible operator, Atlantic OBX.

471

472 Planning Board Member Collins asked why and how you could add another development and  
473 add more stress to a system that is not functioning properly now. Michael Strader stated you  
474 cannot add wastewater flow to a system that is under an emergency operation.

475  
476 Chairperson Ward asked if the plant was still in emergency operation status and would be wise  
477 to know. Michael Strader was unsure of the status.

478  
479 Chairperson Ward stated according to NCDEQ the plant was still under emergency operations as  
480 of February of this year and that Mr. Gupta purchased the plant (two parcels) over five and half  
481 years ago and has been levied fines for its condition.

482  
483 Applicant Attorney Ashley Honeycutt Terrazas stated this is an issue that the applicant is going  
484 to have to resolve before the Utilities Commission will let anything be built. Should the Town  
485 Council wish to add this condition, which I think that they would, we're going to take care of  
486 that prior to anything happening.

487  
488 Chairman Ward referenced the Willingness to Serve letter. He stated the letter makes it appear  
489 that this vacant parcel which is being discussed is serviced by the wastewater treatment plant,  
490 when indeed it is not, maybe eventually but not now. Planning Board Collins stated it could have  
491 been deeded that way.

492  
493 Chairman Ward stated the Willingness to Serve letter also stated that the transfer of ownership  
494 between Blinken and Gupta is ongoing. Michael Strader stated there is a lot going on with the  
495 North Carolina Utilities Commission and could not state how long this has been going on.

496  
497 Applicant Attorney Ashley Honeycutt Terrazas stated no building permit will be issued until this  
498 is all straightened out and that is a condition. She asked if the board is looking at some other  
499 conditions, then maybe they could specify what they are.

500  
501 Planning Board Member McClendon stated that if the wastewater treatment plant is not  
502 operating correctly now do we know when it will be operating correctly, as designed, for the  
503 residents it services now. Michael Strader stated it is functioning now and there are still items  
504 that need to occur and further investments that need to be made.

505  
506 Chairman Ward stated the permit for the plant was issued in 2006, reissued to Mr. Gupta in July  
507 2018 and that permit expires next month (November). Michael Strader stated he will check to  
508 see if there is a renewal in process.

509  
510 Chairperson Ward stated almost a million dollars has been put into the plant and it is still not  
511 operating as permitted. Planning Board Member McClendon stated the entity has owned the  
512 plant since 2018 and has yet to have it operating as designed and is now asking for more  
513 capacity.

514  
515 Michael Strader stated he will provide the board with information from the operator and  
516 hopefully that's demonstrates that it's within compliance.

517

518 Chairperson Ward asked if the current operator did all the renovations to the plant? Michael  
519 Strader stated not all the renovations, as they were ongoing before Atlantic OBX was the  
520 operator.

521  
522 Applicant Attorney Ashley Honeycutt Terrazas stated the applicant is not asking for additional  
523 capacity, it has always been 32,000 gallons per day.

524  
525 Chairperson Ward stated the issue is the wastewater treatment plant not functioning as  
526 permitted.

527  
528 Planning Board Member Lawler stated you can go online and see the monthly reports for the  
529 wastewater treatment plant which are being filed. In 2023 about 6 months of the testing  
530 showed the water was not meeting standards and all the water is going into the pond, the spray  
531 irrigation is not being used.

532  
533 Applicant Attorney Ashley Honeycutt Terrazas stated the parcel is served by a state regulated  
534 wastewater treatment facility that the applicant owns and is maintaining. It will need to be  
535 brought into compliance per the per the conditions prior to anything being built. The applicant  
536 has already invested a lot of money in it as stated last time, as well as again tonight. She asked if  
537 there was an additional condition that the board is looking at here? All these things by law will  
538 be met before the applicant gets a building permit.

539  
540 Vice Chairperson DiBernardo asked for some clarification of numbers with the capacity of the  
541 wastewater treatment plant. He stated the permit is for 32,500 gallons and his calculations are  
542 32,400, which is 100 gallons below capacity. He asked if that included the 6,000 gallons  
543 currently being used by Southern Shores Landing. Planning Board Member Zehner agreed that  
544 there seems to be some documentation of numbers missing from the packet and asked for  
545 clarification.

546  
547 Michael Strader stated the permitted capacity is 32,500 gallons a day. The current usage is  
548 approximately 6,000 gallons. Expected calculations of the new development is an additional  
549 23,000 gallons.

550  
551 Chairperson Ward said there is a discrepancy between engineer Joe Anlauf calculations and  
552 what is proposed here. Michael Strader stated Mr. Anlauf calculations are from the original  
553 plans and there has been three revisions since then and his comments were taken into account  
554 of this latest version.

555  
556 Planning Board Member Collins asked if Southern Shores Landing could be using more than the  
557 estimated 6,000 gallons a day. Michael Strader stated that is a conservative estimate and  
558 according to the flow studies the number is much less.

559  
560 Chairperson Ward stated the wastewater treatment plant is on two parcels and he  
561 recommended a condition to have the parcels combined. He stated he is still confused about  
562 the Willingness to Serve letter.

563

564 Michael Strader stated the transfer of a utility franchise must go through the Utilities  
565 Commission and there are certain things that have happened, but it has not completed its  
566 process. Applicant Attorney Ashley Honeycutt Terrazas added that it will before anything is built.  
567

568 Chairperson Ward stated all these concerns will go to council for consideration and according to  
569 the ordinance section 32-4, it says the Planning Board can request an independent study of the  
570 functionality of the wastewater management systems.  
571

572 Planning Board Member McClendon stated the word quality was made in the opening  
573 statement many times and the comment has been made about being a good neighbor and  
574 wanting to be a good neighbor and that has not been demonstrated by the function of this  
575 wastewater treatment plant, which has been in ownership of this applicant for many years.  
576

577 Applicant Attorney Ashley Honeycutt Terrazas stated the wastewater treatment facility will be in  
578 compliance as required in the conditions before anything can be built. As far as being a good  
579 neighbor, they have not been given the opportunity tonight to show the concessions and  
580 amendment's that have been made and requested to do so.  
581

581

582

583 8. *Was there a 404 wetlands permit secured on the property within the*  
584 *previous 20 years? If so, provide information.*

585

586 *Response: Please refer to the attached pdf containing a copy of the Major CAMA Permit*  
587 *that was obtained to construct the bulkhead and associated impacts. This was a joint*  
588 *State and Federal Permit that involved minor wetland impacts around the edge of the*  
589 *open water basin for bulkhead installation that occurred in the early 2000's. The last two*  
590 *pages include the plan that was submitted for the Permit by previous owners.*  
591

591

592 *There are coastal (Section 404) wetlands located along the north side of the creek within*  
593 *the subject property. However, there are no proposed wetland impacts associated with*  
594 *this development. These wetlands are under State (CAMA) and Federal (US Army Corps*  
595 *of Engineers) jurisdiction.*  
596

596

597 Planning Board Member Lawler inquired if the 404 wetlands certification was still valid. Michael  
598 Strader stated a CAMA major permit will need to be obtained and at that point that  
599 jurisdictional determination occurs. That would be obtained after the special use site plan  
600 approval.  
601

601

602 Chairperson Ward inquired if an Army Corp of Engineers permit be required and is it  
603 unreasonable to ask for one. He stated the prior CAMA permit is from 1998.  
604

604

605 Planning Board Chairperson McClendon stated how about a delineation, could a certified  
606 person go out and do a delineation on the property. Michael Strader replied they reviewed the  
607 site with the wetland professionals, the environmental scientists licensed professional geologist  
608 because he was not going to arbitrarily put that note on a plan set with his seal. They made the  
609 determination that there are no jurisdictional wetlands.  
610

610

611 Planning Board Member Finelli (ETJ) asked what is triggering the CAMA major permit? Michael  
612 Strader explained any improvements within the area of environmental concern. In this  
613 Case, because we've got surface water and coastal wetlands in which there is a 75-foot area of  
614 environmental concern from that surface water and from those coastal wetlands, so any  
615 improvements whatsoever. Obviously, there are improvements located within the area of  
616 environmental concern which triggers a CAMA permit. Because there are other state agency  
617 permits involved, that automatically triggers it to a CAMA major permit.

618  
619 Chairperson Ward asked about an Army Corps of Engineers wetlands permit. Michael Strader  
620 explained you cannot get a permit if there are no jurisdictional wetlands, and that was  
621 determined by environmental professionals, professional geologists.

622  
623 Applicant Attorney Ashley Honeycutt Terrazas stated the town can add that to the list of  
624 conditions. Request the Army Corp of Engineers provide a determination and if that  
625 determination was to state there are wetlands (which they do not believe there are) then that  
626 permit will dictate the amount of disturbance that can take place.

627  
628 Michael Strader stated they have already had professionals look at the parcel and plans and  
629 they can certainly ask the Army Corp for a letter but cannot guarantee they will do that.

630  
631

632 9. *Provide average ground elevation at building corners.*

633  
634 *Response: Please refer to the submitted site plan sheets 2 and 4 of 11 for the existing*  
635 *elevations at the proposed building corners. When averaged, the existing grade of the*  
636 *proposed eastern building is 2.51 ft and western building is 2.02 ft, respectively.*

637  
638 Town Planner Wes Haskett stated the ordinance says that if the average of the existing original  
639 grade at the corners of the proposed structure(s), in this case if it's less than eight, then the  
640 calculation is taken from up to eight.

641  
642 Michael Strader stated the proposed elevation is in compliance.

643  
644 10. *Soil report findings as they relate to stormwater issues.*

645  
646 *Response: Please refer to the attached pdf containing a copy of the soil inspection report*  
647 *prepared by Protocol Sampling Services related to stormwater. This documentation was*  
648 *included within the submitted Narrative and has been taken into account with the*  
649 *stormwater design, which was reviewed by Town technical review staff.*

650  
651 Chairperson Ward stated the soil reports would be alarming if he was building something out  
652 there, but this is not there purview our purview(s) and requested the applicant's team to present  
653 their concessions.

654  
655 [submitted plan and concession plan attached] Michael Strader stated he was tasked with  
656 looking at this plan in detail and finding out what can be done to better demonstrate  
657 compliance with the land use plan, but also the feedback that we're hearing. The applicant  
658 walked the property with the northern neighbor the Church and some of the items that were

659 heard was, they don't want that row of proposed new trees planted and that they utilize an  
660 existing soil pathway along the easement. They increased the area of preserved natural  
661 vegetation by building a retaining wall, moved the eastern refuse area that had been located  
662 near the shared entrance to the western side of the drive aisle so it's actually, much further  
663 away from the eastern adjoiner, put the emergency spillway to overflow into that existing  
664 natural drainage way since that's that is already the natural flow.

665  
666 Chairperson Ward asked what the width between the property line on the east side is of  
667 the property and the retaining wall? Michael Strader stated it is 20 ft from the eastern property  
668 line to the retaining wall, and that's the narrowest part.

669  
670 Vice Chairperson DiBernardo asked the height of the retaining wall? Michael Strader answered  
671 only a few feet. Planning Director Haskett stated ordinance allows up to six feet.

672  
673 Michael Strader stated the plans show no fence but if that is something the board feels strongly  
674 about, he is sure the applicant would be willing to consider.

675  
676 Chairperson Ward stated there was some discussion about rearranging parking and trying to get  
677 more buffer that way. Michael Strader stated he is hearing both sides, so where is the middle  
678 ground between for enough parking. The four parking spaces on the eastern side could be  
679 dropped and still meet the minimum requirement, but you still are going to end up with the 20-  
680 foot minimum buffer where the drive's going underneath the Eastern Building. He stated adding  
681 the retaining wall is a vast improvement.

682  
683 Chairperson Ward stated it would be helpful to have the GIS overlay the plans so the board  
684 could see what was coming out. Michael Strader stated the concession plans save vastly more  
685 vegetation.

686  
687 Planning Board Member Zehner stated the boat slip marina needs to be removed from the  
688 plans as part of this process. There should also be renderings from the rear of the site, clarity on  
689 the elevations, a landscaping plan, rendering as part of the site plan is supposed to be relative  
690 to the proposed landscape plan and should show more of a perspective from 158 rather than  
691 just an architectural generated elevation. He further expressed some concern with the width of  
692 some parking spaces under the buildings, no lights are in the renderings and the specs do not  
693 match in the specifications on a few of the sheets, an emergency vehicles and delivery plan,  
694 signage no place to mount signs and a construction management plan all need to be factored  
695 into the plan.

696  
697 Michael Strader replied to Planning Board Member Zehner's comments and stated there are  
698 about three of the items he mentioned that have not been addressed and he will supply a  
699 response to those items.

700  
701 Planning Board Member McClendon stated if you want him to approve a special use permit  
702 than you are going to show renderings of what it actually looks like on the site. What we are  
703 provided is just flat images and it appears that it will block the entire view 158. Renderings of  
704 what these buildings will look like on this land are essential.

705

706 Applicant Attorney Ashley Honeycutt Terrazas stated the they have provided the typical  
707 renderings and elevations at this point and if the board can't make an approval with all the  
708 conditions already listed, then they would just like a recommendation. They further stated they  
709 have been through everything, and they need the board to make a recommendation.  
710

711 Planning Board Member McClendon stated adding a bulkhead is not a concession.  
712

713 Planning Board Member Collins stated there are traffic concerns, water concerns and requesting  
714 additional renderings should not be out of the scope.  
715

716 Chairman Ward asked Planning Director Haskett to open the staff report.

717 *The following approvals shall be issued prior to submittal of a Building Permit*  
718 *application:*

- 719 *a. Soil Erosion Sedimentation Control Plan Permit for land disturbance over 1 acre from*  
720 *the NCDEQ;*
- 721 *b. Stormwater Management Permit from the NCDEQ;*
- 722 *c. NCDOT driveway permit and/or encroachment application for work in a State right-of-*  
723 *way;*
- 724 *d. Modification to Permit No. WQ0017224 from the NCDEQ (tentative wastewater*  
725 *approval received);*
- 726 *e. CAMA Permit from the NCDEQ;*
- 727 *f. Review and approval of potable water distribution system modifications or extensions*  
728 *by the Dare County Water Dept. (tentative approval received);*
- 729 *g. Receipts for payment of water connection fee from the Dare County Water*  
730 *Department;*
- 731 *h. Water Main Extension Permit from the NCDEQ.*
- 732 *i. Lot Disturbance/Stormwater Management Permit from the Town; and*
- 733 *j. Approval from the Dominion Energy Transmission Group.*

734

- 735 *2. Prior to submittal of construction drawings, an updated fire hydrant flow test must be*  
736 *conducted and witnessed by Town Staff.*

737

- 738 *3. Construction drawings shall demonstrate compliance with Needed Fire Flow*  
739 *requirements, and all*  
740 *other applicable Fire Code requirements.*

741

- 742 *4. The site plan identifies a "Marina." The "Marina" is a series of docks and piers which*  
743 *are not permitted in the C, General Commercial zoning district (see interpretation letter*  
744 *dated August 14, 2023) and as a result, the proposed "Marina," proposed dock/picnic*  
745 *area/kayak storage, and proposed dock that extends into Ginguite Creek cannot be*  
746 *approved as a part of the application.*

747

- 748 *5. If NCDOT requires a traffic impact assessment or traffic study, the requirements in the*  
749 *traffic impact assessment or traffic study must be satisfied prior to submittal of a*  
750 *Building Permit application.*

751



752 6. Maintain a 50 ft. setback from the eastern property line adjacent to Southern Shores  
753 Landing (applicable to buildings and other facilities such as parking spaces, incinerators,  
754 trash collection areas, etc.) and preserve the existing natural vegetative buffer.  
755

756 7. Maintain a 50 ft. setback from the northern property line adjacent to All Saints'  
757 Episcopal Church (applicable to buildings and other facilities such as parking spaces,  
758 incinerators, trash collection areas, etc.) and preserve the existing natural vegetative  
759 buffer.  
760

761 8. The applicant must strictly abide by all requirements of the Town Code and must also  
762 strictly comply with all other applicable local, State, and Federal requirements.  
763

764 Chairman Ward asked the applicant's team to address number 6 and 7. Michael Strader stated  
765 condition number 7 is being met based on the plans. The applicant does not agree to condition  
766 number 6, the 50-foot buffer, but the town could consider putting other language in there if  
767 that what it takes for the board to make a recommendation.  
768

769 Chairperson Ward stated town staff recommends a fifty foot buffer and the reasoning behind  
770 that is probably town code section 36-207(c ) establishes the special uses permits shall be  
771 subject to conditions and modifications relating to impacts on adjacent properties,  
772 transportation and transportation systems, transportation interconnectivity, storm water  
773 utilities, and telecommunications facilities, including capacity vegetation and other elements of  
774 the natural environment, noise hours of operation and other factors that the Town Council finds  
775 applicable in additional regulations and requirements imposed by the Town Council is provided  
776 in article 10 of the zoning ordinance. Town staff recommends that the board recommend  
777 conditional approval of the application to the Town Council with the conditions. He further  
778 added article 10 -36-3 item six says specifically, in granting any special use permit the Town  
779 council may prescribe appropriate conditions and safeguards in conformity with this article.  
780

781 Both Michael Strader and Applicant Attorney Ashley Honeycutt Terrazas stated they did not hear  
782 50 ft listed in there. Chairperson Ward stated it is in the staff recommendation.  
783

784 Applicant Attorney Ashley Honeycutt Terrazas stated we have looked at the plan, reworked it,  
785 and in order to meet all of the other requirements the 20-foot natural buffer is what we are  
786 able to do. All this information is out there, the board has these recommended conditions,  
787 you are able to make the recommendation that you need to make based on those provisions  
788 that were just cited. The applicant feels this is a good compromise, according to the ordinance  
789 there would be no vegetative buffer and just a fifteen-foot setback.  
790

791 Chairperson Ward stated the zoning ordinance speaks to the Town Council being able to put  
792 conditions on certain special uses.  
793

794 Applicant Attorney Ashley Honeycutt Terrazas stated the planning board can make a  
795 recommendation for approval or not. The board has been supplied with all the required and  
796 typical documents and asked for them to make a recommendation. It is not the final step in the  
797 process, but it is where we are now in this process.  
798

799 Michael Strader asked a procedural question. He inquired if the board was to recommend  
800 approval based on all the current conditions that staff has recommended here, can that move  
801 forward based on the submitted site plan because which doesn't meet the 50-foot setback.  
802 Planning Director Haskett stated it would have to come back to the Planning Board.

803  
804 Planning Board Member Collins asked if there was even enough information to make a  
805 recommendation due to the fact of different studies the board is now requesting. Chairperson  
806 Ward stated the board is not ready to make a recommendation.

807  
808 Applicant Attorney Ashley Honeycutt Terrazas stated the other items are not required by the  
809 town or the ordinance.

810  
811 Town Attorney Lauren Arizaga-Womble stated the board has been clear that they need more  
812 information and they're not prepared to make a recommendation tonight. There has  
813 been typical information submitted, however, the board does have the option to request  
814 additional information and given the application that seems appropriate. She further stated the  
815 board has clearly expressed that what they have in front of them is not sufficient.

816  
817 Chairperson Ward stated the Planning Board is not going to give a recommendation just  
818 because the applicant is in a hurry, this board will supply one within a reasonable amount of  
819 time. The process is currently moving forward at a reasonable rate.

820  
821 Town Attorney Lauren Arizaga-Womble recommended a list of recommendations be prepared  
822 from this meeting so they can be addressed, and a recommendation made at the next meeting,  
823 or a special meeting.

824  
825 Planning Board Member Finelli (ETJ) asked to expand on his earlier comments. His biggest  
826 concern is the impact this will have on Martin's Point regarding traffic and the flow of traffic in  
827 that area. He has asked NCDOT specific questions about installation of a traffic light to  
828 accommodate the development and influx of traffic. NCDOT stated once a traffic study was  
829 completed and reviewed, then they would be able to answer the question.

830  
831 **Public Comment**

832 The following residents spoke in opposition to SUP-23-01, a Special Use Permit for a mixed-use group  
833 development of commercial and residential buildings at 6195 N. Croatan Hwy.

- 834 • Katie Foster-156 Chichauk Trail-thanked the planning board for all their hard work.
- 835 • Andrea Windle-Village of Kitty Hawk
- 836 • Susan Johnson-8 Foxwood Circle
- 837 • Katie Morgan-101 Meadow Crossing, Colington
- 838 • Mike Magnum-8 Foxwood Circle

839

840 **Planning Board Member Comments**

841 None

842

843 **Announcements**

844 Planning Director Haskett stated the next regular meeting will be held November 20<sup>th</sup> at 5:00 p.m.

845 Town Attorney Lauren Arizaga-Womble asked the board if they would like to schedule a special meeting.  
846 Chairperson Ward stated he would not commit the board at this point and would poll the members  
847 individually.

848  
849  
850

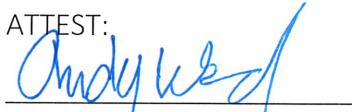
**Adjourn**

851 Motion to adjourn the meeting by Chairperson Ward, Seconded by Vice Chairperson DiBernardo. The  
852 time was 8:31 p.m.

853

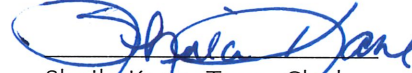
854

855 ATTEST:

  
\_\_\_\_\_  
856 Andy Ward, Chairperson  
857



Respectfully submitted,

  
Sheila Karle, Town Clerk