



**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, November 20, 2023 at 5:00 PM

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 McClendon

10 Planning Board Member (alternate) Michael Zehner

11 Wes Haskett, Deputy Town Manager/Planning Director

12 Town Attorney Lauren Arizaga-Womble

13

14 **Approval of Agenda**

15 **Motion** made by Vice Chairperson DiBernardo to approve the agenda as presented, Seconded by

16 Planning Board Member Lawler. The motion passed unanimously.

17

18 **Approval of Minutes – November 1, 2023, Closed Session Minutes**

19 **Motion** made by Planning Board Member Collins to approve the minutes of November 1, 2023 (Closed

20 Session) as presented, Seconded by Chairperson Ward. The motion passed unanimously.

21

22 **Public Comment**

23 The following residents spoke in opposition to SUP-23-01, a Special Use Permit for a mixed-use

24 group development of commercial and residential buildings at 6195 N. Croatan Hwy.

- 25 • Matt Huband-110 Landing Trail
- 26 • Andrew Keeney-6008 Currituck Rd
- 27 • John Vermeulen-2061 Creek Rd.
- 28 • Elizabeth Ryan-1101 Colington
- 29 • Mike Magnum-8 Foxwood Circle

30

31 **Old Business**

32 SUP-23-01, a Special Use Permit application submitted by Cathleen M. Saunders, P.E. on behalf of

33 Ginguite, LLC for a mixed-use group development of commercial and residential buildings at 6195 N.

34 Croatan Hwy.

35

36 Applicant's Representatives present: **Ashley Honeycutt Terrazas, Parker Poe (virtual)**

37 **Michael W. Strader, Jr., P.E., Quible and Associates**

38 **Erin Dunigan, SAGA**

39

40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86

Applicant's attorney Ashley Honeycutt Terrazas with Parker Poe provided an introduction, highlighting the following:

- Special use permit site plan application for a preliminary discussion about an application that has already gone through several rounds of technical review with Town staff, ultimately to be decided after a quasi-judicial hearing before the Town Council.
- This is a two-building development of 36 apartments, non-residential and commercial office uses, as well on a parcel that's been zoned for multi-family and commercial uses for many years but because the uses are mixed in one development a special use permit is required for the application, per the zoning ordinance.
- Our development team has been going through this preliminary discussion process for the past three months, heard concerns and feedback from neighboring property owners, and wanted to amend the plan we originally submitted to try to respond to some of that (which is the intent of this public process). We met with neighboring church leaders and our team offered to meet multiple times with the Southern Shores Landing residents. A concept plan was shown last time which showed several changes based on what we heard.
 - Original 15ft of Landscaping on Eastern proper property line, although no buffer is required under the zoning ordinance between commercially zoned properties. Made it a 20 ft buffer with existing vegetation and retaining wall on eastern property line.
 - The dumpster enclosure was on the property line. Now moved the dumpster closure away from the property line and now plan to retain more existing vegetation.
 - We also had new landscaping on the property line adjacent to the church where there's an existing path used by the church (that's on our property), so we officially amended the plan to address some of those concerns and we've submitted the full amended set to the town. We added the existing path being used by the church on our site.
 - Removed the marina, as staff has determined it's not currently permitted in the general commercial zoning district.
 - The rest of the plan has not changed. We submitted all of the elements.
- The applicant has submitted an updated US Army Corps of Engineers Wetlands Determination in which the US Army Corps of Engineers determined just last month that there are no wetlands on the area of the property that the applicant plans to develop. There are on the northern side of the creek which are not being developed.
- The applicant also added some additional landscaping to the renderings, the front elevation is a requirement. We added more Landscaping on the front and the sides of the building.
- If the Town Council approves the special use permit, there will be still more permits and state agencies that will review the development, more studies including a traffic impact analysis that we will have to do to be able to build this project.
- The private wastewater treatment plant that will serve the project has been and continues to go through additional processes through the regulating agencies, which are the North Carolina Utilities Commission and the North Carolina Department of Environmental Quality. Those will need to be resolved before permits are issued to extend the Wastewater infrastructure to this plan project.
- All the required information has been submitted, extensive hours spent discussing this, and responding to the 36 additional written questions that this Planning Board has submitted between meetings.

- 87 • Requesting a recommendation so the application can then be decided by the Town Council.

88
89 Chairperson Ward called on the applicant or applicant's representative to review the 26 answers
90 addressing questions or concerns that the Planning Board had at the previous meeting.

91
92 **The document submitted read as, Ginguite, LLC (the "Applicant") responds as follows:**

93
94 1. Add a condition that requires an independent traffic study prior to Town
95 decision, or application for a building permit, with review by third party
96 engineer?

97 **The Town Staff recommended a condition that a TIA be conducted, and any recommended**
98 **improvements be added, prior to receiving a building permit for the**
99 **development. The Applicant has already indicated that it feels this is an**
100 **appropriate condition for the Planning Board to recommend and the Town Council**
101 **to impose on the special use permit site plan. NCDOT, an independent state**
102 **agency, will review and approve this TIA. Under the TOSS Zoning Ordinance, a TIA is not**
103 **required for the proposed development, and thus the Planning Board cannot require a TIA**
104 **prior to making a recommendation.**

105 2. Strike "If in recommended condition #5.

106 **The Applicant has already publicly agreed that this would be an appropriate**
107 **condition on the special use permit.**

108 3. How often is water quality testing conducted? Before and after construction?

109 **The plant is operated as per a NCDEQ permit by a NC licensed operator and**
110 **regularly monitored by NCDEQ for compliance. SUP-23-01 is not an application for a WWTP.**
111 **GWWT, while controlled by the Applicant, is not the applicant for this case, and the TOSS is**
112 **not reviewing any permits or applications for the properties upon which the WWTP sits. The**
113 **WWTP planned to serve the subject development is regulated by the NCDEQ, and NCDEQ**
114 **is responsible for determining whether the WWTP can serve the development. It**
115 **will not issue the necessary permits otherwise.**

116 4. Has transfer of ownership of the wastewater treatment been approved by the N.C. Utilities
117 Commission and if so, who is the owner?

118 **Yes, GWWT is the owner and permittee of the wastewater treatment plant that is**
119 **planned to serve the development. Thus, the letter dated June 1, 2023, from**
120 **GWWT confirming that it is willing to serve the development is sufficient to show that the**
121 **site plan meets the requirement in TOSS Ord. § 36-299 (b)(2)(c)(5) ("name of and written**
122 **approval for connection from any organization that will collect or dispose of wastewater").**
123 **The transfer of the franchise is still in process with NCUC.**

124 5. Is the wastewater treatment plant still under emergency operation?

125 **GWWT is going through the process to end the emergency operation permit.**
126 **But, in any event, this process is not relevant to SUP-23-01. SUP-23-01 is not an application for**
127 **a WWTP. GWWT, while controlled by the Applicant, is not the applicant for this case, and the**
128 **TOSS is not reviewing any permits or applications for the properties upon which the WWTP**
129 **sits. The WWTP planned to serve the subject development is regulated by the NCDEQ, and**
130 **NCDEQ is responsible for determining whether the WWTP can serve the development. It will**
131 **not issue the necessary permits otherwise.**

132 6. The current NCDEQ permit for the wastewater treatment plant expires in November.

133 **Again, this is not relevant to the subject application, but the permit is in the process**
134 **of being updated.**

135 7. Require an independent study of the wastewater treatment plant prior to Town

- 136 decision application for a building permit?
137 **No. SUP-23-01 is not an application for a WWTP. GWWTP, while controlled by**
138 **the Applicant, is not the applicant for this case, and the TOSS is not reviewing any permits or**
139 **applications for the properties upon which the WWTP sits. The WWTP planned to serve the**
140 **subject development is regulated by the NCDEQ, and NCDEQ is responsible for determining**
141 **whether the WWTP can serve the development. It will not issue the necessary permits**
142 **otherwise.**
143
144 **In any event, NCDEQ is the regulating authority for the wastewater treatment plant that will**
145 **serve the development, not TOSS. And under the TOSS Zoning Ordinance, a study of the**
146 **wastewater treatment plant that will serve the project is not required for this application, and**
147 **thus the Planning Board cannot require this prior to making a recommendation.**
148 8. Add a condition that requires the wastewater treatment plant parcels to be
149 recombined prior to Town decision or application for a building permit?
150 **GWWTP (the owner of the parcels) is not opposed to recombining these parcels, and the**
151 **Planning Board may recommend, and the Town Council may entertain, a condition that they**
152 **be recombined prior to receiving a building permit for the development if determined to be**
153 **related to issues raised at the hearing. The Applicant does question the relevance of the**
154 **recombination of these parcels to the subject Application as this does not relate to the special**
155 **use or the site plan.**
156 9. Do covenants allow the proposed number of residential units with respect to
157 wastewater?
158 **Yes. The covenants do not specify the number of units. Furthermore, the covenant entitles**
159 **site to a minimum amount of wastewater treatment by the utility. If the wastewater**
160 **treatment plant can handle more wastewater, which is determined by NCDEQ, it can treat**
161 **more wastewater. This has been discussed and explained at prior Planning Board meetings.**
162 10. Provide updated covenant that replaced previous covenant (recorded
163 12/02/2002) between Southern Coastal Associates (Blinken) and Boddie-Noell
164 (Hayes) referencing 18,000 gallons per day or 50 single family equivalents [#5 in
165 summary of deeds].
166 **No updated covenant is needed. Per the terms of the recorded covenant (Paragraph 5), it is**
167 **binding upon the successors and assigns of the original declarants.**
168 11. Require a Corps. of Engineers wetlands delineation prior to Town decision or
169 application for a building permit?
170 **An updated wetlands determination by the US Army Corps of Engineers dated October 27,**
171 **2023, has been submitted to the Town.**
172 12. Add GIS overlay to concession sheet.
173 **This is not required but will be provided with the updated site plan.**
174 13. Remove "marina", proposed dock/picnic area/kayak storage, and proposed
175 dock that extends into Ginguite Creek from all plan sheets prior to the next Planning
176 Board meeting.
177 **This change is reflected on the modified plan submitted to the Town.**
178 14. Submit elevation drawings that show the buildings from the rear of the site.
179 **This is not required. Zoning Ord. § 36-299(b)(2)(c)(1) requires front and side elevations, which**
180 **have been submitted. Drawings of the rear elevations (which were not required) were**
181 **submitted on the elevations, and show that the rear will be very similar to the front of the**
182 **building in terms of architectural style, and the materials will be consistent throughout the**
183 **building.**
184 15. More landscaping detail is needed.

- 185 **More landscaping detail has been added to the front elevations, which has been resubmitted.**
186 **The Landscape Plan is on Sheet 2, and a rendered landscape plan has been submitted as well.**
- 187 16. Submit renderings that show the buildings relative to the landscape plan. Show
188 from Hwy. 158.
189 **More landscaping detail has been added to the front elevations, which has been**
190 **resubmitted.**
- 191 17. The foundation encroaches into some of the parking spaces.
192 **All of the parking spaces meet the minimum dimensional requirements in TOSS**
193 **Ord. §36-163.**
- 194 18. No building mounted lights are shown.
195 **This will be shown at the building permit phase. Consistent with TOSS Ord. § 36-166, all**
196 **building-mounted lights will be full-cutoff, Dark Sky compliant lighting. In addition, when**
197 **building-mounted lighting is fully planned and shown on a building permit application, the**
198 **Town will still enforce the Ordinance requirement that all outdoor lighting, taken together,**
199 **will not exceed 1 footcandle measured at the property line. The subject site plan shows no**
200 **more than 0.5 footcandles at any given point on any of the property-lines.**
- 201 19. The lighting specifications do not match the proposed lights.
202 **The lighting plan (Sheet 11A) shows the proposed outdoor lighting, and the fixtures are**
203 **highlighted on Page 4 of the submitted lighting specs. These match the description of the**
204 **"Luminaries Schedule" on the Lighting Plan. We have also added an additional symbol on**
205 **Sheets 11A-C, to further clarify which lights are pole lights lighting the parking field:~. and**
206 **which lights are the shorter bollard lights illuminating the boardwalk adjacent to the Creek --S-**
- 207 20. Submit a plan for emergency vehicles and large truck deliveries, including
208 clearance under the east building.
209 **There is 8 ft clearance for east building parking, and this was clarified to Town staff on 7/31.**
210 **No emergency vehicles or large delivery vehicles will park or otherwise pass under this**
211 **building. The plan meets North Carolina Fire Code standards. The site plan demonstrates that**
212 **the circulation will accommodate emergency vehicles. The Fire Exhibit submitted 7/31, which**
213 **was reviewed by Fire Marshal, shows that no emergency vehicles need to enter under the east**
214 **building. The Fire Exhibit shows that, consistent with the Fire Code, there is less than 600'**
215 **from fire hydrants to any point on the exteriors of the buildings, and the circles demonstrate**
216 **that there is at least 200' from parking locations for a fire truck to any point on the exterior of**
217 **the building.**
- 218 21. There isn't anywhere to mount wall signage.
219 **Wall signage location will be determined at the time of building permits, and signage for**
220 **individual tenants will be permitted through the Town and will be required to meet all signage**
221 **requirements.**
- 222 22. Submit a construction management plan for construction phases and a
223 timeline.
224 **This is not required for a site plan or a special use permit.**
- 225 23. Where will the materials be left?
226 **They will be left on the subject property, as required by law. Exact locations have not been**
227 **determined at this stage.**
- 228 24. No construction entrance off of Landing Tri. and no left turn onto Landing Tri.
229 from the site.
230 **The updated site plan shows the relocation of the construction entrance on**
231 **Sheet 6.**
232 **The site plan already proposes a right-in-right-out on Landing Trail.**
- 233 25. Provide copy of easement that allows Southern Shores Landing residents to
234 traverse 6195 N. Croatan Hwy.

235 Whether or not they have an access easement is irrelevant to this application. The applicant
236 has no intention of blocking Landing Trail for use by SSL residents or anyone else. In any event,
237 an "Access Easement" is noted on the recorded plat for the area of the subject property,
238 included in the package of deeds and easements submitted to the Town, Documents #4.
239 Under state law, easements can be recorded on a plat map and do not need to be further
240 defined in a separate instrument. *Benson v. Prevost*, 277 N.C. App. 405, 411-12, 861 S.E.2d
241 343,348

242 26. Provide copy and explanation of easement allowing sewer line connection to
243 the lift station (where the new sewer line is proposed).

244 This was provided in the package of deeds and easements submitted to the Town, Documents
245 #4 and 5. Document 5, The Declaration of Protective Covenants recorded in the Dare County
246 Register of Deeds Book 1463/Page 391, Paragraph One requires the Private Utility (GWWRA,
247 and its successors and assigns, per Paragraph Five) to construct, install, operate, maintain,
248 repair and replace wastewater treatment infrastructure for the benefit of the Boddie-Noell
249 property (the subject of SUP-23-01) and Southern Shores Landing. Paragraph Two also
250 guarantees that the Private Utility will provide certain wastewater capacity to these
251 properties. Thus, the Private Utility may construct (and repair/maintain) the necessary
252 infrastructure to serve both the subject property and Southern Shores Landing to comply with
253 these covenants. Furthermore, Document 4, Note 18 of the Southern Shores Landing Final Plat
254 memorializes an easement agreement between Bodie-Noell, Southern Shores Landing, and
255 the Utility for "encroachments of the wastewater treatment plant."
256

257 **Planning Board comments/questions to applicant's responses submitted.**

258

259 **Item #1**

260 Chairperson Ward stated he was confused about the order of items stated in the last sentence
261 of the applicant's reply to item number one and asked for clarification to the order. He also
262 inquired who hires the traffic engineer. Michael Strader, Quible and Associates stated there
263 would be an independent traffic consultant (engineer) that must be hired to do the traffic study.
264 They work directly with NCDOT, who obviously do the review and then they make formal
265 recommendations and could add requirements. The traffic engineer is hired by the applicant
266 unless the town is willing to take that on.

267

268 Chairperson Ward also clarified that the response to item number one stated, "*the Planning*
269 *Board cannot require a TIA prior to making a recommendation*" which is a correct statement.
270 The Planning Board has no authority to require anything in this process.

271

272 **Item #2**

273 No further comment/concern

274

275 **Item #3**

276 Chairperson Ward asked to circle back to this item later in the meeting. He said the question
277 says how often water quality is tested before and after construction and the answer was the
278 plan is operated as per NCDEQ permit by North Carolina licensed operator regularly monitored
279 by NCDEQ. The same answer was submitted for number five and seven. He stated we
280 understand where the applicant stands on their requirement for wastewater.

281

282 **Item #4**

283 Chairperson Ward stated this is another wastewater item and would like to revisit it later in the
284 discussion.
285
286 **Item #5**
287 Same response at #3
288
289 **Item #6**
290 Chairperson Ward stated this is another wastewater item and would like to revisit it later in the
291 discussion.
292
293 **Item #7**
294 Same response as #3
295
296 **Item #8**
297 Chairperson Ward stated the applicant is agreeable to combine the two parcels that make up
298 the wastewater treatment plant. The Planning Board had no further comment.
299
300 **Item #9**
301 Chairperson Ward stated this would be determined by the town's attorneys.
302
303 Vice Chairperson DiBernardo asked for clarification, as he stated the covenants do specify the
304 number of units. He stated the covenants read, "18,000 gallons per day or 50 single family
305 equivalents".
306
307 Michael Strader, Quible and Assoc. stated NCDEQ rules for determining the gallons per day per
308 bedroom have also changed from the time of those covenants. Also, the covenants do not
309 specify the number of units, it uses equivalent. A certain number of restaurant seats are
310 equivalent to a single-family unit.
311
312 Attorney Ashley Honeycutt Terrazas stated per the covenants, which is a minimum that that this
313 parcel is entitled to. If the wastewater treatment facility can treat more than that would need to
314 be approved by NCDEQ.
315
316 Vice Chairperson DiBernardo stated the word minimum is not in the covenant.
317
318 **Item #10**
319 Chairperson Ward stated this would be determined by the town's attorneys.
320
321 **Item #11**
322 Applicant submitted updated wetlands determination by the US Army Corps of Engineers dated
323 October 27, 2023, which does show 404 wetlands only on the marsh area to the north not in the
324 proposed development area.
325
326 **Item #12**
327 No comment from Planning Board members.
328

329 **Item #13**

330 Chairperson Ward stated boat docks have been removed from the site plan but still need to be
331 removed from the colored rendering (landscape rendering plan).

332

333 **Item #14**

334 Planning Board Member Zehner stated it is certainly not required as part of the application but
335 through the board's review they can certainly request additional information and I don't think
336 the applicant has been responsive. He stated a line of site view from the rear was requested and
337 that has not been supplied.

338

339 **Item #15**

340 No comment from Planning Board members.

341

342 **Item #16**

343 No comment from Planning Board members.

344

345 **Item #17**

346 The applicant revised the plan to resolve the parking spaces issue and any further parking space
347 discrepancy will be caught at permit review.

348

349 **Item #18**

350 Planning Board Member Zehner commented that a site plan is supposed to show all outdoor
351 lighting and the plan does not show building mounted lighting.

352

353 **Item #19**

354 Planning Board Member Zehner stated there is a discrepancy between the spec sheet and the
355 lumen numbers on the plan. They are not matching up.

356

357 Michael Strader, Quible and Associates, stated the foot candles noted on the lighting plan on
358 the photometric plan are accurate.

359

360 Chairperson Ward stated there will be a permit review and any discrepancy will be addressed at
361 that time.

362

363 **Item #20**

364 No comment from Planning Board members.

365

366 **Item #21**

367 Michael Strader, Quible and Associates, commented that any application would go through
368 planning.

369

370 **Item #22**

371 Planning Director Haskett commented that typically the building inspector will look into all that
372 prior to construction commencing. As far as timeframes are concerned, if an inspection is not
373 conducted within 180 days the permit expires. If they do have an inspection within 180 days,
374 then they have 12 months from the date of that inspection to have the next inspection. Per the

375 noise ordinance on weekends, no work-related noise on Sundays but is allowed on Saturday
376 7am-8pm.

377
378 Planning Board Member Zehner suggested a construction management plan and some
379 prohibition on construction hours on Saturdays, as there would be issues accessing the site
380 during certain times of the year.

381
382 **Item #23**
383 No comment from Planning Board members.

384
385 **Item #24**
386 No comment from Planning Board members.

387
388 **Item #25**
389 No comment from Planning Board members, for attorney review.

390
391 **Item #26**
392 No comment from Planning Board members, for attorney review.

393
394 Chairperson Ward stated there is an additional question briefly touched on by the board's
395 attorneys and that is soil data as it relates to NCDEQ storm water management permit.

396
397 Michael Strader, Quible and Associates stated for the areas of proposed infiltration there will be
398 undercutting of that underlying restrictive horizon, which will be undercut and then back filled
399 in with good permeability soils.

400
401 Chairperson Ward stated there is a lot of peat there and what will replace it. He also asked if
402 this soil report is shared with NCDEQ. Michael Strader responded it will be replaced with select
403 fill material and the report accompanies the storm water permit application package and those
404 specifications have been incorporated into the site plan design and that permit application
405 package.

406
407 Planning Board Member McClendon asked Mr. Strader if they knew how far they would have to
408 dig down. Mr. Strader replied that it is specified in the design drawings based on the soil report.

409
410 Vice Chairperson DiBernardo asked for clarification on the good fill material. Michael Strader,
411 Quible and Associates, stated it is high permeability soils based on infiltration requirements,
412 type one core sand material.

413
414 Planning Board Member McClendon asked how the stormwater facility will be maintained.
415 Michael Strader, Quible and Associates, answered there is an operation and maintenance
416 agreement that the applicant signs and this agreement follows the whole life of that storm
417 water permit.

418

419 Planning Board Member Lawler asked how that agreement differentiates from the maintenance
420 agreement for the infiltration pond on the Wastewater side. Michael Strader, Quible and
421 Associates, stated he is not familiar with the wastewater.

422

423 **PLANNING BOARD DELIBERATION**

424 Chairperson Ward stated it is time for the board to deliberate, there are six members present
425 but only five will be voting. Planning Board Member Zehner is sitting as an alternate and will not
426 vote but can answer or ask any number of questions.

427

428 Planning Director Haskett read town code 36-300. (5)

429 Sec. 36-300. - Application for permit for special uses.

430 (5) Before they may grant any special use permit or vested right, the town council shall
431 make affirmative findings that:

432

433 a. The applicant has met the requirements of the applicable provisions of the town
434 chapter pertaining to zoning, subdivision chapter, and all other applicable ordinances.

435

436 b. That the use as proposed will conform with the town's land use plan and will be
437 compatible with the area in which it is to be located, if developed in accordance with the
438 conditions specified in the chapter and additionally required by the town council as
439 authorized by the chapter.

440

441 c. That the use will not materially endanger the public health and safety if located where
442 proposed and developed according to the plan submitted.

443

444 d. That the use as proposed will not overburden the town volunteer fire department
445 fire-fighting capabilities and the county water supply capacity to the town, as said
446 facilities and capabilities will exist on the completion date of the special use for which
447 the application is made.

448

449 Chairperson Ward reviewed the recommended conditions of SUP-23-01 and asked the board
450 members if they had any additions or subtractions.

451

452 **SUP-23-01 Recommended Conditions**

453

454 1. The following approvals shall be issued prior to submittal of a Building Permit application:

455

456 a. Soil Erosion Sedimentation Control Plan Permit for land disturbance over 1 acre
457 from the NCDEQ.

458 b. Stormwater Management Permit from the NCDEQ.

459 c. NCDOT driveway permit and/or encroachment application for work in a State right-
460 of-way.

461 d. Modification to Permit No. WQ0017224 from the NCDEQ (tentative wastewater
462 approval received).

463 e. CAMA Permit from the NCDEQ; (*addition: add word major. Major Permit*)

- 464 f. Review and approval of potable water distribution system modifications or
465 extensions by the Dare County Water Dept. (tentative approval received).
466 g. Receipts for payment of water connection fee from the Dare County Water
467 Department.
468 h. Water Main Extension Permit from the NCDEQ.
469 i. Lot Disturbance/Stormwater Management Permit from the Town; and
470 j. Approval from the Dominion Energy Transmission Group. **(addition: language to**
471 **include an easement for 50 feet at the power poles and 70 feet of power line**
472 **easement with parking inside those 70 feet easement prior to submittal)**
473
- 474 2. Prior to submittal of construction drawings, an updated fire hydrant flow test must be
475 conducted and witnessed by Town Staff.
476
- 477 3. Construction drawings shall demonstrate compliance with Needed Fire Flow requirements,
478 and all other applicable Fire Code requirements.
479
- 480 4. The site plan identifies a "Marina." The "Marina" is a series of docks and piers which are
481 not permitted in the C, General Commercial zoning district (see interpretation letter dated
482 August 14, 2023) and as a result, the proposed "Marina," proposed dock/picnic area/kayak
483 storage, and proposed dock that extends into Ginguite Creek cannot be approved as a part
484 of the application. **(subtraction: remove recommended condition number four as a**
485 **marina/dock slips have been removed from the site plan)**
486
- 487 5. If NCDOT requires a traffic impact assessment or traffic study, the requirements in the
488 traffic impact assessment or traffic study must be satisfied prior to submittal of a Building
489 Permit application. **(addition: revise that condition to any and all requirements in the**
490 **NCDOT required traffic impact assessment or traffic study must be satisfied prior to**
491 **submittal of a building permit application) * PB also recommends the town hiring a third-**
492 **party to review the traffic study plan on behalf of the town.**
493
- 494 6. Maintain a 50 ft. setback from the eastern property line adjacent to Southern Shores
495 Landing (applicable to buildings and other facilities such as parking spaces, incinerators,
496 trash collection areas, etc.) and preserve the existing natural vegetative buffer.
497
- 498 7. Maintain a 50 ft. setback from the northern property line adjacent to All Saints' Episcopal
499 Church (applicable to buildings and other facilities such as parking spaces, incinerators,
500 trash collection areas, etc.) and preserve the existing natural vegetative buffer.
501
- 502 8. The applicant must strictly abide by all requirements of the Town Code and must also
503 strictly comply with all other applicable local, State, and Federal requirements.
504

505 Planning Board Member McClendon asked if the fire department or any other public safety
506 group were involved in the review. Planning Director Haskett answered the Fire Chief, Fire
507 Marshal, and our building inspector were involved in the review. They were in support of
508 recommended condition number two and number three.
509

510 Chairperson Ward read the following town code sections:

- 511 • Sec. 32-2. - Public protection
- 512 • Sec. 32-3. - Wastewater management.
- 513 • Sec. 32-4. - Planning board review.
- 514 • Sec. 32-5. - Community, noncommunity and private wastewater systems.

515
516 Planning Board Member Lawler researched documents received off the state website, stating
517 two inspections of the wastewater treatment plant have taken place since 2018 and the
518 summary report on both stated the plant was non-compliant. He stated the report cited
519 numerous deficiencies in the equipment and the operation and the maintenance of the facility.
520 The water quality in the monitoring wells outside of the wastewater plant has exceeded their
521 limits. This wastewater plant was permitted to be operated as a wastewater reuse plant, yet the
522 spray field has not been used in a number of years, the pumps that operate the spray field are
523 not operational if in fact they're there. The control panel does not work so all the wastewater,
524 whether it meets treatment standards or not, goes into the infiltration pond which is supposed
525 to be used for emergency situations.

526
527 Chairperson Ward reviewed and submitted eleven documents for the record, all pertaining to
528 the wastewater treatment plant. [1-11 are hereby attached as exhibits]

- 529 • 1. 10-3-18 NCDEQ Permit
- 530 • 2. 8-3-21 Inspection Report
- 531 • 3. 10-27-21 Civil Penalty & Notice of Violation
- 532 • 4. 5-24-22 Unpaid Civil Penalty Assessments
- 533 • 5. 2-10-23 Petition to Sale or Transfer CPCN & Rate Increase
- 534 • 6. 3-14-23 Inspection Report
- 535 • 7. 4-3-23 Notice of Violation
- 536 • 8. 5-8-23 Notice of Violation
- 537 • 9. 7-25-23 Public Staff Recommendation
- 538 • 10. 7-31-23 Order Finding Application Incomplete & Request for Additional Information
- 539 • 11. 9-15-23 Petition to Terminate Emergency Operator

540
541 Chairperson Ward stated the applicant, Mr. Gupta and his family purchased the wastewater
542 treatment plant in 2017, securing the permit in 2018. The ten-page permit is very specific, and
543 the majority of the conditions have not been met. The plant does not operate as permitted.

544
545 Planning Board Member Collins inquired about the permit expiring shortly. Planning Board
546 Member Lawler stated the permit will probably be renewed, same conditions as the original but
547 until the plant is brought into compliance, they will most likely not receive an approval to
548 increase capacity.

549
550 Chairperson Ward added that the town cannot inspect the wastewater treatment plant, but it
551 can certainly put pressure on the state.

552
553 Chairperson Ward highlighted the following information within the documents submitted:

- 554 • The facility has been inspected over the last five years and has been non-compliant. The
555 treatment facilities are corroded and not functioning properly, turbidity is required to be
556 reported continuously and it is not reported for multiple days in February of 2021.
- 557 • With treatment units not functioning properly the groundwater and surface water may
558 be impacted with high nutrients and bacteria. There are documented groundwater
559 exceedances for nutrients in the monitoring Wells located around the high-rate
560 infiltration Pond. No documented fish kills or health risk to the public.
- 561 • The facility has not been compliant since 2017 and has failed to come into compliance.
- 562 • The facility has a chronic history of exceeding limits and various monitoring and
563 frequency violations. Recent inspections have shown the facility is currently in a state of
564 disrepair and is not being properly operated or maintained. (report from 2021)
- 565 • Numerous fines and the percentage of over the limit bacteria count amounts
566 documented in the assessment was excessive.
- 567 • As of May 24, 2022, letter from NCDEQ to Prem Gupta GWWTP, LLC the total unpaid civil
568 penalty assessments totaled \$10,250.00 (state eventually reduced fine to \$3087.50)
 - 569 ○ Planning Board Member Lawler stated the state does not want the money; they
570 want the plant to be fixed and most likely there is an agreement to put the
571 remainder of the fine into correcting the deficiencies in the plant.
- 572 • 3/14/23 Most recent compliance inspection report shows the facility is still non-
573 compliant. The comment on the bottom of the report reads, *"Reclaimed irrigation
574 system is not functional. New irrigation pumps and controllers are required. Diversion
575 valve needs to be checked to make sure it is functional and if not, it needs to be replaced.
576 New irrigation pumps and controllers are required. The reclaimed irrigation system is not
577 functioning"*.
 - 578 ○ Planning Board Member Lawler added the generator needs to be replaced and
579 the clarifiers and filters all need to be replaced. They are running the stuff
580 through there with no effective treatment.

582 Chairperson Ward reviewed documents from the Utilities Commission, an application for a
583 transfer of certificate of public convenience and necessity for increase in rates. He stated the
584 application is seeking to double the rate to Southern Shores Landing (gradually over a two-year
585 term). It also appears that Neil Blinken from the Water Reclamation is still the franchise owner
586 (as of 2/10/23). The commission found the application to be incomplete. The Utilities
587 Commission also responded to the application stating that the sewer system has been
588 abandoned by the current franchise holder and the commission appointed an emergency
589 operator. The property on which the system is located has been sold multiple times without
590 commission approval and due to the irregularities, transfer proceedings are not appropriate at
591 this time.

593 Planning Board Member McClendon requested to see the requirements for approval of special
594 the use permit. The board highlighted some considerations.

596 Planning Board Member Zehner stated to consider under "all other applicable ordinance" as to
597 include the wastewater provisions.

599 Planning Board Member McClendon recommended considering Item B the town's land use plan
600 compatibility and with the area in which it is to be located.

601
602 Planning Board Member Zehner commented that part of the challenge is that it is unclear
603 whether the entity that authorized the wastewater has any authority to do that. They may own
604 the real property under it, but they don't have the franchise for the actual facility. No one has
605 authority to allow for an increased tie-in, the records completely unclear on that.

606
607 Chairperson Ward felt the board had done their job and reviewed all documents thoroughly. He
608 read a summary he had written concerning the situation with the water quality and the
609 franchise situation.

610
611 *Since assuming ownership of their wastewater treatment plant in March of 2017 the*
612 *Gupta managed LLC continues to operate it in a manner that is detrimental to the health,*
613 *safety, and welfare not only of our town citizens but of all the surrounding communities*
614 *that enjoy clean air and water quality. I think it is incumbent on our town to put as much*
615 *pressure and resources as possible to force the Gupta managed LLC that owns and*
616 *operates this wastewater treatment plant into compliancy with the permit that it*
617 *currently holds and owns.*

618
619 Chairperson Ward continued by saying, as set forth in article 10 chapter 36 -299 and chapter 36-
620 300 the Planning Board may recommend to Town Council approval, conditional approval, or
621 rejection of the special use permit and site plan.

622
623 Chairperson Ward **moved** that the Planning Board reject the Special Use Permit 23-01 and
624 accompanying site plan submitted by the applicant Ginguite, LLC, Seconded by Vice Chairperson
625 DiBernardo. Chairperson Ward called for discussion.

626
627 Planning Board Member Zehner stated he wanted to point out one more thing. The rendering
628 that was provided added a lot of clarity about the appearance of the site and regarding the size
629 and scale of the buildings. There is nothing in the documents beyond what the building lot
630 coverage is at 41,158 sq. feet, multiple that by 3 because there are two three story buildings.,
631 that is a total of 123, 474 sq. feet of building area. Technically you can discount the parking level
632 as not floor area, but it does contribute to the volume of the buildings. The Marketplace has
633 158,814 sq. feet, so this development is only shy of that by 30,000 sq. feet. The square footage
634 per acre of the marketplace is 8,766 square feet per acre. The square footage of this site based
635 on what they have proposed is 17,740 square feet per acre. You are doubling the density of
636 maybe the nearest benchmark within the town, and I think it's important to mention that and
637 put that on the record.

638
639 Town Attorney Lauren Arizaga-Womble asked the board if there was anything not mentioned in
640 the deliberation portion that contributed to the motion, it would be helpful to include that.

641
642 Chairperson Ward stated the wastewater situation from a water quality standpoint and
643 environmental quality standpoint became the main issue but before that, it would be the 50 ft
644 setback on the east side that the applicant is not in favor of, wastewater all phases including

645 the covenant issues, the traffic study requirement, storm water issue with all this fill and what
646 will be the repercussions of doing all that, the use of Landing Trail which has been answered by
647 the applicant, Dominion Power 70 ft powerline easement questions, and the marina which not
648 allowed.

649
650 Vice Chairperson DiBernardo stated the Land Use plan comes into effect here and does it
651 conform with the Southern Shores Land Use Plan. He is very skeptical as far as from the initial
652 look at it. He further stated he knows he has belabored this before, but the covenant requires
653 50 or 18,000 gallons. If you want to change the covenant in North Carolina it's a 67% vote to
654 change a covenant, that's the regulation in North Carolina. The covenant would need to be
655 straightened out, what is the requirement, and there is no word minimum as stated by the
656 applicant's attorney. Mr. DiBernardo stated the other items for him were the 50-foot setback
657 and wording such as, "if feasible", is concerning and needs stronger clarification.

658
659 Planning Board Member McClendon stated his concerns consisted of the issues with the wastewater
660 treatment plant which has not been satisfied, the use as proposed would not conform with the town's
661 land use plan, nor would be compatible with the area in which it is located. There is a lower density
662 residential area adjacent and therefore the massing of the buildings, a huge bar blocking the view from
663 the road of the waterway is not compatible with that area. Breaking that project up into smaller pieces
664 that doesn't look like a Comfort Inn so that there is light and air and views through there, and having the
665 sizes of the of the buildings somehow reflect the adjacencies which is residential both in Martin Point
666 and in Southern Shores Landing. The project is not compatible with the area.

667
668 Planning Board Member Collins stated the density for that area and the wastewater treatment plant
669 issues were her concerns.

670 Chairperson Ward read his motion once more, **MOTION** to reject the Special Use Permit 23-01 and
671 accompanying site plan submitted by the applicant Ginguite, LLC, Seconded by Vice Chairperson
672 DiBernardo. The motion passed unanimously 5-0.

673 **Public Comment**

674 -An unnamed resident thanked the Planning Board for looking out for their community.

675

676 **Planning Board Member Comments**

677 None

678

679 **Announcements**

680 Planning Director Haskett stated the next regular meeting will be held December 18th at 5:00 p.m.

681

682 **Adjourn**

683 Motion to adjourn the meeting by Vice Chairperson DiBernardo, Seconded by Planning Board Member
684 Lawler. The time was 7:31 p.m. The motion passed unanimously.

685

686 ATTEST:

687 
688 Tony DiBernardo, Vice Chairperson

Respectfully submitted,

Sheila Kahe, Town Clerk

