

**TOWN OF WALLACE
CONTINUED TOWN COUNCIL MEETING
JULY 26, 2011
6:00PM**

The Wallace Town Council continued it's regularly scheduled monthly meeting in the Council Chambers at the Town Hall.

The following Governing Body members were present:

Charles C. Farris, Jr., Mayor

Councilman/Mayor Pro-tem David Jordan
Councilman Graham Kilpatrick

Councilman Warren Hepler
Councilman Jeff Carter

The following members of the Governing Body were absent:

Councilman Michael Blackburn

Also present were:

Matt Livingston, Town Manager
Kathy B. Hubbard, Tax Collector (Minutes Recorder)
Davis Carr, Robert H. Goslee & Assoc.
Mike Staton, Wallace Enterprise
Steve Coggins, Attorney
Norwood Blanchard, Attorney
David Bryant

Richard Burrows, Town Attorney
Jerry James, Public Works Director
James Gantt, Wallace PD
Barry Mills, Associated Development
_____ 2nd Attorney
Carlita McGee
Kris Bryant

Mayor Farris reconvened the meeting.

Joseph D. Bryant Development

Matthew Livingston, Town Manager introduced the Joseph D. Bryant Development consideration of Final Plat. He stated that all of the Sub-division Regulations had been met.

Davis Carr, Robert H. Goslee & Associates, stated that the infrastructure would be completed. The curb and gutter would be the only thing left to do.

Mayor Farris called for a motion to approve Final Plat for Bryant D. Development and the Developer is entitled to proceed with Development upon posting of bond in the form of a letter of credit in the amount of \$735,624.

Councilman Carter made a motion that was seconded by Warren Hepler and approved by unanimous vote of Council.

Conditional Use Permit for Associated Development

Mr. Burrows, Town Attorney reviewed revisions with Council and Steve Coggins, Attorney for Associated Development. After discussion, Mayor Farris called for a motion to resend previous vote to reject the issuance of a Conditional Use Permit (CUP) of Summer Tree on June 9, 2011.

Councilman Hepler made the first motion and was seconded by David Jordan and approved by unanimous vote of Council.

Council upon reconsideration took up the March 31, 2011 Application by Associated Development, Inc. for a Conditional Use Permit under Town Zoning Ordinance § 153.242(A)(2) to construct a proposed Summertree Apartments project as a Planned Residential Unit Development under Town Zoning Ordinance § 153.171(A) on these properties: **(1)** Tax Parcel #09-2731 (approximately 1.1 acres) as described in Deed Book 1280, page 752 (address 4107 South N.C. Highway 11, Wallace, NC 28466, which is zoned in its entirety as “Highway Business” (HB), and **(2)** Tax Parcel # 09-2730 (approximately 8 acres) as described in Deed Book 1231, page 344, which is zoned HB and R-15. Upon giving due regard to the nature and state of all adjacent structures and uses and to the districts within which the same are located, Council voted unanimously that the Applicant during the May 31, 2011 hearing established by substantial, competent and material evidence the Town Code § 153.242(A)(5)(a)-(g) factors, and that the permit should be issued and is issued under Town Code § 153.242(B)(1) subject to the **attached** 28 conditions signed by the Applicant and the Town.

Councilman Carter made a motion that was seconded by Graham Kilpatrick and approved by unanimous vote of Council.

Matt Livingston asked Barry Mills a question regarding the Plantation Acres road maintenance. Mr. Mills was not aware of any written maintenance agreement concerning the roads in Plantation Acres and NCDOT.

Budget Transfers

Matt Livingston, Town Manager, provided the following budget transfers for the Council’s information as required by the budget ordinance.

Governing Body:

From: Professional Services	10.00.4100.040	(450.00)
To: Salaries-Governing Body	10.00.4100.020	400.00
	10.00.4100.035	50.00

Reason: Underestimated salaries.

Tax Department:

From: Computer Support Fees	10.00.4600.210	(940.00)
To: Salaries –Tax Department	10.00.4600.020	850.00
Retirement	10.00.4600.070	60.00
401 (K) Contribution	10.00.4600.071	30.00

Reason: Underestimated salaries.

Police Department:

From: K-9 Narcotic Detection	10.10.5100.220	(1,750.00)
General Insurance	10.10.5100.540	(325.00)
To: Maint/Repair –Vehicles	10.10.5100.170	1,550.00
Auto Supplies	10.10.5100.310	200.00
Police Cars – Principle	10.10.5100.800	325.00

Reason: Increased vehicle expenses.

Animal Control:

From: Maint/Repair-Equipment	10.10.5200.160	(100.00)
To: Health Insurance	10.10.5200.060	100.00

Reason: Underestimated salaries.

Zoning Department:

From: Health Insurance	10.40.5400.060	(335.00)
To: Salaries-Zoning	10.40.5400.020	300.00
Retirement	10.40.5400.070	25.00
401 (K) Contribution	10.40.5400.071	10.00

Reason: Underestimated salaries.

Parks & Recreational Department:

From: Travel, Seminar, Meetings	10.80.6200.140	(120.00)
Capital Outlay-Improvements	10.80.6200.720	(2,750.00)
To: Salaries-Parks & Recreation	10.80.6200.020	2,750.00
Maint/Repair-Facilities	10.80.6200.150	120.00

Reason: Underestimated salaries.

Airport

From: Salaries-Airport	10.20.6500.020	(325.00)
To: Travel, Seminar, Meetings	10.20.6500.140	100.00
Maint. /Repair – Equipment	10.20.6500.160	175.00
Contracted Services	10.20.6500.450	50.00

Reason: To cover NC Airport Association dues and water cooler repair.

Non-Department:

From: Bond Refinance-Interest	10.00.6600.880	(80.00)
Town Hall Addition-Principle	10.00.6600.890	(85.00)
Town Hall Addition-Interest	10.00.6600.891	(90.00)
Depot Loan I-Interest	10.00.6600.920	(20.00)
To: Miscellaneous Expense	10.00.6600.570	275.00

Reason: Increased credit card usage.

Water/Sewer Department:

From: Health Insurance	30.91.6600.060	(100.00)
To: Salaries-Water/Sewer	30.91.6600.020	100.00

Reason: Underestimated salaries.

Water Operations Department:

From: Professional Services	30.91.8100.080	(6,130.00)
To: Salaries	30.91.8100.020	5,700.00
FICA Taxes	30.91.8100.050	125.00
Retirement	30.91.8100.070	240.00
401 (K) Contributions	30.91.8100.071	25.00
Tin City Tank-Principle	30.91.8100.990	40.00

Reason: Underestimated salaries.

Sewer Department:

From: Health Insurance	30.91.8200.060	(1,025.00)
To: Salaries-Wastewater	30.91.8200.020	950.00
FICA Taxes	30.91.8200.050	50.00
Retirement	30.91.8200.070	25.00

Reason: Underestimated salaries.

Public Works Department:

From: Health Insurance	30.91.8300.060	(8,000.00)
To: Sewer System Maintenance	30.91.8300.150	8,000.00

Reason: Paddle wheels at WWTP.

Mayor Farrior called for a motion to accept the Budget Transfers as presented.

Councilman Hepler made a motion and that was seconded by Councilman Carter and approved by Council with a unanimous vote.

Tax Releases

Kathy Hubbard, Tax Collector, presented the following for release from their tax liability:

001640025	Almon H. Carter, Jr.	Out of Town	\$ 975.52
008619372	Max C. Teachey	Out of Town	\$ 360.64
007493166	Mrs. James Rose	Out of Town	\$ 409.36
009369729	Ransom James Whaley, Jr.	Out of Town	\$ 437.92
005767614	Oscar Mejia	Out of Town	\$ 12.32
007386151	Marvin Rivera	Out of Town	\$ 12.32
009903939	Anna Zumigh	Out of Town	\$ 12.32
8934324	Marco Saida Vallecillo	Out of Town	\$ 16.55
7176531	Fito Rafelee	Out of Town	\$ 12.32
000454705	Richard Bennerman	Out of Town	\$ 19.15
1637524	Harry Carrow	Out of Town	\$ 220.08
000180486	Automotion	Out of Town	\$ 3.08
000913086	JF Bradshaw	Out of Town	\$ 1,019.76
007189485	Moises Rapalo	Out of Town	\$ 735.22
006428025	Anthony Noble	Out of Town	\$ 55.20
001581725	James Carr	Out of Town	\$ 528.08
7236132	Michael Redd	Out of Town	\$ 615.44
7690302	Joe Scott	Out of Town	\$ 10.64
2175051	David Jones Investments	Out of Town	\$ 72.66
8099949	South Park Investments	Out of Town	\$ 302.40

2289708	Dixie General Contractors	Out of Town	\$ 22.13
0184564	AXAW Properties, LLC	Out of Town	\$ 622.16
1902885	Collier Enterprises	Out of Town	\$1,104.13
4296190	J.F. Energy Corporation	Out of Town	\$ 352.80
8192799	William Stallings	Out of Town	\$ 53.76
7022304	Samuel Powers	Out of Town	\$ 18.48
7647012	Lula Saunders	Out of Town	\$ 337.12
9696750	Rose Ann Williams	Out of Town	\$ 62.16
6692780	Frederick Pearsall	Out of Town	\$ 216.72
5111217	Marie Lamb	Out of Town	\$ 64.40
8165892	Nannie Stafford	Out of Town	\$ 6.16
6395166	Sherry Newkirk	Out of Town	\$ 39.76
8186145	Mattie Stallings	Out of Town	\$ 12.32
8604050	J.D. Teachey	Out of Town	\$ 12.33
6781929	Sandra Phillips	Out of Town	\$ 222.50
1359642	Joseph Bryant	Out of Town	\$1,116.82
6883776	Arletha Pigford, Hrs.	Out of Town	\$ 29.12
Total Releases Requested		(37)	\$ 10,123.85

Mayor Farrior called for a motion to release these tax liabilities. Councilman Carter made a motion as such. The motion was seconded by Councilman Kilpatrick and approved by unanimous vote of Council.

Councilman Kilpatrick asked Matt Livingston to check on the condition of roads on Hall St. /Railroad St. Mr. Livingston stated he would follow up. Also, Councilman Kilpatrick questioned the trash such as couches located on Hwy 117 just outside the Town limits.

Mr. Livingston stated that “Big Trash Day” is scheduled on August 4, 2011, that would take care of this issue. “Big Trash Day” is scheduled every 3 months.

There being no further business Mayor Farrior called for a motion to close the meeting. Councilman Hepler made a motion that was seconded by Councilman Carter and approved by unanimous vote of the Council.

Respectfully submitted,

Charles C. Farrior, Jr., Mayor

Jacqueline Nicholson, CMC
Town Clerk

CONDITIONAL USE PERMIT CONDITIONS:

APPLICANT SHALL BE REQUIRED TO COMPLY WITH THE FOLLOWING CONDITIONS/REQUIREMENTS:

1. The turn radius and entrance road width off of N.C. Hwy. 11, shall meet or exceed N.C.D.O.T. standards. The turn radius of all curves within the project, as well as the turning lane set out in section 2, will have to be of a sufficient size to enable a Town emergency or waste collection vehicle to be able to turn while maintaining a forward or backward movement.
2. A turning lane shall be constructed by Applicant at the entrance to its road by constructing a right turning land for traffic traveling in a northerly direction exiting off of N.C. Hwy. 11, into the development, meeting or exceeding DOT Standards.
3. Upon completion of the streets within the project, meeting all DOT standards/requirements, sized as shown upon the provided plat, Applicant shall dedicate those streets to the Town for public use. Upon determining that the streets either meet or exceed DOT standards/requirement, Town shall thereafter maintain those streets. No water or sewer main shall be constructed within the street right-of-way, except to diagonally cross a street where ever necessary to provide service to the project structures. Applicant shall provide "as-built" plans and drawings showing the location of all water and sewer lines crossing any street within the project.
4. Applicant to pay for the cost of up-sizing the lift station and control panel into which the sewage from the 24 dwelling unit and an office development will drain, and provide a new four inch (4.0") Godwin pump with Murphy controls for use by the Town complying with the specifications hereto attached in compliance with the requirements of the North Carolina Department of Environment and Natural Resources. ("DENR")
5. All open space shown upon the plat and plans provided by Applicant, (including the area now covered by the brick house near Hwy. 11) shall be cleared of all structures, except as hereafter provided, at or prior to the time a Certificate of Occupancy is issued to Applicant for the habitation of the residential units.
6. No structures, other than open-sided recreational shelters, recreation equipment, or sidewalks that are designed to either be utilized for recreational purposes or to provide pedestrian access to areas designated for recreation use, may be constructed within any of the open space areas shown on the provided plat.
7. All open-space areas shown on the provided plat, shall be permanently dedicated for the use and benefit of the residents who, from time to time, reside in the residential units. In addition, all open-space areas shown on the provided plat shall be permanently dedicated for public use in the event more than fifty percent (50.0%) of the multi-family units cease being used for residential purposes, subject to prior written consent by any then existing secured creditor of the Applicant or subsequent Owner.

8. In that the road frontage portion of the project property (including the property upon which the brick house is currently located) is currently zoned Highway Business (“HB”) for a depth of 150.0 feet, neither that area nor any other part of entire project area shown upon the provided plat as open space areas, shall be used for any commercial purpose.

9. No exterior speakers or intercoms shall be permitted within the project.

10. Applicant shall install a eight inch looped water main running from the Town’s water main located adjacent to N.C. Hwy. 11, and a eight inch sewer main, also to be connected to Town’s sewer collection system. Applicant shall pay a water tap fee of \$747.00, a sewer tap fee of \$515.00, and an impact fee for the entire project of \$39,018.00, upon issuance of this Conditional Use Permit. Each residential unit, and any other area utilizing water and/or sewer services shall be separately metered for water usage, and the sewer connections from each such dwelling unit, office area, or other area utilizing water and/or sewer services shall be constructed in accordance with the North Carolina plumbing code in effect at the time of construction. The water meters utilized by Applicant shall be Hershey “Hot Rod” Radio Read meters, and be consistent with the meters utilized by the Town. Town shall read the meters, and the billings for all meters will be billed to the Applicant/Permit Holder, who shall make payment to the Town. In that the water meters will be installed in close proximity to the serviced units, Applicant/Permit Holder shall be responsible for maintenance of the water system from its property line to the units themselves.

11. Applicant shall install a eight inch sewer collection line from the Town’s sewage collection system into the project. Applicant shall install a clean-out plug in its sewer line in close proximity to its property line and N.C. Hwy. 11's eastern right-of-way line. Applicant shall be responsible for maintenance of the sewer line from the clean-out plug into its project. Town shall be responsible for maintenance from that point to its connection to the Town’s sewage collection lines. Applicant shall install a metal box encompassing the clean-out plug to protect it from breakage.

12. The owner of the development shall either provide, separate garbage containers for each dwelling unit, recreation area, or a central deposit container located at the rear (eastern) portion of the residential units as shown on the provided plan. In the event a central deposit container shall be provided, it shall be contained within a three-sided open-topped structure with the open side facing in the same easterly direction as the project units as are shown upon the provided plans, and shall be provided reasonable access for open so a dumpster truck will have ready access to the central container. No trash or debris shall be allowed to remain outside of the central container area for any period longer than four hours.

13. A manager or assistant-manager (hereafter “manager”), and contact telephone number shall be provided to the Town, and a manager shall be located on the premises at all times during regular business hours. Applicant shall install and maintain an electronic video surveillance system, which shall be accessible at all times by the manager and by all law enforcement agencies with jurisdiction. Provided, however, the on-duty manager shall be permitted to be absent from the project during regular business hours for meals, and other temporary needs or requirements for periods not to exceed two (2.0) hours, except in the event of an emergency. If the on-duty manager is to be absent for any period of time in excess of the prior hourly permitted time, an assistant-manager or designated person shall be on-site at all times during regular

business hours as hereinabove provided. During non-business hours, a manager or assistant manager shall be available by telephone, and shall be able to be at the project location within thirty (30) minutes, upon notification of an emergency or other event requiring managerial action, upon telephonic notification by a Town Representative, law enforcement official or emergency services representative.

14. No junked or inoperable motor vehicles, as defined by the Town's ordinances, shall be permitted to remain on the project property in violation of the Town's ordinances. In the event Town shall notify the manager of such a violation, the Manager shall take prompt action to have the vehicle removed from the project area.

15. The applicant shall plant and maintain trees or shrubs along the eastern boundary of the project property extending from N.C. Hwy. 11 to the northeastern corner/northern line of the project property that will, within six months from the date of the granting of this conditional use permit, be of such density and height as is necessary to provide an opaque buffer between the proposed development and the lots and residences located in the adjacent Summerfield Development. In addition, Applicant shall construct and maintain a six foot (6.0') high fence running from the eastern right-of-way of N.C. Hwy. 11 along and with Applicant's eastern boundary to the northern line of Applicant's boundary. The fence shall be erected immediately west of Applicant's above required vegetative barrier. In the event a single family residential project is developed either to the north or east of the project area, the same buffer requirements shall be planted and/or erected and maintained along those adjacent property lines. In the event multi-family projects are developed in either the eastern or northern boundaries of the project area, the buffer requirements may be utilized by the project owner, but are not required.

16. At all times that the project area is in operation, the owner(s) shall provide written notice to the Town of the name(s), addresses(s) and telephone numbers of all of the owners, which names, addresses and telephone numbers shall be maintained current at all times.

17. At all times that the project area is in operation, the owner(s) shall provide written notice to the Town of the name(s), addresses and telephone number of the manager or assistant manager of the project, which shall be maintained current at all times.

18. The access streets within the project shall remain open and unobstructed at all times to permit any emergency, police, fire department, or waste collection vehicle immediate access to all of the dwelling units, dumpster area, or required open-space areas. In the event of a temporary need to obstruct any of the roadways, a person shall be present or immediately available to remove the obstruction upon the request of a member of the police, fire, waste collection or emergency services.

19. All ordinances, regulations, whether now existing or hereafter amended or adopted that are applicable to all town citizens and property shall be complied with at all times.

20. In the event Town shall notify the Applicant/Permit Holder of any alleged violations of the C.U.P., such violations will be addressed pursuant to the Town's established permit violation regulations. The Applicant/Permit Holder will be provided written notice setting out the alleged

violations, and the right to be heard before the Permit Officer and/or the Town Council prior to any compliance order or determination that the C.U.P. has been violated and any orders entered thereupon

21. Applicant shall cause one or more provisions be included in any lease agreement requiring tenants not be engaged in any conduct that would result in law enforcement personnel being called for either public or private disturbances in excess of five (5.0) times per month, or two (2.0) times per month for any one residential unit. In the event of violations, Applicant shall take appropriate action, but only to the extent consistent with the North Carolina Tenant Security Deposit Act (Article 6, Chapter 42 of the North Carolina General Statutes) and other applicable laws to cause the tenants engaged in such conduct to cease such conduct or be evicted. Any failure by the Applicant to take such appropriate action within ten days of notification by the Town to the manager shall constitute a violation of Condition.

22. The streets and sidewalks shall be constructed according to D.O.T. specifications, and any turns shall have a radius so that any fire truck or other emergency vehicles can reasonably utilize all of the roadways shown upon the provided plat.

23. At or prior to the issuance of a Certificate of Occupancy permitting the utilization of any or all of the residential units the Owner(s) of the project shall dedicate all of the streets for public use.

24. Applicant has agreed to pave the remainder of Summerfield Drive from Summerfield Drive to the northern boundary of the Summerfield Subdivision, Section 1, of which applicant was the developer.

25. Town will, if appropriate, apply for a CDBG grant from the N.C. Dept. of Commerce, Division of Community assistance, in an amount not to exceed \$144,000.00, or such lesser amount as requested by Applicant, and loan those grant funds, if received, to Applicant, less a 10.0% retainage amount under the same terms and conditions as set out in Town's letter dated May 10, 2011, and will not interfere with any grant or financing applications by Applicant for the subject project.

26. By signing this Exhibit A, Applicant and Barry T. Mills specifically agree that such conditions are reasonable, and they jointly and severally accept all such conditions. Upon the execution of this C.U.P., upon the earlier of the expiration of the 30 day appeal period having run without an appeal being filed, or the later of the C.U.P. having been judicially determined to be final, Applicant and Barry T. Mills, do hereby authorize Norwood Blanchard, III to file the provided Notice of Dismissal with Prejudice. Applicant and Barry T. Mills do further agree that neither will file an appeal from the issuance of this C.U.P., and further agree to and do hereby waive the right to seek a Writ of Certiorari challenging any part of the C.U.P.

27. This Conditional Use Permit shall be effective until December 31, 2014, unless earlier terminated, and provided construction is commenced on or prior to June 1, 2013. This Permit shall be assignable, but in the event of an assignment, the Applicant and Assignee shall be and remain subject to all conditions set out in this C.U.P.

28. The terms of this Conditional Use Permit shall not be modified, altered, or amended unless mutually agreed in writing and signed by Town and Applicant.

ISSUED, THIS 26th DAY OF JULY, 2011

TOWN OF WALLACE

BY: _____

TITLE: _____

CONSENTED TO: ASSOCIATED DEVELOPMENT, INC.

By: _____

Barry T. Mills, President

Barry T. Mills, Individually

This ___ day of _____, 2011