



**TOWN OF CALABASH  
PLANNING AND ZONING BOARD  
REGULAR MEETING  
Monday, October 3, 2011  
6:00 pm-SANBORN HALL**

**AGENDA**

**CALL TO ORDER & PLEDGE TO FLAG:**

**APPROVAL/ADJUSTMENT OF AGENDA:**

**ELECT CHAIRMAN:**

**ELECT VICE CHAIRMAN:**

**APPROVAL OF MINUTES:**

1. August 1, 2011-Regular Meeting

**PUBLIC COMMENTS:**

**TOWN CLERK'S REPORT:**

**OLD BUSINESS:** none

**NEW BUSINESS:**

1. **Discussion/Action** to make a recommendation to the Board of Commissioners regarding a preliminary/final plat subdivision request by the current owner of Kingfish Bay. To subdivide the existing 8 townhomes into 8 parcels; current Tax ID# 2410001606.

**BOARD COMMENTS:**

**ADJOURN:**

**Town of Calabash  
Planning & Zoning Board  
Regular meeting  
October 3, 2011-6:00 p.m**

**Minutes**

The Calabash Planning & Zoning Board (PZB) held their Regular Monthly meeting on Monday, October 3, 2011 6pm at Town Hall, 882 Persimmon Road.

**Members Present:** Charlie Daniels, Sonia Climer, Emily DiStasio, Josh Truesdale

**Members Absent:** Vice Chairman John Thomas

**Staff Present:** Town Clerk Kelley Southward, Town/Zoning Administrator Chuck Nance, and Building Inspector/Code Enforcement Officer Stanley Dills.

**Guests Present:** Chris Stanley of East Coast Engineering, Joe Cebina & Rob Davenport of GS Carolina, Cecelia Herman, Sandy Melahn, Commissioner Mary Knight, and Daria Buccilli

**Call to Order/Pledge:** In the absence of a Chairman and Vice Chairman, Town Administrator Chuck Nance called the meeting to order at 6:00 pm and led the Pledge of Allegiance to the Flag.

**Approval/Adjustment of Agenda:** Mr. Truesdale moved to amend agenda to elect a chairman first and approve the agenda as amended; seconded by Mr. Daniels unanimously carried.

**Elect Chairman:** The Town Clerk opened the floor for nominations for Chairman of the PZB. Mr. Daniels nominated Sonia Climer; no other nominations were brought forth. The Town Clerk closed the floor for nominations.

Mr. Truesdale motioned to appoint Sonia Climer Chairperson of the PZB; seconded by Mr. Daniels and unanimously carried.

**Elect Vice Chairman:** Chairperson Climer suggests no action be taken on this matter until Mr. Thomas is present; all agreed.

**Approve/Adjust Minutes:** Ms. DiStasio moved to approve the minutes of August 1, 2011 as presented, seconded by Mr. Daniels and unanimously carried.

**Public Comments:**

1. Mrs. Cecelia Herman addressed the PZB regarding the proposed subdivision of eight lots in the Kingfish Bay development (item #1 of New Business on the PZB agenda). Mrs. Herman noted that she was a former Calabash Commissioner and

former Chairman of the PZB. She said that she was on both boards when Kingfish Bay (KFB) was originally approved. She said that she has great concerns about the proposed action to subdivide as there were many meetings with the original developers of KFB before the Conditional Use Permit (CUP) was ultimately approved. During those many meetings the developers at that time explained their vision for the project and it was discussed with the town (boards) what would and what would not be allowed. Current Mayor Clemmons was a Commissioner at the time this project came before the town. Herself and Commissioner Clemmons were very involved and particularly concerned with the cutting of trees/protection of the land and riverfront and open space associated with the project. During those many meetings, which started in 2005 it was clear that the plan was to produce/develop a condominium project; all condos. Some of the condos would be townhouse style. There was objection in the beginning to all buildings being the 45-foot high condo buildings. During negotiations some of the condo building heights were reduced; buildings in the front of the property would be at 35-foot townhouse style buildings. While the taller buildings, as the topography of the land tends to go down as you go toward the river, would be given the 45-foot limit and they would all relatively appear to not be gargantuan buildings which is what we in Calabash have not wanted for aesthetics. In some of the discussions there was the possibility that in the future, in Phase 3 there would be consideration for single-family because the market at that time was higher on single-family than condominium. That is one of the reasons why in the CUP there was a statement included about if subdivision were to take place then the property would have to be bonded. There was also a statement by staff that staff erred (years ago) in not obtaining a bond. She said staff did not error by not securing bond years ago because a bond was not necessary until something was sold in the project. Wakefield's attorney's came before the board (at that time) and explained that when you subdivide vacant lots you have to post a bond because you are selling something a vacant piece of land with the promise that in the future there will be roads and infrastructure etc. But when you're selling condos you sell the unit and you don't sell the unit until you get a certificate of occupancy (CO). And you get a CO when that portion is finished; the roads and what have you. Clearly it was agreed upon that they would not have to post a bond since they were not subdividing lots, had no intentions at that time they were still looking at townhomes and condos being all condos but leaving their option open that if that subdivision section were in should they decide to go that way they could come back to only the PZB and not go before the Board of Commissioners (BOC). It had been very clear to all members of the PZB and BOC that a decrease in density is considered a minor change and minor changes can be approved by the PZB. If it was the opposite way around and they were increasing density that would be a major change and that would have to go to PZB for a recommendation and BOC for action. When a condo project or a Planned Unit Development (PUD) is developed there must be a master declaration established and there must be documents. The CUP was approved prior to the documents being developed because it was clear that the documents would reflect exactly what the plan was to be. Because to produce the documents

when they were still asking the questions ‘can we have townhouses, can we have this, can we have that?’ “and the documents have to be filed at the county, which they were; in the documents its clear these are condos...and for lack of a better word and I don’t even know whether in our development phases in the state yet we have gotten a clear delineation between building style, management style, sales style—what do you call a condominium that is not a big building? The minute I say condominium to you, you think at least 12 units at least 3 stories high. There are in fact detached single-family condominium communities developed in New York. There are townhouse condo communities developed right here in South Carolina. I don’t know about other areas of North Carolina. So, when you talk condominium, what it says what the documents say is that they are selling the interior of the unit. They are selling from the ground floor flooring to the ceiling, horizontally, and the side walls, vertically. And one of the reasons Kingfish was about this was that this is what our community will look like, this is how our community will be maintained. Because we will be responsible for the exterior of the buildings and the exterior of the landscape. They had no intentions of, as I said, subdividing because they were only selling the interior. And that’s why they had to have a CO before they could sell anything. Now they understood the minute the first unit was sold that they would have to bond that phase. As soon as they sold a unit. As soon as there was a buyer at risk they have to bond. And that’s the whole purpose of the bond, the risk to the buyer. And that’s why the law is in there that they have to bond for the infrastructure so you’re not sitting there with a piece of land with no road going to it, as is the case in San Rio. However they did bond in San Rio because they were selling lots. And I don’t know, I know last year Shallotte was discussing whether they were going to wait and see what happens or whether they were going to take the bond and start finishing the infrastructure. So, contrary to what has been advised, I guess I would say, when whoever owns the property now comes to town hall and says ‘what do we have to do to be able to sell the unit’ all you have to do is what Wakefield would’ve had to do. Because the owner’s name has changed doesn’t mean the plan has changed doesn’t mean the PUD has changed doesn’t mean that things have to be subdivided in order for them to have to sell. It is the plan and one of the things, it’s right in one of the documents, it defines, yes, they’re called condominium buildings and it differentiates between townhouses because they were required to do that because clearly we say a townhouse cannot be more than 35-feet. And a condominium, multiple unit building can be 45-feet. But there is no...there are such things...and perhaps part of the reason it is not in the CUP that they should’ve been termed ‘townhouse condominiums’ is because when the final CUP was voted on neither Commissioner Clemmons nor myself were present. Wakefield even asked the Board ‘don’t you want to wait for Commissioner Herman and Commissioner Clemmons to be present’ because they knew they had dealt mostly with us and the Mayor said no we don’t need them here we can go ahead without them. So, some of the nuances may have been, I’m not saying they would’ve been and I’m not saying we wouldn’t have missed, maybe clarifying the wording a little bit. But on the night that the CUP was passed...um...right in here..when they had a...they had to have, which you will be very aware of, Sonia,

they had to have a quasi judicial hearing to give a conditional use permit; it so happens that with conditional use permits are issued by the Board (of Commissioners). But it says right here ‘the applicant shall complete the development strictly in accordance with the plan submitted to and approved by this Board a copy of which is filed in the Clerk’s office.’”

Chairperson Climer asked where Mrs. Herman read that sentence from—it was from the first page of the CUP, which was included in the PZB’s packets.

Mrs. Herman continued, “Also in the...in looking up in the building codes they basically call multiple single-family dwellings is the definition of townhouses now whether they’re sold as condominiums...there has been some discussion...I’ve had a meeting with the Town, probably having the most history on this whole development, and some are concerned they were permitted as single-family residences under condo and again I’ll say, condo envisions multi-units, multi-units above and below one another, that they should not have been permitted as single-family. I say they are single-family residential whether I own the land or whether I only own the interior. That’s what they are. And there is some concern that if I don’t own the land, it’s not single family. It’s condominium by sale, it’s condominium by management, and it’s single-family by structure. Whether I own the land or not, I put the question to people at the Town ‘well why can I be less safe without the commercial sprinklers and higher fire wall if I don’t own the land than if I only own the interior?’ And nobody’s quite answered that question but I would challenge and I have been in touch with Raleigh and waiting for a call back because it shouldn’t matter. If a townhouse can be owned single-family, lived in single-family, is a single family building...structure...why it wouldn’t follow residential permitting. So, I do not believe the town erred in issuing single family permits and I do not believe the town erred in not getting a bond. Yes, if they’re required to subdivide, the minute they subdivide they will have to post a bond. This development was to be one big community not subdivided little pieces of property. It was suppose to be built and maintained in one look not people being able to change the color and whatever.”

Mr. Truesdale asked if the covenants could be re-written because there are lots of places where you have to get permission from a homeowners association before you can change the color of your house and things of that nature.

Mrs. Herman said “they are still the owners...let’s pretend whoever is the owner now is not the owner but that it’s still Wakefield because the only difference is there is a new owner because Wakefield went bust. Any owner until turnover takes place can amend their documents.”

Mr. Truesdale said he thought that right now the property/development is owned by the bank; Mrs. Herman said she believes it’s owned by the bank. Mr.

Truesdale said that we're talking about a perspective buyer taking over the project because the bank is just going to sit on it.

Mrs. Herman said "It doesn't matter whether they're going to sit on it or whether they're going to move on it or whatever. From what I was told, the bank does not want to change the PUD and does not want to change the plan. I am telling you if you subdivide the 8 lots you are already changing the plan, in my opinion. And in all my history and all my discussion and all my belief from moving forward with the PZB and recommending approval to the BOC because it is not just what you have on paper, trust me when a development starts, you ladies and gentlemen will working a lot harder than just looking at a piece of paper and saying I like what it says or I don't. Yes, maybe we have to be tighter and be clearer on our words and what have you but if it's the bank owns it and the bank wants to subdivide, I say they can subdivide but I say it voids the conditional use permit for the plan that was delivered to us. And then they can start from scratch and do whatever they want if they go through the process and get the proper permits and stuff. But before a homeowner's association (HOA) most documents written, and you probably know this Josh, that the documents will state that the developer has the majority on the board until such time that so much has been built out and then it's turned over to the owners. So until that point and time they can amend it, change it, limit it...certainly their covenants and restrictions could change. I think that there is a little bit of legality if they say there is going to be a pool and before they turn it over they change their documents to say now there's not going to be a pool. But as far as covenants and restrictions...ya know, having animals, not having animals and so on and so forth and certainly when not a thing has been sold they can do anything they want. But if a CO is given if they meet all their permits and a CO is given to one unit and its sold then they have to bond the rest of the phase. But they don't have to bond the phase, they did not have to bond the phase that's why I say it's not an error that there was no bond, until something was sold. Because until it's sold it's their own property; they own it all. They can do what they want on it so long as it's not illegal. So, I would just urge you, certainly not if you're not clear on it, not to act on it until you get more clarity. But I believe that this violates the purpose of the development. It violates the plans and everything that was submitted to us and as it says in the CUP 'in accordance with the plans submitted' and all that was said that they were granted so many units and they were talking condominium units. And I think that it's spelled out in the documents in the master declaration. So I would ask you not to be too quick to subdivide. That opens that property up to many more subdivisions. Thank you." Chairperson Climer thanked Mrs. Herman for her comments. Mrs. Herman said if anyone had any questions she would be happy to answer them.

**New Business:**

- 2. Discussion/Action to make a recommendation to the Board of Commissioners regarding a preliminary/final plat subdivision request by the**

**current owner of Kingfish Bay. To subdivide the existing 8 townhomes into 8 parcels; current Tax ID# 2410001606.**

Madam Chairman referred to the findings of facts memo provided by Mr. Nance. She noted that it said the CUP differentiated between townhomes and condos in three places. Mr. Nance pointed out the three places in the CUP—Conditions of Approval (#3, #5, and #11—a copy of both the memo and the entire CUP is attached hereto and made a part of these minutes). Mr. Nance stated, having just started with the town, he has come in at the tail end of this project. He said he has gone back and read minutes and reviewed the site development plan for Phase 1A (the phase in which the proposed subdivision is taking place) as well as the CUP and town ordinances. When he first started in August he was approached by the Clerk and Building Inspector who explained that the representatives of KFB wanted to know what they had to do in order to obtain CO's for the existing 8 townhome units (2 buildings each containing 4 units) that have been sitting vacant and unfinished for several years (although they were near completion). Because the buildings had been sitting so long, they had experienced a lot of vandalism. The three staff members reviewed minutes of meetings where KFB was discussed, the CUP associated with the project, and the site plan for Phase 1A. Further the construction of the 8 units was discussed with Mr. Dills who relayed that condos and townhomes fell under different construction guidelines in NC. Mr. Dills said the 8 units were permitted and constructed according to the NC Building Code standards for townhomes (not condos). Mr. Nance said he assumes that NC sets different standards for condos and townhomes because of the difference in density associated with the two types of dwellings.

Mr. Dills said that the primary difference between the two is on the commercial based residential unit the possibility exists for someone to own property either directly above or below another person. In which case, you now have to travel in a vertical need because fires generally travel upwards. Therefore the risk is greater when you have different levels with different occupants above and below. Generally, townhouse units are only to the left and right (horizontal). The barrier between townhomes is the wall where condos the barrier is the floor/ceiling.

Mr. Nance said the other thing included in the Phase 1A development plan, similar to the CUP, the types of units listed are townhomes and condos; they are separated out. Further, the on the Phase 1A plans the footprints of condo buildings are shown as one outline (although there are 16 units in the buildings) whereas townhome buildings show a division in the units rather than an overall building footprint. Mr. Nance said this further supported staff's interpretation in that if the townhomes were intended to be condos they would've only shown the outline of the entire townhome building rather than the four units.

Based upon the construction type, what was shown in the Phase 1A development plan, and the information contained in the CUP it is Mr. Nance's interpretation that the existing dwellings are townhome units and a subdivision is required. The only difference between what is proposed in the subdivision map that is in front of the PZB this evening and the Phase 1A plan is a minute amount of land for a small front and back yard. The Phase 1A

plan shows the subdivision of the land in the footprint of each unit. It is staff's interpretation that this added minor front and rear yard does not change the CUP. In fact, the owner needs to do a subdivision in order to be able to obtain a certificate of occupancy and sell the units.

Mr. Truesdale asked if the subdivision would change who is responsible for maintaining the exterior. Mr. Nance said that will always be governed by either the HOA or the developer. The Town required an acceptable set of covenants and restrictions for the property (in 2007 with the approval of the Phase 1A development plan) for the purpose of ensuring that the open space and recreation areas in the entire development would be deeded to the HOA. The Town has no control over how the HOA maintains the property—the property is currently all under a single ownership and therefore they can change the covenants and restrictions to meet their desire as far as who is responsible for property and building maintenance. Mr. Truesdale said the bank owns the property and they are going to want to do maintenance as inexpensively as possible. The bank would have controlling interest and single property owners would likely be responsible only for their lot. Mr. Nance concurred that all open and common space would still be owned and controlled by the bank; therefore the bank would be responsible to maintain; individual property owners would be responsible for their own property and building.

Mrs. DiStasio said when someone buys a lot with the dwelling they are buying the exterior of the building as well. The person who buys is responsible for the exterior. Tentatively if the subdivision is approved there would be 8 different owners for the units and each would be responsible for their own exterior of the building. She continued by saying that is not what the covenants and restrictions currently state so therefore the covenants and restrictions would have to be amended. Mr. Truesdale said that in his opinion a change of that nature is not a big deal and he could accept that. Currently he feels that it's a little ambiguous as to who is responsible for what. Mr. Nance said it all depends on how the developer chooses to write the covenants. Even if the subdivision of land takes place the covenants could still be written in a way that makes the developer responsible for maintenance. Or, they could be written that the individual owner is responsible. It is likely that regardless of who is responsible for repair and maintenance the HOA documents will restrict such things as color of building, accessory structures, etc but that is solely up to the HOA, which at this time is only the bank. Mr. Nance pointed out that representatives of KFB are present if the PZB would like to ask them any questions. He added that they have already spoken to staff regarding the covenants/restrictions and they plan to make changes. He again pointed out that the Town doesn't have any control over an HOA's covenants and restrictions—any HOA can change them at anytime.

Mrs. DiStasio asked what is going to happen with the remaining (approximate) 61 acres; instead of being 1 parcel the project would consist of nine if subdivided? She asked if there would ever be a pool or amenities. Mr. Nance said based upon staff's interpretation the only other subdivision of land that could take place in the project would be of the remaining 7 townhome buildings (9 total buildings, 4 units per building, total 36 lots) as this is in accordance with the CUP and development plans. The developer would still be



responsible for the amenities approved in the CUP as part of the master plan. The rest of the property on the plans shows all condo buildings contained in one large parcel. Mrs. DiStasio said she was on the BOC when Wakefield Development Company originally came to the Town and they explicitly told the Town that the project was all condos, two different types of condos. There was to be the multiple condo units and the townhouse style condo unit. It is her opinion that the whole plan would change if the property is subdivided for the townhomes. Mrs. DiStasio went onto say that the units would have to be repaired (from the vandalism) to be sold. She asked why don't they just repair them and hire a night watchman if they're worried about more vandalism and then sell them as is (as condos with no property). Mr. Nance said they could subdivide with the footprint of the building rather than with a minimum yard; that is certainly an option but it still has to go through the same subdivision procedure. Mr. Truesdale asked if that was to mean there would only be two subdivisions rather than eight. Mr. Nance clarified that it would still be eight lots regardless it would simply be that the property lines would be in the footprint of the units rather than the property lines running to the common space at the sidewalks and right of ways. He continued that it would still be the HOA's responsibility to decide who is responsible for the exterior maintenance and upkeep (to be included in the covenants and restrictions). Mrs. DiStasio said if she buys a lot she wants to take care of her own yard and not rely on the HOA. Mr. Truesdale asked if the subdivision runs with the footprint would the yard in front of each unit be considered common ground. Mr. Nance concurred that such was the difference. If simply the land under the townhome is subdivided then the yard would be owned by the HOA and common to the entire development. If the lot goes all the way to the sidewalk (in front) and street (in rear) as proposed on the subdivision map being considered this evening then the yards would be privately owned. The homeowner would be responsible for what is inside the deeded space.

Madam Chairman Climer asked what would happen with the proposed pool. Mr. Nance noted that the CUP requires that the pool and cabana area are to be completed no later than the 300<sup>th</sup> CO; this requirement would not change. He reiterated that the plan included 9 townhome buildings each consisting of 4 units for a total of 36 townhome dwelling units whether there is a yard with them or not. Mrs. DiStasio reiterated that when the original developers came before the Town (in 2006/2007) they told the Town the entire project was condos and the townhomes were a style of condos. Mr. Nance said he was not here at that time and he has had to make an interpretation based upon the Conditional Use Permit, the minutes of past meetings, and the development plans. It is difficult for him to understand a CUP that differentiates between condos and townhomes without containing any definition of either one. Madam Chairman added the CUP differentiates the heights of condos and townhomes differently. Mr. Truesdale said just looking at the CUP and plans he can tell there is a difference between the two structurally; the legal definitions may be different. Mr. Truesdale added that he is in the real estate business and feels it will be easier in this market for them to sell the units if they are subdivided. He asked if the subdivision would make a huge impact on the city or anyone else. Mr. Nance said he doesn't see there being a difference to the town if the subdivision is in the shape of the footprint or if there is a small yard associated with the dwelling. To the Town he feels the impact would be the same. Mr. Truesdale said he

doesn't feel there would be any impact if the subdivision includes a yard. Personally he would like to see them obtain CO's so that someone can move in because the current condition is an eyesore. He feels the covenants and restrictions would govern the appearance—hopefully pink flamingos won't be allowed. This could facilitate sale of the whole project and someone finishing out the development which would be an improvement for the town. Madam Chairman asked if there would be different covenants and restrictions for the next section of development. Mr. Truesdale said they could not subdivide the condos and asked if there were more townhomes slated for the development. Mr. Nance reiterated that there are 7 more townhome buildings each consisting of 4 units. The remaining buildings are 16 unit condo buildings. Madam Chairman said if we were to subdivide this what happens to the covenants. Mr. Nance said currently the developer owns all the land (and at the initial point of subdivision they would still own all the land). Therefore, they are in complete control of the covenants at this time. Once they sell something (be it condo or townhome) then other owners have interest in the covenants and normally a vote on changes to covenants and restriction.

Madam Chairman asked about bonding. Mr. Nance said the CUP is very clear; they must bond before any lot can be recorded. He clarified that the bond would only be for the remainder of the phase for any unfinished utilities. In this case, the infrastructure is already in place for water/sewer, stormwater, street lights, curb/gutter, and sidewalks. Basically all they would have to bond is a top layer of asphalt for the streets in Phase 1A. It's not an arbitrary amount for the bond. Madam Chairman again asked about the pool and other amenities in the CUP. The Town Clerk said subdividing doesn't change the requirement of the CUP for the amenities; the pool has to be in place by the 300<sup>th</sup> CO. The project doesn't change; it's still the same planned neighborhood. Mr. Nance said it's staff's interpretation that subdividing is NOT a violation of the Conditional Use Permit because they are not changing the density or the number of units. The only difference is that the lot line is going to the edge of the property rather than just containing the land under the footprint of the unit. This would be the case for all nine buildings of townhomes but subdivision final plats for the remaining 7 buildings would have to come back before the town for approval. The rest of the property contains condo buildings. Mr. Truesdale asked if each building gets permitted separately; yes. Mr. Nance pointed out that two townhome buildings are in a different phase of the project.

Mr. Joe Cebina of GS Carolina Development Firm out of Raleigh, representative of PNC bank who currently owns Kingfish Bay addressed the PZB as he felt he could provide answers to some of the questions being posed. He said they have let the property sit for over a year without changing anything because they thought they were going to be able to sell the property as is but that has not happened. He opined that whoever does buy the property is likely going to be coming back to the town to change the plan. The economy is very different now than it was 5.5 years ago. It's incredibly unlikely that anyone will want to build over 400 condo units on the property in this market, which will likely not change that much anytime soon. That is why originally they made no changes. The Town will have full control over any changes to be made to the original plan. A year passed with no interest in the property; much like the rest of the county, state and country. Vandalism continued to occur at the units and they gave up on making repairs

because every time they made a repair it would be vandalized again; it was a waste of time and money. So, a couple months ago they decided to regroup and felt if they got a tenant in at least one of the units the vandalism would be deterred. Therefore they came to the town and asked what they needed to do to obtain a certificate of occupancy to make the happen. Mrs. DiStasio asked why they don't just hire a night watchman to deter the vandals. Mr. Cebina explained that such would be very expensive and the bank would not be willing to spend that kind of money. Mr. Cebina said they have been working closely with the Sheriff's Department; they've identified who is doing the vandalism and are confident the situation will soon be rectified. Mrs. DiStasio then asked if the person they are going to have moved in would pay rent. Mr. Cebina said that they may or may not; that's not yet been determined. She felt it was the same as a night watchman if they're not going to pay rent. It was explained that allowing someone to live there rent free would not cost anything whereas a night watchmen could cost \$75,000 plus a year. Mr. Cebina continued on to explain that when they came to the Town staff to inquiry about CO's for the existing units is when they learned that the dwellings were constructed under the residential code and were therefore townhomes and a subdivision was necessary. If they wanted to obtain a CO's as condos for the units they would have to make construction alterations which would include the expense of adding sprinklers. Mr. Cebina said they would love to be able to keep the HOA documents just as they are and not incur anymore administrative efforts. However, the administrative costs to make the changes to the HOA documents and have subdivision maps prepared are less expensive than making construction changes to bring the dwellings up to condo construction standards. He said the individuals who have spoken this evening that were a part of the original approval know far more about the original project than he does. The owner would happily leave the property in one parcel if they could obtain CO's without retrofitting for condo construction but they can't. To subdivide and have them be townhomes, as they were constructed is the most viable solution to move things forward. He understands that if the subdivision is approved the covenants will have to be amended; they are already working on new language and he will share that with the Town for their input before recording any changes. Madam Chairman asked if they were townhomes. Mr. Cebina said that structurally they were built as townhomes but Mrs. Herman is correct anything can be a condo if built to that code and established as a condo; it's a legal definition.

Mrs. DiStasio said condos are considered a purchased apartment; you buy the interior of a unit. Mr. Dills said that is not entirely correct. Mrs. DiStasio said that is the definition in the dictionary. Mr. Dills began to clarify. By state building codes there are condominiums, apartments, townhomes, and single family homes. If you start with apartments they are a physical space no ground associated with them where a person rents and controls from paint to paint wall to wall and paint to carpet ceiling to floor. Condominiums are very similar with the same inside boundaries. Townhouse the left and right walls are shared and there is zero difference between the two; the dividing line goes straight through left goes with left unit and right goes with right unit. Furthermore with townhomes you own common property at least two sides which is front and back; end units own land front, back, and on one side. Townhomes are attached. The other definition in the past was row houses. Single family homes are an individual home with

all four sides open; property lines set away from the foundation a minimum distance set by local zoning codes. The construction of each is a little different. Between an apartment and a condo the handicap code is applied differently. That aside the difference between apartment and condo as far as construction technique is very similar. You have vertical stairs in which to get from one level to another and then the purchasers owns or rents paint to paint and carpet to ceiling. There are multi-levels with condos and apartments meaning someone else occupies living space above and below. Fire tends to travel vertically so you end up with fire protection codes that must be met in construction and in general that is most normally a sprinkler system. Additionally, walls, floors and ceilings must be constructed of fire rated materials. When you get to the attic because no one occupies that space, attic spaces are simply segmented—sprinklers are not provided in that area. Townhomes because the safety issue is left to right and not vertical there are not sprinklers required but rather a separation of walls between units. For single family there is no separation rating required by the building code. Madam Chairman Climer asked Mr. Cebina why he wants to subdivide. Mr. Cebina said it is his understanding that they would have to do so to get a CO. Mrs. Climer said she understood him to say he needed sprinklers. That is correct if they don't subdivide they would have to install sprinklers. Mr. Dills said the question came up when they wanted to subdivide as to whether these are condos or townhomes. According to codes, the way in which they were constructed, these buildings are townhomes. The left to right walls have separations, one ownership for multilevel, you access the second floor from inside the unit—it is a two story townhome and not required to have a sprinkler system but must have some land on at least two sides (front and back—front/back and one side for end units). If they want to change it to a condominium, the problem occurs that there is no sprinkler system. They would have to retro-fit the buildings to put a sprinkler system in. Madam Chairman asked were they originally supposed to be townhomes or condos. Mrs. DiStasio said they were supposed to be condos in the style of townhomes. Mr. Dills said the problem comes, in his opinion, when the construction drawings came before him, when they applied for building permits, they did not meet the definition for current structures Residential 1 through Residential 4 in the NC Building Code unless they were to be condominiums but he did not receive any information to support that they were to be condos. Mr. Dills said he would not say that he did not error in reviewing the drawings and made the assumption that they were townhomes instead of condos. If that is the case, that is his error but when he permitted the buildings he permitted them based upon the residential code which governs townhouses and not the commercial code which governs condos and apartments. From that point on the Inspections Department always looked at the 8 units (2 buildings) as townhomes; the statement block on the construction drawings declares them as townhomes. If they truly were intended to be townhome style condos he wishes that language would've appeared on the plans. He could only base his decision on the information he had at the time. Also at that time, the plans went before the Zoning Administrator (Mr. Dills was only the Building Inspector) who agreed they were townhomes. To the best of his knowledge he permitted the structures correctly based upon the plans submitted. Mrs. DiStasio read from the current covenants and restrictions the definition of townhouse unit: "Townhouse Unit means a unit which does not have any other unit located above or beneath said unit, and which is located and designated or noted on Exhibit B and any other units of similar architectural style as may

be created pursuant to the exercise of Development Rights. The lower horizontal boundary of each townhouse unit is the flooring on the ground floor, and the upper horizontal boundary of each townhouse unit is the ceiling of the upper most story, both of which are shown and designated on Exhibit B. The walls are designated as the vertical boundaries of each townhouse unit.” She said there is nothing stating that they were going to subdivide these as lots and the exterior would be sold. It was always be the interior. Mr. Cebina said they completely understand that they are in a position where the covenants will have to be amended and they will allow staff to review to ensure everything is copasetic before they record the revised covenants. The owner, i.e the bank, is going to continue to own everything until something is sold. Therefore, the bank is going to have to keep the grass mowed. The bank is maintaining this area and the common area already and nothing will change in that regard. If it makes the town comfortable to have it stated in the covenants that the HOA will continue to maintain these areas that’s fine, whatever makes the town comfortable; the covenants can be written in many different ways. Mr. Cebina said he does not want to belittle the concerns brought up tonight. However, in his business he deals with a lot of distressed assets across NC many of which already have established HOAs. The condo HOAs with a lot to take care of (common areas, pools etc.) are the most difficult to maintain and they are greatly underfunded. They are the most expensive HOAs to run and when funding stops coming in the HOA falls apart and there is no one left to maintain things. You have to be able to find a balance in how much they have to maintain and the cost of maintaining those things so the HOA stays together. The covenants can address the concerns of who is going to maintain what. The condo association and/or HOA is not the Town’s shield of protection because when it defaults there is no protection. Design the covenants in a way that the HOA can run as lean as possible so it won’t default and there is some assurance. He reiterated that they would work with staff to ensure the town is agreeable to the covenants. Regarding the subdivision risk, it doesn’t mean that they can now take the remaining large parcel (approx 65 acres) and do whatever they want; it’s all still Kingfish Bay. The town is still protected by the CUP. Any change to the CUP has to come back before the town for approval. Mr. Cebina said it might be beneficial to have a master HOA at KFB with two sub-associations; one for condos and one for townhomes. That is an idea the person who buys the project might want to explore; it’s not something the bank is going to do. Due to recent federal oversight laws, banks are not necessarily allowed to act like developers; not fully at least. Madam Chairman thanked Mr. Cebina for his input. Mrs. Herman (from the audience) asked Madam Chairman if she could ask a question; Madam Chairman said she had a question first and would then allow Mrs. Herman to pose a question.

Madam Chairman asked Mr. Dills why they cannot obtain a CO. Mr. Dills said it was built as a townhouse and according to the code they need a minimal amount of deeded property with the townhouse on at least two sides; they need the subdivision proposed this evening in order to get the CO for a townhouse. If they want to get a CO without subdividing the land then it’s a condo and the units have to be retrofit to meet the condo code which would require sprinklers. Mr. Truesdale asked if anything else besides the land was needed at the units to obtain a CO. Mr. Dills said final inspection of the units was needed. Mr. Dills read from the 2006 NC Residential Building Code:

“Townhouse—a single family dwelling unit constructed in a row of attached units separated by property lines with open space on at least two sides.”

Madam Chairman recognized Mrs. Herman. Mrs. Herman said that the master plan states how much open space is in the project. If now the town is going to allocate land to the townhouses (#36 townhomes total) you are removing that land from the open spaces. There was to be condos there was no land ownership on the part of any buyer. A certain amount of open space was delineated in the plan, in the PUD, and if you take land for 36 townhomes then you are reducing the amount of open space approved with the project. Mr. Truesdale said the only land he sees being reduced is the yard associated with the townhome units. Mr. Cebina said it still remains open; it's still green space. Mrs. Herman said it would no longer be common open space. Mr. Truesdale said even if it was common most people are not going to hang out in someone else's yard; whether its common or not if it's in front of that townhome unit, most people would view it as that units yard. Mr. Truesdale further noted that the yard associated with the subdivision is very small front and rear. He noted that there would still be common area in between the two buildings. Mr. Truesdale and Mr. Daniels didn't feel there was any problem with the open space concern posed by Mrs. Herman.

Mr. Nance said we are asking for approval of a major subdivision for final plat of these two buildings; 8 units resulting in 8 lots. Madam Chairman clarified that a CO could not be obtained for the units, as townhomes, unless the subdivision is approved. Madam Chairman Climer stated that staff has reviewed the most current conditional use permit for Kingfish Bay Development (the September 2006 revision) which differentiates between condos and townhomes in three places. Mr. Nance said that this fact was part of the information staff used to make the interpretation to get the subdivision to this point. Mr. Truesdale began to make a motion but stopped mid sentence to seek clarification. Once again Mr. Dills explained the units were constructed as townhomes and the building code requires land to be associated with a townhome, which is why the subdivision is necessary. Mrs. DiStasio said when the CUP was approved (and she was on the Board of Commissioners at that time) she understood like everybody else that based upon the pictures presented by the developers, that even though it was not written, it was implied that the townhomes were condos. Madam Chairman said that she read in some of the documents that the front part of the development was to be townhomes because of the 35' maximum height requirement. The topography of the land goes down as the property goes to the river those buildings (condos) were approved for 45' maximum height. If the townhomes are 35' and constructed as a townhome, what is the problem with the subdivision? She said that she doesn't want them to be condos because she doesn't want to see something at the road at 45' high. Mrs. DiStasio said there will be condos there anyway if they ever complete the project. Madam Chairman said the condos would be in the back. Mrs. DiStasio noted that there are some condos in the front too. Mr. Nance said that was correct, on the sides, in the front. Mr. Nance showed the PZB the Phase 1A site plan. They noted that the existing buildings are buildings 4 and 5 of the project. Mr. Nance identified the condo buildings and townhome buildings in the project. He pointed out the 30-foot buffer areas as well. Mrs. DiStasio said she does not see why they have to subdivide and felt that subdividing changes the plan. Mr. Truesdale said the existing

buildings cannot be townhomes until it's subdivided. Madam Chairman asked if the other townhome buildings would have to come before the town for approval of a subdivision; Mr. Dills said that would be the case. Mrs. DiStasio said if that were true they would have had to subdivide them in the very beginning. Mr. Truesdale said he wasn't on the Board six years and right now the PZB has to move forward with the information that they have. Mrs. DiStasio said there was not a subdivision six years ago when the plans came in, it wasn't done then and she cannot see it being done now. Madam Chairman asked if the other 7 townhome buildings would be built as townhomes. Mr. Nance said that is what is shown on the development plan. It was again clarified that the other 7 buildings would require a subdivision as well and those subdivisions would have to come back to the PZB for a recommendation to the BOC who has final approval just as the subdivision plat being considered this evening.

*Mr. Truesdale motioned that they be allowed to be subdivided as townhomes; Mr. Daniels seconded that recommendation to the Board of Commissioners and the motion carried by a vote of three (3) to one (1) with Mrs. DiStasio voting in opposition.*

Mr. Nance noted that staff had included the check-off list from the ordinance that notes everything that is required for a preliminary and a final plat (and staff had completed the check off list). He suggested that for the record, the PZB go through the check-off list and compare it to the subdivision plat to ensure everything required on the map has been included. Madam Chairman read each of the subdivision checklists one-by-one; the Board noted if each item had or had not been included on the subdivision map. If an item had not been included it was discussed whether it was applicable or not; several things were included on the original master plan and/or the Phase 1A development site plan, which was acceptable and made the item N/A for the subdivision map. A copy of the checklist with notes from the PZB review is attached hereto and made part of these minutes; also attached hereto and made part of these minutes is a copy of the subdivision map. The PZB concluded that all necessary requirements for the map had been met, which further supported their recommendation of approval to the Board. Mr. Nance asked is the Board wanted to make another motion noting that the map met the checklist but the PZB felt it was not necessary as the review would be included in the minutes for support of their recommendation.

**BOARD COMMENTS:** none

**ADJOURN:** *Mr. Truesdale moved to adjourn the meeting, seconded by Mrs. DiStasio and unanimously carried at 7:30 pm.*

(SEAL)

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Madam Chairman Sonia Climer

Attest:

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Kelley Southward, Town Clerk