



AGENDA

Monday, February 28, 2022: 3:00 PM

Town Council Work Session

**C. Michael Haney Community Room: Southern Pines Police Department
450 W. Pennsylvania Ave**

1. CALL TO ORDER

2. TOWN MANAGER'S COMMENTS

3. ACTION ITEMS

a. Consider SU-01-21 Patrick's Pointe SUP

Council has conducted and closed a quasi-judicial hearing on a Special Use Permit for a multi-family residential and office development. The subject property is located along US Highway 1 North between West Connecticut Avenue and Midland Road and is comprised of three (3) parcels for a total of 25.4 acres of presently undeveloped, wooded land.

b. Consider Written Decision for PD-12-21 Waterworks Phase 1 PDP

Staff has prepared a draft of the written decision of the board document for the application PD-12-21 that was heard by the Town Council at the regular meeting on February 8, 2022 and that the Town Council may now wish to adopt.

c. Consider Written Decision for PD-13-21 Old Morganton Park South Parcel 1 PDP

Staff has prepared a draft of the written decision of the board document for the application PD-13-21 that was heard by the Town Council at the regular meeting on February 8, 2022 and that the Town Council may now wish to adopt.

4. COUNCIL UPDATES AND DISCUSSION

a. Street Resurfacing Contract

The Town has received bids for the FY 21-22 street resurfacing projects. Staff is seeking direction from Council on the total contract amount to authorize, as a budget amendment will be required since the low bid exceeds this year's budget allocation of \$275,000.

b. Skate Park Update

Staff will provide a brief status update on the skate park project for Memorial Park.

5. CLOSED SESSION

a. Council Closed Session

Council will hold a closed session as authorized in N.C.G.S. §143-318.11(a)(6) to discuss a personnel matter.

6. ADJOURNMENT

Meetings/work sessions of the Southern Pines Town Council are now available on the Town's [YouTube channel](#). Video of the Town Council meetings will be live streamed on the channel for viewing either during the meetings or after they have concluded. Please note, the video is provided only for the purposes of viewing the meetings; public comments or questions are not accepted via the live stream. To receive notifications when new content is published, please "subscribe" to the Town's channel at <https://bit.ly/3hXx2Qk>

Work Session Agenda Item

To: Reagan Parsons, Town Manager

From: BJ Grieve, Planning Director

Subject: SU-02-21 Special Use Permit; New construction of a 276-unit multi-family residential and office development located along US Highway 1 North between West Connecticut Avenue and Midland Road.

Date: February 28, 2022

I. SUMMARY OF APPLICATION REQUEST:

On behalf of Francis Maser, Mr. Bob Koontz, of Koontz Jones Design, has submitted an application for a Special Use Permit for the new construction of a multi-family residential and office development. The applicant is proposing to develop 13 apartment buildings with 276 multi-family residential units and one (1) office outparcel. The subject property is located along US Highway 1 North between West Connecticut Avenue and Midland Road and is comprised of three (3) parcels for a total of 25.4 acres of presently undeveloped, wooded land. The subject properties are identified as PIN: 858214321933 (PARID: 00039174), PIN: 858217214672 (PARID: 00032830), PIN: 858217213440 (PARID: 00032829). The property owner for all three parcels according to the Moore County tax records is Maser, Francis T Trustee.

II. TOWN COUNCIL PUBLIC HEARING:

First Meeting: On December 14, 2021 the Town Council opened the public hearing at their Regular Meeting for application SU-02-21. After hearing from staff, the applicant and those representing the applicant, as well as the public, the Town Council per UDO §2.12.1, continued the SU-02-21 matter to the January 11, 2021 regular meeting of the Town Council to allow for additional research or review to evaluate the issues presented. At this hearing Exhibits A through R were entered into the record of the proceedings.

Second Meeting: On January 11, 2022 the Town Council resumed the public hearing from December 14, 2021 for application SU-02-21. Attorney for the applicant, Mr. Nick Robinson presented the developer, Mr. Burnett, who discussed the overall development and provided an opinion on the wetlands, but deferred to Mr. Koontz for expert testimony. Mr. Koontz then presented a new concept for the site based on the feedback received at the December Town Council Regular Meeting. Mr. Koontz also provided the process for wetland mapping. Mr. Fluitt presented the updated TIA addendum and stated that the current design from a traffic standpoint is adequate in his professional opinion. At this hearing, the applicants entered Exhibits S through U were entered into the record of the proceedings.

Mr. Carson Crooms, attorney for opposition, presented statements regarding his request for continuance as well as the procedures thus far not accommodating everyone's interests to seek a resolution. After hearing from staff, the representation for the applicant and opposition, the Town Council per UDO §2.12.1, continued the SU-02-21 matter to the February 8, 2022 regular meeting of the Town Council to allow for additional research or review to evaluate the issues presented. Town Council instructed the applicants and the opposition's attorney that all additional documentation to be considered for the February 8, 2022 Regular Meeting must be submitted by January 26, 2022 by 5:00 pm and copies must be provided to all parties and staff.

On January 26, 2022 planning staff received cover letters and multiple attachments from Nick Robinson and Carson Crooms. Planning staff uploaded all submittals to the Council's Dropbox folder so that members of Council have access prior to the continued public hearing on February 8, 2022.

Third Meeting: On February 8, 2022 the Town Council resumed the public hearing from January 11, 2022 for application SU-02-21. The applicant's attorney Nick Robinson presented additional testimony from Logan Burnett, Bob Koontz, Travis Fluitt, Frank Dean and Tad Hardy and entered Exhibits V through GG into the record of the proceedings. All the applicant's additional Exhibits had been submitted by the January 26th deadline referenced above. The opponent's attorney Carson Crooms cross-examined the applicant's witnesses Tad Hardy, Frank Dean and Bob Koontz and presented testimony from Linda Brazwill, a resident of Village Green. The opponents' attorney entered Exhibits HH through MM into the record of the proceedings. All the opponent's additional Exhibits had also been submitted by the January 26th deadline referenced above.

After hearing closing arguments from both the applicant's and the opponent's attorneys, a motion was made to close the public hearing and reconvene for discussion and a decision at the February 28, 2022 Town Council Work Session. The motion passed on a 5-0 vote.

On February 22, 2022 the Town Attorney Doug Gill received copies of proposed findings of fact for the Town Council's consideration from both Nick Robinson on behalf of the applicant Logan Burnett and Carson Crooms on behalf of the opponent Village Green HOA. Both documents were forwarded via email to the Town Council by Assistant Town Manager Jessica Roth on February 22, 2022 and both proposed findings of fact are attached to this report.

III. PROJECT INFORMATION:

A. Property Owner & Applicant Information:

i. Property Owner:

Francis Maser
PO Box 1133
Southern Pines, NC 28387

ii. Applicant:
1700, LLC
Logan Burnett
2601 South Bayshore Drive
17th Floor
Miami, FL 33133

iii. Authorized Agent:
Koontz Jones Design
Bob Koontz
150 S Page Street
Southern Pines, NC 28387

B. Project Site Information:

i. Location:
The subject properties are located along US Highway 1 between W. Connecticut Avenue and Midland Road. (See Figure 1 below).

ii. Zoning:
The sites are currently zoned Office Service (OS) and Residential Mixed Housing (RM-2). (See Figure 2 below).

iii. Future Land Use Map Designation:
One subject property is designated as Commercial on the Future Land Use Map. *The Commercial designation applies to all land dedicated to retail, professional office, or other primarily non-residential, commercial use. It includes the Downtown portions along Broad Street and Pennsylvania Avenue, the regional commercial corridor on US 15/501, and all commercial land in between. Higher density residential may be incorporated into mixed-use developments within areas designated for this future land use category.*

The other two subject properties are designated as Residential on the Future Land Use Map. *This designation encompasses the majority of Southern Pines' residential land, providing for single-family and attached housing at development densities ranging from one unit per acre in areas that are less intensively developed to up to twelve units per acre in places that are clearly more urban. Elementary schools, civic uses, parks and neighborhood scale commercial services may be authorized through the rezoning process without amending the future land use map. (See Figure 3).*

Figure 1: Vicinity Map (Subject Property Outlined in Black):

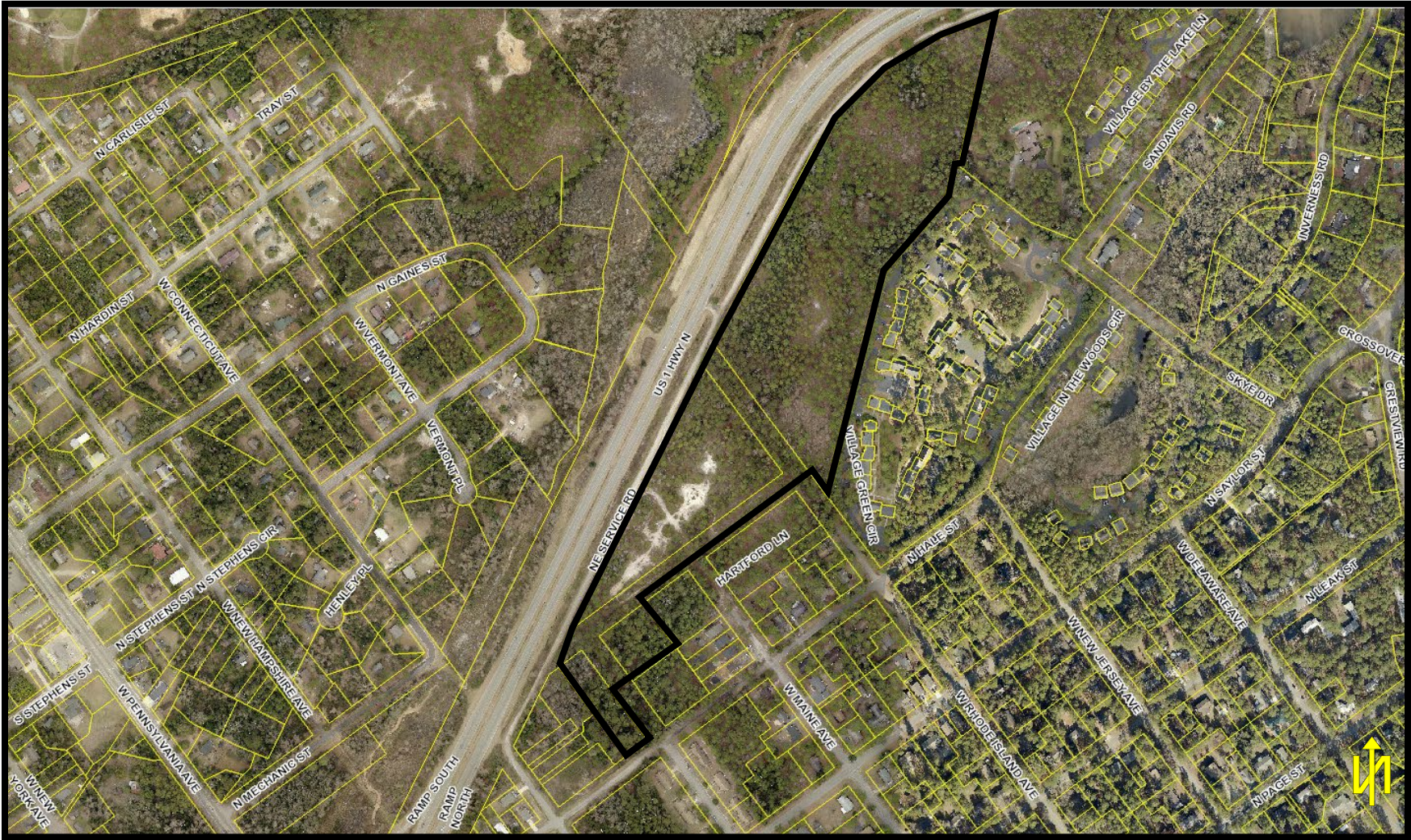
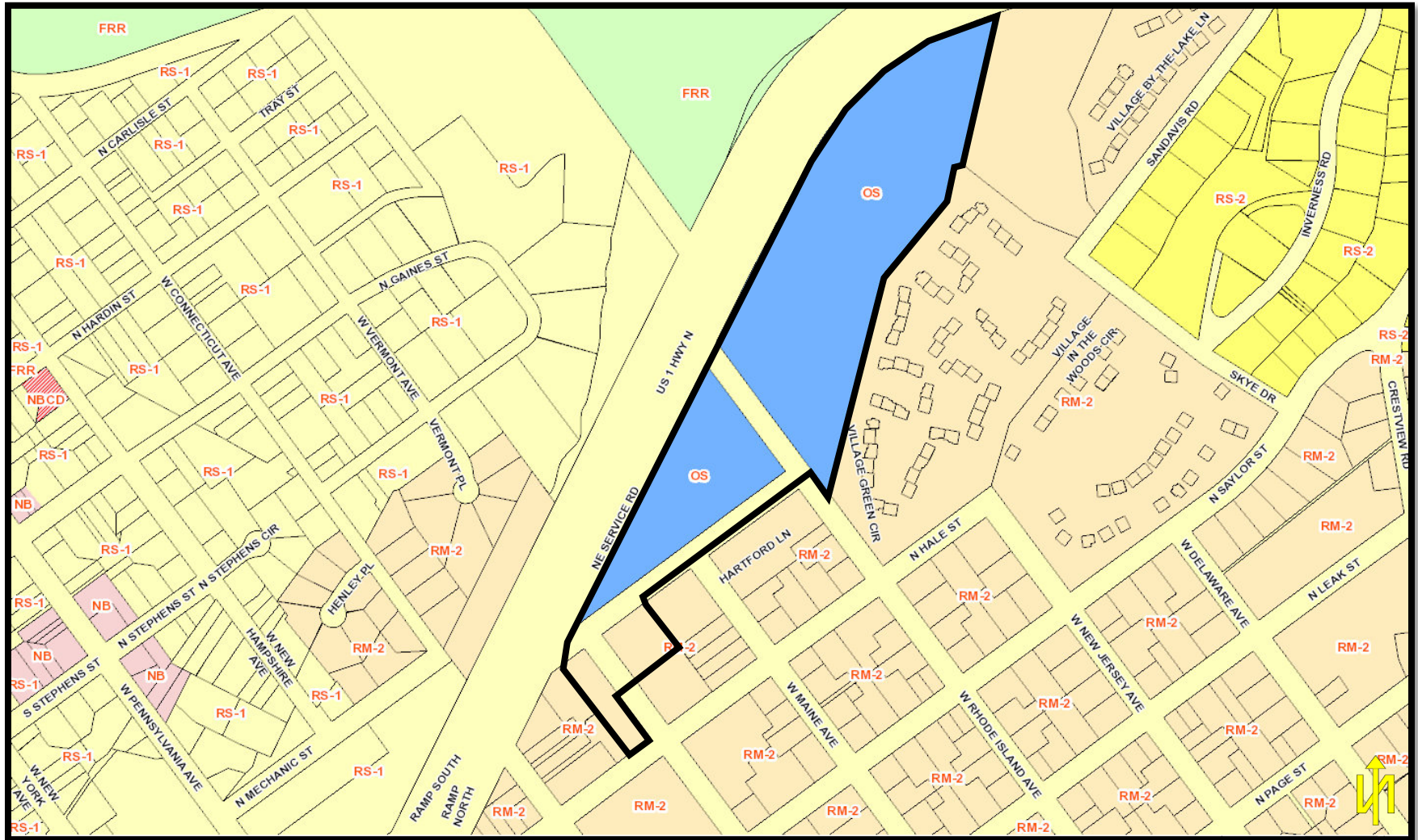


Figure 2: Zoning Map (Subject Properties (OS and RM-2) Outlined in Black):



[illegible]

IV. ATTACHMENTS:

Detailed staff reports and attachments from the December 14, 2021, January 11, 2022 and February 8, 2022 Town Council meetings may be found in the archived packets from those meetings. The following attachments are provided with this Work Session report for the Town Council's consideration:

1. Staff's Original Draft Findings of Fact from December 14, 2021 Staff Report
NOTE: Much of this document may be obsolete following the extensive public hearing and is only being provided to Council as one optional starting point for formatting and language considerations.
2. Applicant's Proposed Findings of Fact, February 22, 2022.
3. Opponent's Proposed Findings of Fact, February 22, 2022.

V. TOWN COUNCIL ACTION:

To either approve or deny a Special Use Permit application, the Town Council shall make findings of fact and conclusions to the applicable standards. The Town Council shall first vote on whether the application is complete and whether the facts presented are relevant to the case. The Town Council shall then vote on whether the application complies with the criteria as set forth in Section 2.21.7(A-F) Criteria for a Special Use Permit. The Town Council may choose one of the following motions or any alternative they wish:

I move to:

1. Adopt _____ as our Findings of Fact regarding the proposed Conditional Use Permit SU-02-21.
2. Adopt _____ as our Findings of Fact regarding the proposed Conditional Use Permit SU-02-21 with the following changes _____.

Next, the Town Council may vote on whether to approve, deny or approve with conditions the proposed Special Use Permit. The Town Council may choose one of the following motions, or any alternative they wish:

I move to:

1. Approve the Special Use Permit SU-02-21.
2. Deny Special Use Permit SU-02-21
3. Approve the Special Use Permit for SU-02-21 with the following additional conditions....

ATTACHMENT “A”
Draft Town Council Findings of Fact
Special Use Permit Application SU-02-21

Finding of Fact #1:

The Town Council finds that the application is complete and that the facts submitted are relevant to the case because the request for Special Use Permit approval has met the specified submittal requirements as required in the Town of Southern Pines UDO Appendices and the evidence submitted was sworn testimony by qualified experts or provided through substantiated documentation.

Finding of Fact #2:

The Town Council finds that the application complies with UDO §2.21.7 Criteria for a Special Use Permit, Criteria A, C and D and finds that the application does not comply with UDO §2.21.7 Criteria for a Special Use Permit, Criteria B, E and F in that:

A. The proposed special use shall comply with all regulations of the applicable zoning district and any applicable supplemental use regulations;

1 The Town Council finds that the application SU-02-21 complies with all regulations of the
2 OS, RM-2 and UTHCO zoning districts development standards. The applicant is allowed
3 554 parking spaces and granted the watershed protection permit for 65% impervious
4 coverage.

B. The proposed special use shall conform to the character of the neighborhood in which it is located and not injure the use and enjoyment of property in the immediate vicinity for the purposes already permitted;

5 The Town Council finds that the density, scale and use appear to be incompatible with the
6 surrounding neighborhood.

C. Adequate public facilities shall be provided as set forth herein;

7 The Town Council finds the subject properties have access to and can be served by TOSP
8 public facilities.

D. The proposed use shall not impede the orderly development and improvement of surrounding property for uses permitted within the zoning district or substantially diminish or impair the property values within the neighborhood;

9 The Town Council finds that the proposed development is consistent with the existing
10 zoning standards. The mixed use residential and professional office development is located
11 along the highway corridor and provides for compatibility by being a transition within the
12 Office Services zoning district and multi-family residential zoning district.
13

E. The establishment, maintenance or operation for the proposed use shall not be detrimental to or endanger the public health, safety, comfort, or general welfare; and

14 The Town Council finds that in regards to safety and the addition of 2100 daily trips that
15 will be generated from this project, the following issues,

- 16 o There is no acceleration lane on Route 1
 - 17 o There will be increased traffic on side streets
 - 18 o The northern portion of the Service Rd is not going to be improved
 - 19 o There are currently school bus safety issues and will only become worse
- 20 are not just potential impacts to the neighborhood but they will impact US 1, Midland Road,
21 Pennsylvania Avenue and Saylor Street.

F. **The public interest and welfare supporting the proposed use shall be sufficient to outweigh individual interests that are adversely affected by the establishment of the proposed use;**

22 The Town Council finds that there were a large number of residents that border this
23 property that were concerned that the quality of their life and impact on the surrounding
24 neighborhood would adversely affect them. They do not believe that the public interest
25 and welfare supporting the proposed use outweighs the interests of the residents that
26 showed up and stated their concerns at the hearing.

APPLICANT'S PROPOSED ATTACHMENT "A"
Draft Town Council Findings of Fact
Special Use Permit Application SU-02-21

FINAL REVISED FINDINGS OF FACT AND CONCLUSIONS OF LAW
(FEBRUARY 28, 2022)

Finding of Fact #1:

The Town Council finds that the application is complete.

Finding of Fact #2:

A quasi-judicial hearing was held on December 14, 2021 (the "First Hearing") and continued to January 11, 2022 (the "Second Hearing") and then continued a second time to February 8, 2022 (the "Third Hearing")(collectively, the First Hearing, the Second Hearing and the Third Hearing are referred to as the "Hearing"). At the Second Hearing, Applicant introduced and admitted into evidence a revised site plan dated January 7, 2022 (the "Second Site Plan"). At the Third Hearing, the Applicant introduced the third (and final) site plan, dated January 26, 2022 the "Final Site Plan"). The Town Council finds that, based on competent, material and substantial evidence in the record of this quasi-judicial proceeding, the application and the Final Site Plan comply with all of the six required UDO §2.21.7 Criteria for a Special Use Permit (Criteria A, B, C, D, E and F) in that:

A. The proposed special use shall comply with all regulations of the applicable zoning district and any applicable supplemental use regulations;

The Town Council finds that the application SU-02-21 complies with all regulations of the OS, RM-2 and UTHCO (including those set forth in UDO Exhibit 3-13) zoning districts development standards as well as all applicable supplemental use regulations, including the Multi-Family Development Standards set forth in UDO Section 4.10.8. During the Hearing on this matter, the Applicant presented ample uncontroverted evidence through the testimony of expert witness Bob Koontz that all such regulations, including supplemental regulations, have been met. Planning Staff agrees that this finding is met. The Applicant is allowed 521 parking spaces and granted the watershed protection permitted for 65% impervious coverage. Opponents provided no or insufficient and insubstantial evidence to the contrary.

B. The proposed special use shall conform to the character of the neighborhood in which it is located and not injure the use and enjoyment of property in the immediate vicinity for the purposes already permitted;

Character of the Neighborhood: Because the proposed multi-family and office uses are allowed as special uses within the applicable zoning districts, the prima facie showing of compliance with this requirement is automatically established as a matter of law. Despite

benefitting from that rebuttable presumption, Applicant also presented competent, material and substantial evidence during the Hearing to further establish that the proposed development and site plan conform to the character of the neighborhood in which it is located. Applicant's expert planning witness, Mr. Bob Koontz, testified that the neighborhood relevant to this project is comprised of a major highway corridor on the western side (US 1) and primarily other multi-family townhome projects to the eastern side. Mr. Koontz testified that, from a land planning perspective, it is accepted that uses located between high intensity highway use and lower intensity multi-family uses (such as townhomes) should be transitional uses that help soften the transition between the highway and the townhome developments. This project fulfills that planning objective by positioning the office parcel closest to the highway and then by positioning the apartment buildings between the highway/office parcel and the adjoining townhome development, thereby creating the sought after transition that preserves the character of the two adjoining neighborhoods. In addition, during the Second Hearing, in order to further ensure conformity with the character of the neighborhood, Applicant took care to revise the site plan to limit and reduce the impact of buildings along shared property boundaries. All such changes were carried over into the Final Site Plan as well. The Final Site Plan, among other things, (a) voluntarily reduced the total number of units from 276 units to 266 units, (b) voluntarily changed the design of the buildings along the Village Green boundary such that they are converted to townhome-style design to further integrate their character with the townhomes within Village Green, (c) reduced them from three-story buildings to smaller two-story units, (d) voluntarily increased the buffer along the Village Green boundary by 150% from 20' to 50' allowing a greater opportunity to save existing trees along that boundary, (e) voluntarily increased the building setback along that same Village Green boundary by 60% from 50' to at least 80', (f) increased the building setback along US 1 (from 75' to at least 90'), and (g) increased the Open Space from +/- 10.7 acres to +/- 11.1 acres. The revised site plan (Third Site Plan) provides substantial buffers and the grading will place the multi-family buildings more than 20' below the adjoining property boundary, which will limit views of the buildings from the existing townhome side. Along with the required buffer and screening plantings, it is anticipated that very little of the buildings will be visible from the adjoining properties. Mr. Koontz provided graphic evidence of anticipated sight lines to corroborate his testimony, including a revised sight line exhibit (submitted during the Second Hearing) comparing the original (3-story) plan to the revised (2-story townhome style) plan along the Village Green boundary. The testimony presented by the Village Green Association of Southern Pines, Inc. ("VG") at the Third Hearing mainly related to the difference in density between certain adjoining townhome developments and the Patrick's Pointe Project. The Town Council finds that the density of the Patrick's Pointe project is both less than the maximum density specifically allowed by the UDO and also conforms to the character of the "neighborhood," which includes the US 1 highway corridor adjacent to the project as well as town homes and single family lots. In addition, at the Second and Third Hearings, Applicant introduced unopposed evidence of conceptual drawings showing townhome-style structures closest to VG to conform to the design character of the Village Green portion of the neighborhood.

No Injury to Use and Enjoyment. Applicant demonstrated that all buffering and setback standards applicable to the project are met or exceeded by the proposed, revised site plan for the project. At the Second Hearing, in response to generalized concerns by Village Green residents (unsupported by competent, material or substantial evidence) regarding pool/amenity noise, Applicant presented a revised site plan that moved the clubhouse and pool area the US 1 Highway side of the project, backing up to the wetland preserve area, and now over 300' from the Village Green property. In addition, Applicant demonstrated through uncontroverted expert testimony (Tad Hardy) that traffic noise will not significantly alter the existing traffic noise environment once the development is completed and, thus, will not adversely impact the adjoining neighbors to the east of the project. Lay opinion testimony offered by certain opponents regarding noise was incompetent and, in any event, superseded by the expert testimony, data and calculations of expert witness of Applicant's sound engineer, Tad Hardy. Applicant further established through expert testimony and the concurrence of planning staff that it is meeting all of the approximately 38 Multi-Family Development Standards set forth in the UDO (Section 4.10.8) or any deviations are minor and reasonable. Mr. Koontz testified at the Third Hearing that the Final Site Plan, occasioned by receipt of the surveyed wetland areas, allowed for creating square shaped common open space. Even if there were any minor variations from the Multi-Family Development Standards, Section 4.10.8(3) specifically allows for such deviation within the context of a special use permit and the Town Council finds that either the standards are fully met or any requested deviation is reasonable and appropriate. Conformity with the applicable design standards and the overall design by Applicant as mentioned above under the Character of the Neighborhood section further support this finding. The record contains competent, material and substantial evidence to support the finding that there will be no injury to the use and enjoyment of property in the immediate vicinity for the purposes already permitted. The record reflects no evidence or insufficient, incompetent or insubstantial evidence to the contrary.

C. Adequate public facilities shall be provided as set forth herein;

The Town Council finds the subject properties have access to and can be served by TOSP public facilities. Applicant submitted competent, material, substantial and uncontroverted testimony from expert witness, Tim Carpenter, a civil engineer that the site has access to public water and sewer and that stormwater from the site of the development will be controlled at pre-development rates with approved stormwater control devices. In addition, during the Third Hearing, Applicant voluntarily committed to constructing sidewalks along portions of W. Maine Ave. and N. Saylor Street in the locations shown on Applicant's Proposed Sidewalk Improvements Plan. The record reflects no evidence or insufficient, incompetent or insubstantial evidence to the contrary.

D. The proposed use shall not impede the orderly development and improvement of surrounding property for uses permitted within the zoning district or substantially diminish or impair the property values within the neighborhood;

Applicant demonstrated through competent, material and substantial evidence that the proposed development is consistent with the existing zoning standards. The mixed use residential and professional office development is located along the highway corridor and provides for compatibility by being a transition within the Office Services zoning district and multi-family residential zoning district. Applicant's expert witness (Bob Koontz) provided uncontroverted testimony that the proposed use would not impede the orderly development of the remaining undeveloped land around the project for permitted uses. Further, Applicant provided expert testimony from an MAI appraiser (A. Franklin Dean, MAI) that, based on his appraisal research with comparable multifamily developments in the vicinity, he expects no diminishment or impairment of property values within the existing neighborhoods. In addition, during the Third Hearing, Applicant's real estate appraisal expert provided testimony and Applicant admitted into evidence an Addendum to his initial report further detailing, with specific data, comparable sales and paired sales analyses, his conclusion that that development of Patrick's Pointe will not substantially diminish or impair the property values of existing townhomes nor existing single family homes within the neighborhood. The record reflects no evidence or insufficient and insubstantial competent evidence to the contrary. Any such testimony from opponents was anecdotal and in the form of lay opinions which constitutes incompetent evidence by statute (N.C.G.S. Section 160D-1402(j)(3)).

E. The establishment, maintenance or operation for the proposed use shall not be detrimental to or endanger the public health, safety, comfort, or general welfare; and

Applicant presented ample substantial, competent and material evidence that the proposed use will not be detrimental to or endanger the public health, safety comfort or general welfare. With regard to traffic, the Applicant, at the First Hearing, the Second Hearing, and the Third Hearing provided evidence through an expert traffic engineer (Travis Fluitt, NC Licensed Traffic Engineer) and the traffic impact assessment ("TIA") and a first Addendum he prepared that were submitted into the record that traffic will pose no danger to the public health, safety, comfort or general welfare. In response to concerns regarding pedestrian safety along portions of N. Saylor St., at the Third Hearing, Applicant presented a Second Addendum to the TIA establishing that levels of service will not be meaningfully modified by the development and concluding that the development will not create a danger to the public health, safety, comfort or general welfare from a traffic standpoint. Notwithstanding that conclusion, in order to allay expressed concerns regarding pedestrian safety, Applicant further committed at the Third Hearing to install sidewalks where there are none on portions of W. Maine Ave. and N. Saylor St. as shown on Applicant's Proposed Sidewalk Improvements Plan admitted into evidence at the Third Hearing. Applicant is also willing to install any DOT-approved signage regarding sight distance issues along N.

Saylor Street. It was further proven that the NCDOT reviewed and approved the TIA with certain roadway improvements accepted by the Applicant. Further it was proven that the Town Engineer reviewed and approved the TIA. Applicant further proved through an expert engineer (Tad Hardy, Engineer) that traffic noise impact on properties to the east of the project from Highway 1 will not significantly alter the existing traffic noise environment once the development is completed. The record reflects no evidence or insufficient, incompetent or insubstantial evidence to the contrary. All such testimony from opponents was anecdotal and in the form of lay opinions which constitutes incompetent evidence by statute (N.C.G.S. Section 160D-1402(j)(3)).

F. The public interest and welfare supporting the proposed use shall be sufficient to outweigh individual interests that are adversely affected by the establishment of the proposed use;

Applicant demonstrated that the Comprehensive Long-Range Plan (“CLRP”) calls for “housing that is diverse, affordable and compatible with the neighborhood in which it is developed.” (CLRP, p. 2-4). The CLRP also adopts a policy of “encouraging development of a variety of housing types in new residential areas and promoting compatible infill in existing neighborhoods. (CLRP, P-12, p. 2-10). This project does just that. Applicant also demonstrated that the CLRP explicitly states that the Town should “accommodate a diverse mix of housing.” (CLRP, p. 4-6). The CLRP is the public expression of the public interest and welfare from a land planning perspective. Provision of apartment housing is consistent with the public interest and welfare as expressed in the CLRP. Applicant further presented uncontroverted expert testimony (Kyle Winters, MAI) that there is a greater demand than supply for market rate apartments in the surrounding area and that increasing the supply of apartments available can reduce apartment rental rates in the jurisdiction, thereby fulfilling goals of the CLRP. Applicant provided substantial, material and competent evidence sufficient to support this finding. The record reflects no evidence or insufficient, incompetent or insubstantial evidence to the contrary. No competent evidence of actual injury to individual interests was submitted in the record.

Finding of Fact #3:

The Town Council acknowledges that the Special Use Permit contemplates certain right of way abandonments which abandonments will be sought by the Applicant after approval of the Special Use Permit.

CONCLUSIONS OF LAW

The Town Council concludes as a matter of law as follows:

Conclusion of Law #1: The evidence supplied by the Applicant is substantial, competent and material evidence as required to support the Special Use Permit Findings.

Conclusion of Law #2: Inclusion of the requested uses as a special use within the applicable zoning districts establishes a rebuttable presumption that the use is compatible with the character of the surrounding area. The uses requested by Applicant are allowed uses in the applicable zoning districts (OS and RM-2) and, therefore, a rebuttable presumption and a *prima facie* showing of conformity with the character of the surrounding area was established. The burden of showing non-conformity with the character of the neighborhood, therefore, shifted to the opponents and it was not met with substantial, material and competent evidence, sufficient to overcome the *prima facie* showing of the Applicant, as well as the additional evidence supplied by the Applicant.

Conclusion of Law #3: Notwithstanding Conclusion of Law #2 above, Applicant also independently made a *prima facie* showing of all evidence required to legally support all six required findings under UDO Section 2.21.7. Opposing evidence was insufficient, incompetent, immaterial, insubstantial or speculative such that, based on the weight of the evidence in the record, all six findings are supported and proven to the satisfaction of the Town Council.

Conclusion of Law #4: Applicant met the required showings and the Application should be approved as a matter of law.

CROCKETT & OLDHAM ATTORNEYS, PLLC
ATTORNEYS AND COUNSELLORS AT LAW

DAVID G. CROCKETT, 1945 -2018
LINDA REID OLDHAM*
CARSON E. CROOMS
WILLIAM M. APPLE

CARSON E. CROOMS
ATTORNEY AT LAW

*NCDRC CERTIFIED SUPERIOR COURT MEDIATION

February 22, 2022

TO: THE TOWN OF SOUTHERN PINES TOWN COUNCIL
CARE OF: DOUG GILL, TOWN OF SOUTHERN PINES ATTORNEY

FROM: CARSON E. CROOMS, COUNSEL TO VILLAGE GREEN ASSOCIATION OF
SOUTHERN PINES, INC.

RE: SU-02-21 PATRICK'S POINTE
VILLAGE GREEN ASSOCIATION OF SOUTHERN PINES, INC.'S PROPOSED
FINDINGS OF FACT AND LAW

FINDINGS OF FACT

1. The Town of Southern Pines finds that the application is complete.
2. Village Green Association of Southern Pines, Inc. ("the Opposition") has standing to oppose the Applicant's request for a special use permit.
3. A quasi-judicial hearing was held on December 14, 2021 (the "First Hearing") and continued to January 11, 2022 (the "Second Hearing") and then continued a second time to February 8, 2022 (the "Third Hearing") (collectively, the First Hearing and the Second Hearing are referred to as the "Hearing"). The Town Council finds that the Applicant has failed to meet its burden of proof as to the six criteria contained in UDO §2.21.7, Criteria for a Special Use Permit (Criteria A, B, C, D, E, and F). More specifically, the Town Council finds as follows:

With respect to Criteria A:

A. The proposed special use shall comply with all regulations of the applicable zoning district and any applicable supplemental use regulations.

The Town Council finds that proposed development site is zoned, in part, OS - Office/Services. The stated purpose UDO §3.5.11 OS - Office/Service, in pertinent part, is "to accommodate office and service uses as well as medium-density residential uses." The Town Council finds that the Applicant's proposed development provides high-density housing with a secondary purpose of an undefined approximately 7,500 square foot commercial space. The Town Council further finds that the Applicant's proposed development is inconsistent with the stated purpose of UDO §3.5.11 OS - Office/Service, as applicable.

Further, the Town Council further finds that the proposed development is located within the Highway Corridor Overlay, UDO §3.6.5 HCO- Highway Corridor Overlay and the Urban Transition Highway

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Corridor Overlay District, as that district is referenced in UDO §3.6.5 (C) (1). The Town Council further finds that UDO §3.6.5 (C) (1) states, in pertinent part, that: "[the]Urban Transition Highway Corridor Overlay District, which shall be developed with a balance of residential, recreational and commercial uses" and that the applicant's proposed development is overwhelming residential in nature and does not provide a balance of residential, recreational and commercial uses.

With respect to Criteria B:

B. The proposed special use shall conform to the character of the neighborhood in which it is located and not injure the use and enjoyment of property in the immediate vicinity for the purposes already permitted.

The Town Council finds that the proposed uses for the project are permitted for the site of the development and that the applicant is entitled to a presumption that the proposed uses conform to the character of the neighborhood in which it is located. On that issue, the Town Council further finds that the burden therefore shifts as a matter of law to the Opposition to rebut the presumption afforded the Applicant as a matter of law.

The Town Council finds that the Opposition produced evidence as to the character of the neighborhood, including the nature of the neighborhood, the density of the surrounding residential communities, and the types of structures located therein. The Town Council further finds that, as to this issue, the burden of persuasion shifts back to the Applicant as a matter of law.

The Town Council finds that, as to this issue, while the Applicant produced evidence which suggested that the land use was appropriate for the proposed development site and consistent with classic or traditional land use practices, the Applicant failed to produce evidence that the proposed development conformed to the character of the neighborhood. Further, and more specifically, the Town Council specifically finds that the Applicant's witness, Bob Koontz, upon cross-examination, knew very little about the surrounding residential neighborhood to the east of the proposed site, misstated the zoning of the residential zoning for the surrounding residential neighborhood, and his testimony regarding the character of the US 1 Highway focused solely on the impact it had on the proposed development site and not its actual character and the conformity of the proposed project thereto.

For the foregoing reasons, the Town Council finds that the Applicant's proposed project fails to conform to the conform to the character of the neighborhood in which it is located.

With respect to Criteria C:

(C) The proposed use shall not impede the orderly Development and improvement of surrounding property for permitted uses within the zoning district or substantially diminish or impair the property values within the neighborhood.

The Town Council finds that the Town of Southern Pines has previously enacted the Southern Pines' Comprehensive Long-Range Plan ("CLRP") and that the proposed development site is zoned Commercial therein. Under the CLRP, the "commercial designation applies to all land dedicated to retail, professional office, or other *primarily non-residential, commercial use*. It includes the Downtown portions along Broad Street and Pennsylvania Avenue, the regional commercial corridor 15/501, and all commercial land in between. Higher density residential

may be incorporated into *mixed-used* developments within areas designated for this future land use category." (*emphasis added*)

The Town Council finds that the primary purpose of the Applicant's proposed development is residential. The Town Council further finds that the Applicant's proposed development, while proffered as a mixed-use development, is approximately 98% residential and 2% commercial and that the Applicant has tendered little evidence about the commercial aspects of the proposed project. The Town Council further finds that the Applicant's proposed development is inconsistent with the Town of Southern Pines' CLRP.

The Town Council finds that the Applicant tendered Franklin Dean as an expert appraiser to offer opinions as to the impact the proposed development would have on the property values within the neighborhood. During the Applicant's case in chief, the Town Council further finds that Franklin Dean offered testimony and documentary evidence indicating that the proposed development would not impair the property values within the neighborhood. The Town Council further finds that, upon cross-examination, Franklin Dean testified that 7 of the 8 properties he used as comparable to the Applicant's proposed project were not in fact comparable. Further, the Town Council finds that Franklin Dean testified that he compared the Applicant's proposed project to these non-comparable multi-family projects upon instruction of the Applicant. Further, the Town Council finds that, of the eight properties considered by Franklin Dean in his analysis of the proposed project's impact on surrounding property values in the neighborhood as comparable to the Applicant's proposed project, Mr. Dean testified that the Eagles' Point apartment complex was the only similar property to Patrick's Pointe and that that project was approximately 600 to 800 feet away from the closest residential properties in stark contrast to the close proximity of residential homes to the Applicant's proposed project. Finally, the Town Council finds that the opinions offered by Franklin Dean on behalf of the Applicant are not supported by appropriate data and facts, as evidence by his own testimony elicited upon cross examination and concludes that the Applicant has failed to produce sufficient evidence that the Applicant's proposed use will not substantially diminish or impair the property values within the neighborhood.

With respect to Criteria F:

(F) The public interest and welfare supporting the proposed use shall be sufficient to outweigh individual interests that are adversely affected by the establishment of the proposed use.

The Town Council finds that a number of individual residents have testified during the Hearing as to their individual interests and the manner in which they contend those interests will be adversely affected by the proposed development. The Town Council further finds that the portion of those concerns which related to generalized fears or unsubstantiated concerns are not admissible in these proceedings, but that those concerns which are based in fact and upon those individuals' own perceptions are admissible.

The Town Council finds that public interest is well documented within the UDO and the Town of Southern Pines Comprehensive Long-Range Plan are met.

Finally, the Town Council concludes that the Applicant has failed to demonstrate that the proposed use is consistent with the public interest and that it is sufficient to outweigh the individual interests that would be adversely affected the establishment of the proposed use.

4. For the foregoing reasons, the Town Council need not consider Criteria D and E.
5. The Town Council has considered only that evidence which was competent, substantial, and material.

CONCLUSIONS OF LAW

The Town Council concludes as a matter of law:

1. The Applicant has failed to carry its burden of persuasion as to UDO §2.21.7 Criteria for a Special Use Permit - Criteria A, B, C, and F.
2. As a result of the Applicant's failure to meet its burden of persuasion as to UDO §2.21.7 Criteria for a Special Use Permit - Criteria A, B, C, and F, the Town Council need not consider Criteria D and E.
3. As a result of the foregoing, the Applicant's request for a special use permit should be denied as a matter of law.

Work Session Agenda Item

To: Reagan Parsons, Town Manager

From: BJ Grieve, Planning Director

Subject: Written Decision of the Board for PD-12-21: Planned Development - Preliminary Development Plan for Phase 1 of the Waterworks mixed-use development; Applicant: Andy Bleggi, PTAH Corporation; Authorized Agent: Kevin Lindsay of Crawford Design.

Date: February 28, 2022

I. PURPOSE:

Per UDO §2.14.6(F)(11), “A written decision must be approved for every quasi-judicial application, either by entering the decision at the end of the hearing or at a subsequent meeting of the hearing body, which shall generally be the next scheduled meeting. As part of the written decision, the hearing body must make findings of fact and conclusions as to applicable standards and any conditions. The chair may direct the planning director or town attorney to draft a written decision for approval by the hearing body at its next regularly scheduled meeting, which approval may be on a consent agenda.”

Staff has prepared a draft of the written decision of the board document for the application PD-12-21 that was heard by the Town Council at the regular meeting on February 8, 2022 and that the Town Council may now wish to adopt. If the Town Council approves the written decision of the board document, the Mayor will sign the document. The original signed version will be delivered to the petitioner, with staff maintaining a copy of the signed document in the file.

II. SUMMARY OF APPLICATION REQUEST:

Andy Bleggi with PTAH, LLC applied for a Preliminary Development Plan (PDP) for Phase 1 of the Waterworks development. Waterworks Phase 1 includes construction of a 33,000 square foot expansion of the existing 4,260 square foot recently-renovated Waterworks building that will be used for office space as permitted by the Waterworks Conceptual Development Plan (CDP). A new, additional 9,600 square foot building will also be built as part of the Phase 1 PDP. The building is presently planned to be occupied by Workhorse Fitness, a by-right use in the Waterworks CDP. However, any other by-right use may occupy the building in the future subject to UDO design standards. Phase 1 will also include construction of 152 permanent parking spaces and 20 temporary gravel parking spaces to serve the proposed buildings. Access will be provided off Central Drive, directly across from Reservoir Park Road.

Waterworks Phase 1 PDP will also include development of a walking path connecting north across wetlands to the Town’s Greenway system, as depicted on the CDP. Water

and sewer services are available to the subject property. Detailed site plan review as well as an Architectural Compliance Permit will be required prior to construction. The subject property is identified as PIN: 858300245709 (PARID: 00039185) and per the Moore County tax records, the property owner is listed as PTAH, LLC.

III. TOWN COUNCIL PUBLIC HEARING AND ACTION:

A public hearing for this request was held at the February 8, 2022 regular business meeting of the Town Council. All public notice requirements were met for that hearing date. The Town Council had five (5) members present. The Town Council opened the quasi-judicial public hearing and received evidence from those in attendance regarding preliminary development plan application PD-12-21. Mr. BJ Grieve, Planning Director, entered the staff report into the record as Exhibit A and provided an overview of the project and applicable criteria for review. Mr. James Michel, Town Engineer, answered a variety of questions from the Town Council regarding the town's and NCDOT's review of the Traffic Impact Analysis provided by the applicant.

Messrs. Kevin Lindsay and Andy Bleggi jointly presented the case for the approval of PDP application PD-12-21. Mr. Lindsay provided a review of site and building images that were entered into the record as Exhibit B and presented information regarding design characteristics of the development such as access, parking and building layout. Mr. Bleggi presented additional information regarding characteristics of the development such as improvements to Central Drive, wetland easements, job creation and economic development, building appearance modifications and the proposed building expansion, and future phases of development. After presenting details of the development, Messrs' Lindsay and Bleggi answered questions from members of the Town Council. The Town Council opened up the meeting to public comment.

Mr. Marsh Smith presented information related to his ability to access the Town Council packet, concerns regarding growth rates of Vehicle Miles Travelled (VMTs) on North Carolina roads, and concerns regarding a wetland easement for a portion of the subject property. Mr. Smith's materials were entered into the record as Exhibit C.

The Town Council asked a variety of additional questions of the applicants and member of town staff, then closed the public hearing and voted on Preliminary Development Plan application PD-12-21.

The town council voted 4-1 (Ann Peterson dissenting) to adopt Attachment A to staff report PD-12-21 as findings of fact. Attachment A included findings of fact that the application is complete, the facts submitted were relevant to the case, and that the application complies with Section 2.18.5(H) criteria for a Preliminary Development Plan, criteria 1-4. Attachment A included a description of the manner in which each of the four criteria are met. The Town Council then voted 4-1 (Ann Peterson dissenting) to approve the Preliminary Development Plan under application PD-12-21.

IV. ATTACHMENTS:

1. Written Decision for PD-12-21 (DRAFT)

V. TOWN COUNCIL ACTION:

The Town Council may wish to take one of the following actions:

1. No action;
2. Accept the Written Decision for PD-12-21 as prepared by the Town staff;
3. An action listed above with the following conditions...
4. Action not listed above...

TOWN OF SOUTHERN PINES

REGULAR BUSINESS MEETING OF THE TOWN COUNCIL

FEBRUARY 8, 2022

6:00 pm

DECISION OF THE BOARD

Petitioner: PTAH, LLC

Case Number: PD-12-21

The meeting was called to order with all members present. The Mayor administered the oath to all witnesses choosing to speak. Mr. BJ Grieve, Planning Director for the Town of Southern Pines, presented the staff report. Messrs. Kevin Lindsay and Andy Bleggi, presented on behalf of the petitioner.

Matter at Issue:

PD-12-21: Planned Development - Preliminary Development Plan for Phase 1 of the Waterworks mixed-use development

Andy Bleggi with PTAH, LLC applied for a Preliminary Development Plan (PDP) for Phase 1 of the Waterworks development. Waterworks Phase 1 includes construction of a 33,000 square foot expansion of the existing 4,260 square foot recently-renovated Waterworks building that will be used for office space as permitted by the Waterworks Conceptual Development Plan (CDP). A new, additional 9,600 square foot building will also be built as part of the Phase 1 PDP. The building is presently planned to be occupied by Workhorse Fitness, a by-right use in the Waterworks CDP. However, any other by-right use may occupy the building in the future subject to UDO design standards. Phase 1 will also include construction of 152 permanent parking spaces and 20 temporary gravel parking spaces to serve the proposed buildings. Access will be provided off Central Drive, directly across from Reservoir Park Road.

Waterworks Phase 1 PDP will also include development of a walking path connecting north across wetlands to the Town's Greenway system, as depicted on the CDP. Water and sewer services are available to the subject property. Detailed site plan review as well as an Architectural Compliance Permit will be required prior to construction. The subject property is identified as PIN: 858300245709 (PARID: 00039185) and per the Moore County tax records, the property owner is listed as PTAH, LLC.

Mr. BJ Grieve, Planning Director, entered the staff report into the record as Exhibit A and provided an overview of the project and applicable criteria for review.

Mr. James Michel, Town Engineer, answered a variety of questions from the Town Council regarding the town's and NCDOT's review of the Traffic Impact Analysis provided by the applicant.

Messrs. Kevin Lindsay and Andy Bleggi jointly presented the case for the approval of PDP application PD-12-21. Mr. Lindsay provided a review of site and building images that were entered into the record as Exhibit B and presented information regarding design characteristics of the development such as access, parking and building layout. Mr. Bleggi presented additional information regarding characteristics of the development such as improvements to Central Drive, wetland easements, job creation and economic

development, building appearance modifications and the proposed building expansion, and future phases of development. After presenting details of the development, Messrs' Lindsay and Bleggi answered questions from members of the Town Council. The Town Council opened up the meeting to public comment.

Mr. Marsh Smith presented information related to his ability to access the Town Council packet, concerns regarding growth rates of Vehicle Miles Travelled (VMTs) on North Carolina roads, and concerns regarding a wetland easement for a portion of the subject property. Mr. Smith's materials were entered into the record as Exhibit C.

No additional testimony was provided by Town staff, the applicant or members of the public.

Town Council Action:

Having heard all evidence submitted by those wishing to speak, the Town Council then closed the public hearing. After closing the public hearing, the Town Council made the following findings of fact on the application:

The Board voted on the following Findings of Fact and Conclusions of Law as required by UDO Section 2.18.5(H) and as presented in Attachment A, the staff report for PD-12-21:

Finding of Fact #1:

The Town Council finds that the application is complete and that the facts submitted are relevant to the case because the request for Preliminary Development Plan approval has met the specified submittal requirements as required in the Town of Southern Pines UDO Appendices, the applicants have submitted adequate evidence addressing criteria for a Preliminary Development Plan, and the evidence submitted was sworn testimony by qualified experts or provided through substantiated documentation.

Finding of Fact #2:

The Town Council finds that the application complies with UDO §2.18.5(H) Criteria for a Preliminary Development Plan, Criteria 1-4, in that:

1. **The application demonstrates that it will achieve the purposes of the PDD and this section;**
The Town Council finds that the Preliminary Development Plan (PDP) to develop 33,000 square feet of professional offices for a military defense contractor as well as a separate 9,600 square foot building for Workhorse Fitness is generally consistent with the purposes of the PD-planned development zoning district because the recently-revised Waterworks Planned Development District is an established Planned Development that is compliant with the purposes outlined in UDO §3.5.14.
2. **The Preliminary Development Plan is consistent with the Conceptual Development Plan and conforms to all applicable provisions of this UDO;**
The Town Council finds that the PDP is consistent with the recently-revised Waterworks Conceptual Development Plan (CDP), PD-11-21, because the PDP maintains the mix and intensity of land uses as well as the standards evaluated and approved with the CDP. No deviations from the CDP or the UDO were requested and none are therefore approved.
3. **The proposed Development is located in an area of the Town that is appropriate; and**
The Town Council finds that the PDP is in an area of the Town that is appropriate because the proposed Waterworks Phase 1 (to include professional offices for military defense contractors and a recreation facility) is located along Central Drive, is served by water and sewer, is adjacent to Reservoir Park and will extend the existing Greenway Path into the development, and is revitalizing a property that was previously an abandoned institutional structure and municipal storage area.

4. **The proposed Development will not cause the need for inefficient extensions and expansions of public facilities, utilities and services.**

The Town Council finds that this development will not cause a need for inefficient extensions and expansions of public infrastructure and services because roads, utilities and recreation infrastructure is all available nearby and the proposed land uses will not cause an unreasonable demand for services.

By a vote of 4-1 (Ann Peterson dissenting), the Town Council then voted to approve the Preliminary Development Plan Application PD-12-21 as requested by the applicant and as described in Exhibits A and B.

Decision of the Board:

The Town Council approves the request under Preliminary Development Plan application PD-12-21 for a 33,000 square foot expansion of the existing 4,260 square foot recently-renovated Waterworks building and a new, additional 9,600 square foot building will also be built as part of the Phase 1 PDP. The approval is as set forth in Exhibits A and B at the public hearing.

This is the 28th day of February, 2022.

FOR THE TOWN COUNCIL:

Carol Haney, Mayor

cc: andybleggi@gmail.com
kevinlindsay@crawforddsn.com

TOWN OF SOUTHERN PINES

REGULAR BUSINESS MEETING OF THE TOWN COUNCIL

FEBRUARY 8, 2022

6:00 pm

DECISION OF THE BOARD

Petitioner: PTAH, LLC

Case Number: PD-12-21

The meeting was called to order with all members present. The Mayor administered the oath to all witnesses choosing to speak. Mr. BJ Grieve, Planning Director for the Town of Southern Pines, presented the staff report. Messrs. Kevin Lindsay and Andy Bleggi, presented on behalf of the petitioner.

Matter at Issue:

PD-12-21: Planned Development - Preliminary Development Plan for Phase 1 of the Waterworks mixed-use development

Andy Bleggi with PTAH, LLC applied for a Preliminary Development Plan (PDP) for Phase 1 of the Waterworks development. Waterworks Phase 1 includes construction of a 33,000 square foot expansion of the existing 4,260 square foot recently-renovated Waterworks building that will be used for office space as permitted by the Waterworks Conceptual Development Plan (CDP). A new, additional 9,600 square foot building will also be built as part of the Phase 1 PDP. The building is presently planned to be occupied by Workhorse Fitness, a by-right use in the Waterworks CDP. However, any other by-right use may occupy the building in the future subject to UDO design standards. Phase 1 will also include construction of 152 permanent parking spaces and 20 temporary gravel parking spaces to serve the proposed buildings. Access will be provided off Central Drive, directly across from Reservoir Park Road.

Waterworks Phase 1 PDP will also include development of a walking path connecting north across wetlands to the Town's Greenway system, as depicted on the CDP. Water and sewer services are available to the subject property. Detailed site plan review as well as an Architectural Compliance Permit will be required prior to construction. The subject property is identified as PIN: 858300245709 (PARID: 00039185) and per the Moore County tax records, the property owner is listed as PTAH, LLC.

Mr. BJ Grieve, Planning Director, entered the staff report into the record as Exhibit A and provided an overview of the project and applicable criteria for review.

Mr. James Michel, Town Engineer, answered a variety of questions from the Town Council regarding the town's and NCDOT's review of the Traffic Impact Analysis provided by the applicant.

Messrs. Kevin Lindsay and Andy Bleggi jointly presented the case for the approval of PDP application PD-12-21. Mr. Lindsay provided a review of site and building images that were entered into the record as Exhibit B and presented information regarding design characteristics of the development such as access, parking and building layout. Mr. Bleggi presented additional information regarding characteristics of the development such as improvements to Central Drive, wetland easements, job creation and economic

development, building appearance modifications and the proposed building expansion, and future phases of development. After presenting details of the development, Messrs' Lindsay and Bleggi answered questions from members of the Town Council. The Town Council opened up the meeting to public comment.

Mr. Marsh Smith presented information related to his ability to access the Town Council packet, concerns regarding growth rates of Vehicle Miles Travelled (VMTs) on North Carolina roads, and concerns regarding a wetland easement for a portion of the subject property. Mr. Smith's materials were entered into the record as Exhibit C.

No additional testimony was provided by Town staff, the applicant or members of the public.

Town Council Action:

Having heard all evidence submitted by those wishing to speak, the Town Council then closed the public hearing. After closing the public hearing, the Town Council made the following findings of fact on the application:

The Board voted on the following Findings of Fact and Conclusions of Law as required by UDO Section 2.18.5(H) and as presented in Attachment A, the staff report for PD-12-21:

Finding of Fact #1:

The Town Council finds that the application is complete and that the facts submitted are relevant to the case because the request for Preliminary Development Plan approval has met the specified submittal requirements as required in the Town of Southern Pines UDO Appendices, the applicants have submitted adequate evidence addressing criteria for a Preliminary Development Plan, and the evidence submitted was sworn testimony by qualified experts or provided through substantiated documentation.

Finding of Fact #2:

The Town Council finds that the application complies with UDO §2.18.5(H) Criteria for a Preliminary Development Plan, Criteria 1-4, in that:

1. **The application demonstrates that it will achieve the purposes of the PDD and this section;**
The Town Council finds that the Preliminary Development Plan (PDP) to develop 33,000 square feet of professional offices for a military defense contractor as well as a separate 9,600 square foot building for Workhorse Fitness is generally consistent with the purposes of the PD-planned development zoning district because the recently-revised Waterworks Planned Development District is an established Planned Development that is compliant with the purposes outlined in UDO §3.5.14.
2. **The Preliminary Development Plan is consistent with the Conceptual Development Plan and conforms to all applicable provisions of this UDO;**
The Town Council finds that the PDP is consistent with the recently-revised Waterworks Conceptual Development Plan (CDP), PD-11-21, because the PDP maintains the mix and intensity of land uses as well as the standards evaluated and approved with the CDP. No deviations from the CDP or the UDO were requested and none are therefore approved.
3. **The proposed Development is located in an area of the Town that is appropriate; and**
The Town Council finds that the PDP is in an area of the Town that is appropriate because the proposed Waterworks Phase 1 (to include professional offices for military defense contractors and a recreation facility) is located along Central Drive, is served by water and sewer, is adjacent to Reservoir Park and will extend the existing Greenway Path into the development, and is revitalizing a property that was previously an abandoned institutional structure and municipal storage area.

4. **The proposed Development will not cause the need for inefficient extensions and expansions of public facilities, utilities and services.**

The Town Council finds that this development will not cause a need for inefficient extensions and expansions of public infrastructure and services because roads, utilities and recreation infrastructure is all available nearby and the proposed land uses will not cause an unreasonable demand for services.

By a vote of 4-1 (Ann Peterson dissenting), the Town Council then voted to approve the Preliminary Development Plan Application PD-12-21 as requested by the applicant and as described in Exhibits A and B.

Decision of the Board:

The Town Council approves the request under Preliminary Development Plan application PD-12-21 for a 33,000 square foot expansion of the existing 4,260 square foot recently-renovated Waterworks building and a new, additional 9,600 square foot building will also be built as part of the Phase 1 PDP. The approval is as set forth in Exhibits A and B at the public hearing.

This is the 28th day of February, 2022.

FOR THE TOWN COUNCIL:

Carol Haney, Mayor

cc: andybleggi@gmail.com
kevinlindsay@crawforddsn.com

Work Session Agenda Item

To: Reagan Parsons, Town Manager

From: BJ Grieve, Planning Director

Subject: Written Decision of the Board for PD-13-21: Planned Development - Preliminary Development Plan for the new development of a retail building; Applicant: Ubuntu Developer LLC, Sanjeev Bhunta; Authorized Agent: Kevin Lindsay of Crawford Design Company.

Date: February 28, 2022

I. PURPOSE:

Per UDO §2.14.6(F)(11), “A written decision must be approved for every quasi-judicial application, either by entering the decision at the end of the hearing or at a subsequent meeting of the hearing body, which shall generally be the next scheduled meeting. As part of the written decision, the hearing body must make findings of fact and conclusions as to applicable standards and any conditions. The chair may direct the planning director or town attorney to draft a written decision for approval by the hearing body at its next regularly scheduled meeting, which approval may be on a consent agenda.”

Staff has prepared a draft of the written decision of the board document for the application PD-13-21 that was heard by the Town Council at the regular meeting on February 8, 2022 and that the Town Council may now wish to adopt. If the Town Council approves the written decision of the board document, the Mayor will sign the document. The original signed version will be delivered to the petitioner, with staff maintaining a copy of the signed document in the file.

II. SUMMARY OF APPLICATION REQUEST:

Ubuntu Developer, LLC applied for a preliminary development plan for the purpose of developing a retail building. The proposed Old Morganton Road Lot 1 development will be located in the planned development known as Morganton Park South. The retail building is a 7,000 square foot building located on 1.12 acres that are currently located in the Town of Southern Pines limits. The subject property is located on the corner of West Morganton Road and Brucewood Road with Old Morganton Road on its southwest corner, lies within the Morganton Road Overlay and is designated as traditional mixed use on the future land use map in the comprehensive long-range plan. The GIS mapping shows sewer and water availability. The subject property is identified as PIN: 857100484800 (PARID: 20200422) and per the Moore County tax records, the property owners are listed as Ubuntu Developer LLC.

III. TOWN COUNCIL PUBLIC HEARING AND ACTION:

A public hearing for this request was held at the February 8, 2022 regular business meeting of the Town Council. All public notice requirements were met for that hearing date. The Town Council had five (5) members present. The Town Council opened the quasi-judicial public hearing and received evidence from those in attendance regarding preliminary development plan application PD-13-21. Mr. BJ Grieve, Planning Director, entered the staff report into the record as Exhibit A and provided an overview of the project and applicable criteria for review.

Mr. Kevin Lindsay presented the case for the approval of PDP application PD-13-21. Mr. Lindsay provided a review of site and building images that were entered into the record as Exhibit B and presented information regarding design characteristics of the development. Mr. Lindsay spoke about the request for a deviation from the maximum parking requirements of the Morganton Road Overlay and the Highway Corridor Overlay. The Town Council opened up the meeting to public comment and there were no comments from the audience.

The Town Council asked a variety of additional questions of the applicants and member of town staff, then closed the public hearing and voted on Preliminary Development Plan application PD-13-21.

The town council voted 5-0 to adopt Attachment A to staff report PD-13-21 as findings of fact with changes. Attachment A included findings of fact that the application is complete, the facts submitted were relevant to the case, and that the application complies with Section 2.18.5(H) criteria for a Preliminary Development Plan, criteria 1-4. However, the Town Council changed language in criteria #2 to find that the requested deviation to maximum parking limitations is not necessary based on the availability of parking within the overall development, and denied the request for additional parking. The Town Council then voted 5-0 to approve the Preliminary Development Plan under application PD-13-21.

IV. ATTACHMENTS:

1. Written Decision for PD-13-21 (DRAFT)

V. TOWN COUNCIL ACTION:

The Town Council may wish to take one of the following actions:

1. No action;
2. Accept the Written Decision for PD-13-21 as prepared by the Town staff;
3. An action listed above with the following conditions...
4. Action not listed above...

TOWN OF SOUTHERN PINES

REGULAR BUSINESS MEETING OF THE TOWN COUNCIL

FEBRUARY 8, 2022

6:00 pm

DECISION OF THE BOARD

Petitioner: Ubuntu Developer, LLC

Case Number: PD-13-21

The meeting was called to order with all members present. The Mayor administered the oath to all witnesses choosing to speak. Mr. BJ Grieve, Planning Director for the Town of Southern Pines, presented the staff report. Mr. Kevin Lindsay presented on behalf of the petitioner.

Matter at Issue:

PD-13-21: Planned Development - Preliminary Development Plan for the new development of a retail building.

Ubuntu Developer, LLC applied for a preliminary development plan for the purpose of developing a retail building. The proposed Old Morganton Road Lot 1 development will be located in the planned development known as Morganton Park South. The retail building is a 7,000 square foot building located on 1.12 acres that are currently located in the Town of Southern Pines limits. The subject property is located on the corner of West Morganton Road and Brucewood Road with Old Morganton Road on its southwest corner, lies within the Morganton Road Overlay and is designated as traditional mixed use on the future land use map in the comprehensive long-range plan. The GIS mapping shows sewer and water availability. The subject property is identified as PIN: 857100484800 (PARID: 20200422) and per the Moore County tax records, the property owners are listed as Ubuntu Developer LLC.

Mr. BJ Grieve, Planning Director, entered the staff report into the record as Exhibit A and provided an overview of the project and applicable criteria for review.

Mr. Kevin Lindsay presented the case for the approval of PDP application PD-13-21. Mr. Lindsay provided a review of site and building images that were entered into the record as Exhibit B and presented information regarding design characteristics of the development. Mr. Lindsay spoke about the request for a deviation from the maximum parking requirements of the Morganton Road Overlay and the Highway Corridor Overlay. Mr. Lindsay answered questions from the Town Council.

The Town Council opened up the meeting to public comment. No members of the public spoke for or against the project.

No additional testimony was provided by Town staff, the applicant or members of the public.

Town Council Action:

Having heard all evidence submitted by those wishing to speak, the Town Council then closed the

public hearing. After closing the public hearing, the Town Council made the following findings of fact on the application:

The Board voted on the following Findings of Fact and Conclusions of Law as required by UDO Section 2.18.5(H) and as presented in Attachment A to the staff report for PD-13-21 and furthermore as modified by the Town Council:

Finding of Fact #1:

The Town Council finds that the application is complete and that the facts submitted are relevant to the case because the request for Preliminary Development Plan approval has met the specified submittal requirements as required in the Town of Southern Pines UDO Appendices, the applicants have submitted adequate evidence addressing criteria for a Preliminary Development Plan, and the evidence submitted was sworn testimony by qualified experts or provided through substantiated documentation.

Finding of Fact #2:

The Town Council finds that the application complies with UDO §2.18.5(H) Criteria for a Preliminary Development Plan, Criteria 1-4, in that:

1. **The application demonstrates that it will achieve the purposes of the PDD and this section;**
The Town Council finds that the Preliminary Development Plan (PDP) for the development application PD-13-21 located in Morganton Park South implements the purposes of the Planned Development District because the project is located in an area of town with existing access to necessary utility infrastructure and where the street system is adequate to accommodate the projected traffic volumes. Furthermore, the design of the PDP integrates with the 14 stated intentions of the Planned Development District as set forth in Chapter 3 of the UDO.
2. **The Preliminary Development Plan is consistent with the Conceptual Development Plan and conforms to all applicable provisions of this UDO;**
The Town Council finds that the PDP is consistent with the Conceptual Development Plan (CDP). Furthermore, the applicant is found to comply with the applicable sections of the UDO except for the deviation request to provide 45 parking spaces. The Town Council recognizes per UDO §4.5.4 that, due to the particularities of any given Development, the inflexible application of the parking standards set forth in Exhibit 4-6 may result in a Development either with inadequate or excess parking spaces. However, the Town Council finds that due to an abundance of parking with the overall Morganton Park South development, allowing 10 extra parking spaces is not a reasonable deviation to the underlying zoning requirements based on the specific circumstances for this site.
3. **The proposed Development is located in an area of the Town that is appropriate; and**
Town Council finds that the proposed PDP is located in an appropriate area of town because the proposed retail development may be served by existing public utilities. The subject property is near similar existing land uses and development of the site will not remove critical wildlife habitat.
4. **The proposed Development will not cause the need for inefficient extensions and expansions of public facilities, utilities and services.**
Town Council finds that the proposed PDP has existing stub outs for water and sewer and development is not creating a new location of public service delivery demand and the retail development will be accessed by existing roadways.

By a vote of 5-0, the Town Council then voted to approve the Preliminary Development Plan Application PD-13-21 as requested by the applicant but without the deviation to maximum parking restrictions, and as described in Exhibits A and B.

Decision of the Board:

The Town Council approves the request under Preliminary Development Plan application PD-13-21 for a 7,000 square foot building located on 1.12 acres. The approval is as set forth in Exhibits A and B at the public hearing.

This is the 28th day of February, 2022.

FOR THE TOWN COUNCIL:

Carol Haney, Mayor

cc: kevinlindsay@crowforddsn.com

Ubuntu Developer, LLC

PO Box 249

Southern Pines, NC 28388

TOWN OF SOUTHERN PINES

REGULAR BUSINESS MEETING OF THE TOWN COUNCIL

FEBRUARY 8, 2022

6:00 pm

DECISION OF THE BOARD

Petitioner: Ubuntu Developer, LLC

Case Number: PD-13-21

The meeting was called to order with all members present. The Mayor administered the oath to all witnesses choosing to speak. Mr. BJ Grieve, Planning Director for the Town of Southern Pines, presented the staff report. Mr. Kevin Lindsay presented on behalf of the petitioner.

Matter at Issue:

PD-13-21: Planned Development - Preliminary Development Plan for the new development of a retail building.

Ubuntu Developer, LLC applied for a preliminary development plan for the purpose of developing a retail building. The proposed Old Morganton Road Lot 1 development will be located in the planned development known as Morganton Park South. The retail building is a 7,000 square foot building located on 1.12 acres that are currently located in the Town of Southern Pines limits. The subject property is located on the corner of West Morganton Road and Brucewood Road with Old Morganton Road on its southwest corner, lies within the Morganton Road Overlay and is designated as traditional mixed use on the future land use map in the comprehensive long-range plan. The GIS mapping shows sewer and water availability. The subject property is identified as PIN: 857100484800 (PARID: 20200422) and per the Moore County tax records, the property owners are listed as Ubuntu Developer LLC.

Mr. BJ Grieve, Planning Director, entered the staff report into the record as Exhibit A and provided an overview of the project and applicable criteria for review.

Mr. Kevin Lindsay presented the case for the approval of PDP application PD-13-21. Mr. Lindsay provided a review of site and building images that were entered into the record as Exhibit B and presented information regarding design characteristics of the development. Mr. Lindsay spoke about the request for a deviation from the maximum parking requirements of the Morganton Road Overlay and the Highway Corridor Overlay. Mr. Lindsay answered questions from the Town Council.

The Town Council opened up the meeting to public comment. No members of the public spoke for or against the project.

No additional testimony was provided by Town staff, the applicant or members of the public.

Town Council Action:

Having heard all evidence submitted by those wishing to speak, the Town Council then closed the

public hearing. After closing the public hearing, the Town Council made the following findings of fact on the application:

The Board voted on the following Findings of Fact and Conclusions of Law as required by UDO Section 2.18.5(H) and as presented in Attachment A to the staff report for PD-13-21 and furthermore as modified by the Town Council:

Finding of Fact #1:

The Town Council finds that the application is complete and that the facts submitted are relevant to the case because the request for Preliminary Development Plan approval has met the specified submittal requirements as required in the Town of Southern Pines UDO Appendices, the applicants have submitted adequate evidence addressing criteria for a Preliminary Development Plan, and the evidence submitted was sworn testimony by qualified experts or provided through substantiated documentation.

Finding of Fact #2:

The Town Council finds that the application complies with UDO §2.18.5(H) Criteria for a Preliminary Development Plan, Criteria 1-4, in that:

1. **The application demonstrates that it will achieve the purposes of the PDD and this section;**
The Town Council finds that the Preliminary Development Plan (PDP) for the development application PD-13-21 located in Morganton Park South implements the purposes of the Planned Development District because the project is located in an area of town with existing access to necessary utility infrastructure and where the street system is adequate to accommodate the projected traffic volumes. Furthermore, the design of the PDP integrates with the 14 stated intentions of the Planned Development District as set forth in Chapter 3 of the UDO.
2. **The Preliminary Development Plan is consistent with the Conceptual Development Plan and conforms to all applicable provisions of this UDO;**
The Town Council finds that the PDP is consistent with the Conceptual Development Plan (CDP). Furthermore, the applicant is found to comply with the applicable sections of the UDO except for the deviation request to provide 45 parking spaces. The Town Council recognizes per UDO §4.5.4 that, due to the particularities of any given Development, the inflexible application of the parking standards set forth in Exhibit 4-6 may result in a Development either with inadequate or excess parking spaces. However, the Town Council finds that due to an abundance of parking with the overall Morganton Park South development, allowing 10 extra parking spaces is not a reasonable deviation to the underlying zoning requirements based on the specific circumstances for this site.
3. **The proposed Development is located in an area of the Town that is appropriate; and**
Town Council finds that the proposed PDP is located in an appropriate area of town because the proposed retail development may be served by existing public utilities. The subject property is near similar existing land uses and development of the site will not remove critical wildlife habitat.
4. **The proposed Development will not cause the need for inefficient extensions and expansions of public facilities, utilities and services.**
Town Council finds that the proposed PDP has existing stub outs for water and sewer and development is not creating a new location of public service delivery demand and the retail development will be accessed by existing roadways.

By a vote of 5-0, the Town Council then voted to approve the Preliminary Development Plan Application PD-13-21 as requested by the applicant but without the deviation to maximum parking restrictions, and as described in Exhibits A and B.

Decision of the Board:

The Town Council approves the request under Preliminary Development Plan application PD-13-21 for a 7,000 square foot building located on 1.12 acres. The approval is as set forth in Exhibits A and B at the public hearing.

This is the 28th day of February, 2022.

FOR THE TOWN COUNCIL:

Carol Haney, Mayor

cc: kevinlindsay@crawforddsn.com

Ubuntu Developer, LLC

PO Box 249

Southern Pines, NC 28388



Town of
Southern Pines
North Carolina

MEMORANDUM

To: Reagan Parsons, Town Manager
Jessica Roth, Assistant Town Manager

From: Cory Albers, Assistant Public Works Director

Re: Street Resurfacing Bids

Date: February 22, 2022

The Town has allocated \$275,000 in the FY21-22 budget for the annual resurfacing projects. Based on this amount and the Town's recent projects averaging 1.60 of resurfaced roadway a year, the Town released the following projects for bid:

1. Resurfacing 1.61 miles on 6 low-volume, residential streets – the typical scope of recent annual projects
2. Resurfacing 1 mile of Knoll Road, from the traffic circle to Arboretum Drive. Staff recommends adding this section to the FY 21-22 program due to the current condition and the PCR (Pavement Condition Rating) of 64. Knoll Road is a higher volume, collector street, which means its pavement life cycle is shorter and resurfacing carries additional costs, including pavement markings.

Staff recommends including Knoll Road in this year's program, as the PCR of 64 means the roadway has slipped from "fair" condition to the beginning stages of being in "poor" condition. Further decline will require the more extensive and costly work associated with reconstruction, compared to the preventive resurfacing that can be provided at this point. As Council may recall, staff documented in an October 2021 presentation that the costs for reconstruction are generally seven times higher than preventive resurfacing.

The Town received 3 bids on February 14, 2022 with the low bidder (Turner Asphalt) at \$481,763.97. Staff has reviewed all bids and analyzed the breakdown of the low bid for the project scope. Staff has identified the two most viable options for Council consideration:

- **RECOMMENDED SCOPE:** Award the contract for \$481,763.97 to complete the full scope of 2.61 miles, including Knoll Road. This would require a budget amendment in the amount of \$206,763.97 to cover the difference from the \$275,000 which was budgeted. The low bid is priced as follows:
 - \$307,952.30 for the 1.61 miles of low-volume residential streets
 - \$173,811.67 for Knoll Road

While this scope requires a budget amendment, this is the option that staff recommends as the pricing is very favorable and this is the optimum time to resurface Knoll Road. The overall bid for Turner Asphalt is approximately \$185K per mile, compared to around \$250K for the other two bidders. Additionally, Turner's pricing for the required pavement marking on Knoll Road is 20% the cost of the other two bidders

(around \$6K compared to \$30K).

- **REDUCED SCOPE:** Award the contract for \$307,952.30 for the 1.61 miles of low-volume residential streets. This would require a budget amendment in the amount of \$32,952.30 to cover the difference from the \$275,000 which was budgeted. With this option, Knoll Road would not be included in the FY 21-22 program and would be reconsidered in FY 22-23.

Town of Southern Pines
Street Resurfacing
Southern Pines, NC

BID SUMMARY

Bid Date: Monday February 14, 2022

Time: 2:00 PM

	Contractor	License No.	Total Bid
1.	Barnhill Construction	3194	\$ 638,287
2.	Turner Asphalt	55042	\$ 481,763.97
3.	Fred Smith Company	43848	\$ 644,947.63
4.			
5.			
6.			
7.			

Bids Received and Read by:

Archie Daniel

Cory Albers / James Michel
Town of Southern Pines

2-14-2022
Date