

**Town of Calabash
Planning & Zoning Board
April 18, 2013 Workshop Agenda**

NOTE: NO ACTIONS OR RECOMMENDATIONS WILL BE MADE AT THIS WORKSHOP (i.e. this is how the items were worded on the 4-1-13 agenda, which is what the workshop is to address)

Section 1: Designating Common Area/Open Space

1. **Action Item:** Consider designating Tax Parcel ID #255JB00106 as Common Area/Open Space-Dever Park 1.01 acres in Devaun Park (TOC Map #12)
2. **Action Item:** Consider designating 5 parcels in Phase 2-A, 2-A-1 & 6-A of Devaun Park as Common Area/Open Space; Tax ID#s 255IA00101, 255JB00103, 255JB00104, 255JB00102, & 255JB00101(TOC Map #11)
3. **Action Item:** Consider designating 4 parcels in Phase One of Devaun Park as Common Area/Open Space; Tax ID#s 255HB00106, 255HB00108, 255HA00104, & 255HA00105 (TOC Map #10)
4. **Action Item:** Consider designation of Common Area/Open Space of Tax ID# 262AA00102 located in Phase 8 of Devaun Park and to establish ROW limits on the same parcel (TOC Map #7)
5. **Action Item:** Consider designating portions of Tax Parcel ID #s 262AA00101 and 262AA00102 in Devaun Park as Common Area/Open Space (TOC Map #5)
6. **Action Item:** Consider designating Tax Parcel ID #2550002861 in Devaun Park as Common Area/Open Space (TOC Map #4)
7. **Action item:** Consider designating Tax Parcel ID #s 262AB00101 & 262AB00102 as Common Area/Open Space (TOC Map #9)

Section 2: Combining Parcels and Designating Common Area/Open Space

8. **Recommendation Item:** Consider combination of 3 parcels in Phase 6-B of Devaun Park into one parcel-Tax Parcel ID#s 255PD006, 255PD007, 255PD008 totaling 0.87 acres & designate as ~~Future Development~~ Common Area/Open Space (TOC Map #14)
9. **Recommendation Item:** Consider combination of 8 parcels in Phase 3 of Devaun Park into one parcel-Tax Parcel ID#s 2550002819, 2550002850, 2550002855, 2550002863, 2550002864, 255PE001, 255PE002, 255PE003 totaling 10.83 acres and designate as Future Development. AND designate existing Tax Parcel ID# 255JC019 as Common Area/Open Space 1.74 acres (TOC Map #13)
10. **Action Item:** Consider combination of 4 parcels in Devaun Park into one parcel-Tax ID #s 2550002844, 2550002845, 2550002846, & 255HE011 and designate as Common Area/Open Space; Revise the right-of-way (ROW) of South River Terrace SW; and revise the ROW of Devaun Point Circle (TOC Map #8)

Section 3: Combining Parcels near Horseshoe Lake and Clubhouse then subdividing Clubhouse area

11. **Recommendation Item:** Consider combination of 5 parcels in Devaun Park into one parcel-Tax Parcel ID#s 255HA00103, 2550002862, 255HB00105, 2550002808, and

2550002826 totaling 11.30 Acres and designate as Common Area/Open Space. (TOC Map #2)

- 12. Recommendation Item:** Consider subdividing a parcel of land out of the 11.30 Acres (#2 above) a total of 0.56 acres where the existing Horseshoe Clubhouse/pool is located; designate as Common Area/Open Space (TOC Map #1)

Section 4: Corrections from plans to actual built upon area

- 13. Action Item:** Consider a revision to lot 306/Phase 7-1-A of Devaun Park (TOC Map #3)
- 14. Action Item:** Consider changes in Devaun Park near Devaun Lake-(1) revising the ROW of East Lake Road; (2) establish the limits of the alley north of lot 400; (3) combine a portion of East Lake Road ROW with parcel #262AA0010 & designate the recombined parcel as Common Area/Open Space; & (4) designate parcel #255JD00101 as Common Area/Open Space (TOC Map #6)

**TOWN OF CALABASH
PLANNING & ZONING BOARD
SPECIAL CALLED MEETING/WORKSHOP
Thursday, April 18, 2013
6:00 PM Sanborn Hall**

MINUTES

The Calabash Planning & Zoning Board (PZB) held a special/called meeting for the purpose of holding a workshop on Thursday, April 18, 2013, 6:00 PM in Sanborn Hall, located at Town Hall, 882 Persimmon Road, Calabash, NC. The purpose of the workshop was to review 14 plats/maps submitted by the developer of Devaun Park (hereinafter DP) Mr. Vaughn Stalaland (i.e. Stalaland Stewart Company-SSC) pertaining to DP. These 14 maps were tabled during the PZB's April 1, 2013 Regular Meeting.

MEMBERS PRESENT: MC Sonia Climer, Commissioner Emily DiStasio, Mr. Charlie Daniels, Mr. Mark Pero and Mrs. Clare Leary (ETJ member).

MEMBERS ABSENT: Mr. John Thomas, Vice Chairman.

STAFF PRESENT: Town Administrator Chuck Nance, Town Clerk Kelley Southward, Town Building Inspector Stanley Dills and Town Attorney Mac Tyson.

GUESTS PRESENT: there were about 8 property owners from the DP subdivision, some of whom are members of the neighborhood's home owners association called Devaun Park Community Association (hereafter DPCA). Also present was Mayor Mary Knight and Commissioner Charles Walton.

CALL TO ORDER/PLEDGE/ROLL CALL: MC Climer called the meeting to order at 6:00 PM and led everyone in the Pledge of Allegiance to the Flag. Roll call of members and staff present was taken; attendance is reflected above.

WORKSHOP: to review the 14 plats/maps regarding changes to the Devaun Park Master Plan (Devaun Park is an approved Planned Unit Development-PUD) submitted by Mr. Stanaland, Developer, and tabled during the April 1, 2013 PZB Regular Meeting. (a copy of the 14 maps are attached hereto and made part of the official minutes).

MC Climer laid some ground rules for the workshop: (1) no action would be taken this evening; (2) PZB members and staff may ask questions and provide comments; (3) the developer, Mr. Stanaland, may talk; and (4) there will be no public comments.

Mrs. Clare Leary, PZB ETJ member who resides in Devaun Park began by making the following statement and asking the following questions (discussion and answers are provided in *italics*)

As holder of the ETJ seat on the P&Z (and a DP resident property owner), I consider my role as being to impartially consider, to the best of my ability, the interests and concerns of both the DPCA Board and property owners, as well as those of the developer (who is also a DP property owner), along with the larger interests of the Town of Calabash. To that end I hope to take away from tonight's workshop a better understanding of the UDO as it pertains to the site specific changes requested by Mr. Stanaland, the technical aspects of those changes, and the larger picture of their impact on the community and what would be in the best interest of all, all within the confines of what is deemed the legitimate purview of the P&Z Board. With that in mind I have several general questions and concerns that relate to more than one, and in many cases all, of the plats submitted for consideration. I ask that the Board consider these general topics before moving on to the specifics of each individual site plan.

General Questions and Concerns

1. Which PUD ordinance applies? Who falls under which (i.e., old vs. new/developer vs. property owner)? What are implications to enforcement of codes and/or covenants for one and not the other. *It was staff's assessment that the PUD ordinance that was effective when the PUD Agreement was approved in 1999 was the governing ordinance (i.e. this is **not** the current PUD ordinance included in the Town's UDO). The Town Attorney concurred with staff's assessment. Mrs. Leary then asked how covenants and restrictions are enforced. Staff explained that the Town does not enforce any covenants and restrictions; that is up to the POA/HOA (or in this case DPCA).*
2. What is the difference between an "Action Item" and a "Recommendation Item" on the agenda? *Staff explained that an "Action Item" is a matter that the PZB can make a final decision themselves (i.e. to approve or deny) rather than simply forwarding a recommendation to the Board of Commissioners (BOC). Adversely, a "recommendation item" is a matter in which the PZB cannot take action on; rather they can only make a recommendation to the BOC. It was noted that there are certain items that the PZB can take action upon; usually these are minor items such a reduction in density. It was also noted, again, that no action to approve, deny or recommend would be taken this evening.*

3. Conflicting/unclear terminology regarding designation of “Common area/Open Space” on many of the plats submitted. There are two pertinent definitions in the UDO: Common Open Space (A2,S47,p2-8) and Open Space (A2,S141,p2-25). Note that the latter actually includes a clarifying distinction of the former (for future consideration by the board, perhaps the former definition should be amended to also include the clarifying information from the latter). I personally need a clearer understanding of that distinction between these two definitions. Further, as it pertains to the concerns of this workshop, where Mr. Stanaland has indicated an area to be designated as “common area/open space”, which of the UDO Article 2 definitions does he actually intend, and should the plats be adjusted to reflect the more appropriate designations before approval by the P&Z Board? *Again, it was noted that the UDO is not the applicable ordinance for these 14 plats; rather the ordinance in effect in 1999 supersedes. The definition at that time was: “Common Open Space (COS) is defined as any land held and developed as open space or land dedicated to the public as parks, playgrounds, parkway medians, landscape green space, schools, community centers or other similar areas held in public ownership or covered by an open space easement including passive and active recreational areas.” It was noted that the definitions in the UDO (which do not apply to this matter) for “Common Open Space” and “Open Space” need to be reviewed for clarification. Mrs. Leary noted that DPCA is already maintaining a lot of the “open space” areas included on the 14 plats. Mr. Nance said its staff interpretation that labeling the plats “Common Area/Open Space” falls under the governing ordinance’s (1999) definition of common open space as it pertains to this PUD. Mr. Stanaland noted that SSC has submitted previous plats over the past 13 years with areas labeled “Common Area/Open Space” and there has never been any question or concern about this label and plats have been approved that included this designation. He estimated about 70 plats/maps have been submitted over the past 13-14 years. He said that it came to his attention when he received tax bills that a lot of the areas included in the 14 plats, if the area was big enough for a structure, had been designated as “future development” even though they had never been planned for anything other than open space. The properties currently designated as “future development” are evaluated for taxes at a much higher value than if they were to be designated as “common area/open space”. This “future development” designation has also had a negative effect on some property sales. Mr. Stanaland went to the Brunswick County (BC) tax department to see what could be done and they suggested the redesignation of “common area/open space”; that is why he had the maps prepared in this manner. Mr. Nance said it’s staff’s interpretation that the addition of the word “area” doesn’t stop these properties from meeting the governing definition of common open space. Mr. Stanaland noted that in several of the maps he is attempting to abandon multiple parcel boundaries and designate the new parcel boundary as common area/open space (ca/os). This is due to the fact that before Devaun Park began the property was leased to Ocean Harbor Golf Links. At that time, BC taxed golf courses by each hole on*

the course; so, each hole had it's own tax parcel ID number. He noted this in the map where the clubhouse/pool is located which, currently contains 5 parcel ID numbers. Mrs. Leary said she is satisfied, for the purposes of what is before the PZB, that the designation of ca/os is not a critical issue.

4. As of foreclosure proceedings that took place on Friday, April 12th, it should be clarified whether or not any of the plats Mr. Stanaland has submitted represent property now solely owned by Horry Bank. If so, should the P&Z Board even be considering plat changes at the request of SSC for any properties that are now no longer owned by SSC? *Mr. Stanaland said that Stanaland Stewart Company still owns the parcels as of today; there is a 10-day waiting period where another party has the opportunity to upset the bid. If the bid is upset, the 10-day waiting period starts again. The Town Attorney concurred that this is an accurate assessment of the foreclosure/upset bid procedure. It was noted that at a minimum, the future marina area, Riverside Park, areas of the Village Square and The Reserve at Devaun Park were affected by the foreclosure. Mr. Stanaland said if after the 10-day waiting period he no longer owns the affected parcels he would be the first one to let everyone know because he would pull the maps (because he won't own them). The Town Clerk noted that some parcels affected by the foreclosure are included in the maps being considered by the PZB; but we won't know their fate until the next PZB meeting in May.*
5. What is the implication of the Sheriff's Sale scheduled for tomorrow, April 19th, which to my understanding has a potential impact on ownership of all these properties now under consideration (presumably with the exception of any now wholly owned by Horry Bank)? Who might end up being the owner of those properties if not SSC, and again, can the Board legitimately approve changes to those plats as submitted if they are not? *Mr. Stanaland noted the process is similar to the scenario above; tomorrow there will be a bidding process that starts a 10-day waiting period. He doesn't know who might end up owning the properties. The amount of the judgment that is being executed by the Sheriff's sales is about \$335,000. Mr. Nance pointed out an important fact: the PUD agreement goes with the land. So, no matter who ends up owning the properties any changes that deviate from the approved PUD Agreement/Master Site Plan would have to be obtained through the Town of Calabash. It is further correct that if ownership has changed prior to the May 6th PZB meeting the plats/maps would be null and void as the "owner" referenced on the maps is SSC; the new property owner would have to resubmit with the correct owner information should they want these changes to be made.*
6. Why did Mr. Stanaland not inform the Board and the public of these pending sales (on both the 12th and the 19th) at the end of the Public Comments portion of the April 1st meeting agenda when Chairman Climer invited any additional comments by anyone, not just those who had signed in to do so? How is Mr. Stanaland's urgency in getting these plats addressed now related to those sales? *Mr. Stanaland said he came tonight for the purpose of discussing the plats/maps that he has presented. He said that on April 4th he*

apprised the Town and DPCA. It is the duty of the foreclosing entity (i.e. the bank) to give public notice of the foreclosure/sale; it was advertised in the paper like they were supposed to do. He said that he knew the bank was planning foreclosure proceedings but he does not recall when he found out what the date of the proceedings would be. He further added that previously a bank had tried to foreclose and a settlement agreement was reached just a couple hours before the proceedings were to begin and therefore the proceedings never took place. He doesn't want to put out information that might then become misinformation. Mrs. Leary asked why Mr. Stanaland didn't share the urgency with everyone on April 1st and why he had not shared any of the information in the plats with DPCA in advance. Mr. Stanaland said he had been trying to submit the majority of the maps for two year; they had been shared with both the Town and DPCA. The Town would not accept the maps until a separate matter that came to fruition earlier in 2013 was settled. Mrs. Leary said she recalls seeing 10 of the maps at a DPCA meeting some time ago; and they didn't appear to be anything that DPCA would be opposed to. DPCA did not receive the April 1st PZB agenda until March 28th which did not give them sufficient time to review the plats. This is why members of DPCA requested the maps be tabled during the April 1st meeting. She does not believe the developer gave due diligence to DPCA.

7. Is Mr. Stanaland's intent for those areas designated on the plats as "common area/open space" to facilitate the ultimate conveyance of those properties to the DPCA? This presumably is the ultimate outcome desired by the DPCA as well. But a great deal of concern was expressed by the representatives of that community at the April 1st meeting as to what financial and legal liabilities and entanglements might automatically convey with those properties (e.g.: facilities in need of major repairs, not just normal maintenance; taxes owed or liens on any of the properties in question; outstanding storm water permit issues with the state, etc.). Understanding that those issues may not be the legitimate purview of this board to consider when reviewing the plat changes we have before us, has Mr. Stanaland made a good faith effort to address those issues with the DPCA? Note that in addressing PUDs, Section 15-10 (A) (3) of the UDO requires the developer inform the property owners association of any proposed amendments prior to PZB considerations. It also requires that the developer show proof to the town that all proposed amendments have been informed to the POA. *Mrs. Leary noted that she is aware not all of these issues are under the prevue of the Calabash PZB. It was at this point that MC Climer redirected the meeting back to the agenda; to review each of the 14 maps. Mrs. Leary asked if approval of these plats would necessitate changing the Master Plan. Ms. Southward explained that anytime a plat for a specific area of Devaun Park is approved it is a change to the Master Site Plan. Changes must be made in accordance with the Master Plan. Any plat that is submitted and ultimately approved gets recorded at the BC Register of Deeds Office. Then the BC GIS and Tax departments make the approved changes to their systems. Staff referenced an updated Devaun Park map that*

GIS prepared for them today...this is what Devaun Park looks today like with all the changes that have been approved over the years.

Section 1: Plats Designating Common Area/Open Space: (items PZB can act upon)

1. Town of Calabash (TOC) Map #12-this is currently an undesignated area that Mr. Stanaland would like to designate CA/OS; Mr. Stanaland concurred. Commissioner DiStasio asked if Mr. Stanaland was going to convey this area to the DPCA. It was noted that the plats don't convey anything to DPCA at this time. If he does convey any property to them in the future that would be done by deed and would be done between the developer and DPCA; the Town would not need to be involved. Currently DPCA is its own entity that collects dues and their declaration outlines what those dues can/cannot pay for. The subject area, Dever Park, has been maintained by DPCA for years. Commissioner DiStasio expressed concern that some of the other maps (not this subject map #12) are disposing of lots originally intended for single family use, which would change the density, which might violate the master plan/PUD Agreement. Mr. Stanaland said none of the maps do that; Mrs. Leary concurred that it does not appear to her that any of the maps do that either. Further, none of the maps impact DPCA or their structure or their dues. None of the maps convey any property to DPCA. There are 260 single family approved lots; they generate the revenue for DPCA.
2. TOC Map #11-Mr. Stanaland pointed out the 5 small (the largest being 0.18 acres) parcels that are currently just green spaces at the end of lots are being charged at a higher tax rate because they are undesignated. Ms. Southward noted this map as a good example of why the PZB can take action on some items rather than forwarding a recommendation to the BOC. The CA/OS designation of these parcels is a very minor thing. Further, they are adding to their required open space, which is a less intensive use of property. If they were trying to take away open space that would be more intensive and consider a major change that would have to be forwarded to the BOC for final decision. Mr. Dills asked why Mr. Stanaland was designating an alley as CA/OS. Mr. Stanaland said it is the only alley in the development (and there are many) that the BC Tax Department has assigned a tax parcel identification number to; he said he does not know why they have done that but its likely an oversight mistake. In fact, he said he might ask BC to dispose of that tax parcel id and make it consistent with the rest of the alleys. Mr. Dills noted that during the in-depth staff review of the 14 maps, that was the only question he had concerning the maps.
3. TOC Map #10-this area is directly across the street from the previous map and is similar in that they are small parcels used only as green space in the neighborhood. For some reason BC has these small parcels (the largest is 0.12 acres) designated as "future development", which is taxed at a higher rate. Further, a sale did not go through on an adjacent single family lot because the prospective buyer was concerned that something would be developed there due to the "future development" designation.
4. TOC Map #7-the two affected areas are currently green space in the development and slated to stay that way. Mr. Stanaland would like those designated CA/OS because they are to remain green space and he would like them taxed at a lower rate. Mrs. Leary pointed out that one parcel has a non-functioning fountain on it but other than that it is green space. Mrs. Leary alluded to stormwater concerns in the neighborhood; a notice of "non-compliance" had been issued to the developer. DPCA and other property owners

are concerned that certificates of occupancy might not be issued if the developer does not bring the stormwater system into compliance. Mr. Stanaland noted that DENR (Department of Environmental and Natural Resources) had been issued a notice of non-compliance in October 2012. Originally, Devaun Park had been issued a low-density stormwater permit by DENR. About 6 years ago the developers requested to modify the permit to a high-density permit; DENR issued the modification and it came with a lot of rules and regulations. He said that all the modification was “here is your permit, here is what you need to build, and here is when the permit expires”. There was no time-line for specified for what portions of the system were to be completed when; it was a long-term permit of 15-20 years. DENR has the right to come in at any time and investigate and say anything they want; according to Mr. Stanaland. He said that this is not the first notice of noncompliance in our district. Mr. Stanaland said that the non-compliance bulleted four points; he has taken care of one or two of the points and a plan of action for compliance has been submitted to DENR who is currently reviewing the plan.

5. TOC Map #5-consists of five 0.02 acre “parcels” at the ends of blocks (of single family lots) that are to be designated CA/OS.
6. TOC Map #4-This parcel is 3.77 acres on the riverfront that has always been intended for open space. Mr. Stanaland said this area might have a new owner in the near future.
7. TOC Map #9-This area is known as “The Reserve at Devaun Park” it is to designate two small “endcap” parcels as CA/OS. This area may also soon have another owner.

Section 2: Plats Combining Parcels and Designating Common Area/Open Space or Future Development: (recommendation only items)

8. TOC Map #14-This map effects Parcel ID #s 255PD006, 255PD007, 255PD008 totaling 0.87 acres and is to be designated CA/OS (originally there was an error on the designation when the developer submitted the map but he submitted a correct map with the CA/OS designation by the April 1st Regular Meeting of the PZB). There were no questions forthcoming about this plat.
9. TOC Map #13-this plat combines 8 parcels in Phase 3 totaling 10.83 acres and designate as Future Development and it also is to designate Parcel ID# 255JC019 as CA/OS (1.74 acres). Mr. Stanaland noted that the first part of this map (8 parcels) might be affected by the upcoming Sheriff’s Sale. Mrs. Leary asked if SSC remains owner of the area what is intended for “future development”. Mr. Stanaland said the intent for this area, which is the center of Devaun Park is the same as it has always been: some multifamily (condo/townhomes) and a commercial center. He said this area has always been projected to be developed last as it would need a mass of people to support it as does any commercial area. If someone else should become owner they would still be held to the original master plan and PUD Agreement. Mr. Nance added that anything built should still need reviewed by the Devaun Park Architectural Review Committee in addition to building/development permits being issued by the Town.
10. TOC Map #8-combines 4 parcels near “The Pointe” to be combined into one parcel and designate that parcel as CA/OS. Additionally this map fixes a previous map that shows that the sewer pump station is located in the middle of South River Terrace Road, which it is not.

Section3: Combining Parcels near Horseshoe Lake and Clubhouse then subdividing Clubhouse Area (recommendation items only)

11. TOC Map #2-combines five parcels that include the location of the clubhouse and pool; totals 11.30 acres. This area is a perfect example of the parcels previously taxed for the golf course—where each hole was given a tax parcel id. It would also designate the combined parcel as CA/OS. This map goes along with TOC Map#1, which after combining the parcels (subject map) subdivides out the clubhouse and pool, which is located at Horseshoe Lake.
12. TOC Map #1-subdivides out club house and pool from previous combination of 5 parcels. The subdivision boundary follows the boundary of Horseshoe Lake. Mrs. Leary noted that the “dustbowl” was original to be dredged for the marina; are there any plans to backfill the “dustbowl”. Mr. Stanaland gave explanation of the question but had no bearing on any of the maps. Mrs. Leary went on record to say that simply designating this area CA/OS does not convey any property to DPCA who has some concerns about the current conditions of the pool and clubhouse, which DPCA are working on with the developer.

Section 4: Corrections from plans to actual built upon area: (items PZB can act upon)

13. TOC Map #3-lot 306 located at the corner of South River Terrace and Devaun Pointe Blvd is oddly shaped at the moment which also makes the corners of the streets oddly shaped. The maps notes that SSC will convey some right of way (ROW) to the lot owner, Mr. & Mrs. Pitman (both have also signed this map), and they will in turn convey a smaller piece of their lot to SSC to square up the corner. Lot 306 will be increased in size by 717 square feet.
14. TOC Map #6-Revises the ROW of East lake Rd., establishes the limits of the alley north of lot 400, combines a portion of East Lake Rd. ROW with parcel #262AA0010 & designates the recombined parcel as CA/OS, and designates parcel #255JD00101 as CA/OS. The map was examined. Mrs. Leary asked about stormwater plans associated with this area; a fore bay is the designed stormwater control and swales are used to direct water to the fore bay.

BOARD COMMENTS: MC Climer asked if it were correct that the properties affected by the foreclosure proceedings on April 12th would we know more about their fate on Monday, April 22nd; yes—either the bank will own them or if there is an upset bid the 10-day period would start all over again. Mr. Stanaland also confirmed after being asked, that other properties under consideration in the maps could be affected by the Sheriff’s Sale on April 19th (tomorrow). We should know what maps can and cannot be acted upon at the next Regular Meeting on May 6th.

Mrs. Leary noted that she will be out of the country and unable to attend the May 6th meeting. It was noted that she cannot attend the meeting by phone or other electronic means; nor can she provide a pre-written vote. However, Mrs. Leary can submit comments for the agenda packets so that her fellow board members are aware of her opinions.

ADJOURNMENT: *At 7:45 PM Commissioner DiStasio moved to adjourn, seconded by Mr. Pero and unanimously carried.*

(SEAL)

Sonia Climer, Chairperson

Attest:

Kelley Southward, Town Clerk