Director of
Planning and Inspections
MEREDITH GUNS

Building Inspector
MARTY SHAW
CHARLES THUMAN

Code Enforcement Officer
JORDAN BLYTHE

THE TOWN OF KILL DEVIL HILLS
NORTH CAROLINA

PLANNING DEPARTMENT

Assistant Director of
Planning and Inspections
CAMERON RAY

Senior Planner
RYAN LANG

Zoning Administrator
DONNA ELLIOTT

January 11, 2021

Memorandum

To: Debbie Diaz, Town Manager

From: Cameron Ray, Assistant Planning Director CR

Subject: **Conditional Site Plan Review** — Bermuda Bay P.U.D. - Section 200A - Amend Site Plan for (2) Four Story Multi-Family Structures and Associated Site Improvements

Enclosed is a Conditional Use Site Plan Review submittal by BB Southampton Mews, LLC for Bermuda Bay P.U.D., Section 200A amending the previously approved conditional use site plan. The plan includes a proposed amendment to the conditional use site plan including (2) four story multi-family structures (apartment style mostly 1 or 2 bedroom units) including 112 units with 192 overall bedrooms and associated site improvements with the development name "Somerset". Attached you will find a commercial site plan review application, email from applicant regarding phasing/construction schedule for Bermuda Bay PUD, applicant's attorney response to staff's most recent technical review comments, and Town Attorney response.

The previously approved Bermuda Bay P.U.D., section 200A site plan includes (7) multi-family buildings (townhome style mostly 3-bedroom units) including 70 units and 196 bedrooms with associated site improvements with the development name "Southampton Mews".

The Planning Board reviewed this proposal on December 15, 2020 and forwarded it to the Board recommending approval with the condition that the applicant incorporate the development phasing plan into the BOC site plan submittal. This condition has been addressed. Staff recommends setting the required public hearing for January 27, 2021.

TOWN OF KILL DEVIL HILLS
PUBLIC SERVICES

Post Office Box 1719, 107 Town Hall Drive
Kill Devil Hills, NC 27948
Administration (252) 480-4080 Fax (252) 441-6136
Office Hours: 8:00 a.m. – 5:00 p.m. Mon. – Fri.
Water Plant (252) 480-4090
www.kdhnc.com

STEPHEN F. ALBRIGHT
Director

DEREK A. DAIL
Assistant Director

MARCIA OLLIS
Administrative Services

ALFRED W. BURTON
Water Plant

WILLIAM H. WATERFIELD
Water Systems

L. RANDOLPH TURNER
Streets

LYNN E. LINDSEY
Solid Waste

November 4, 2020

To: Cameron Ray, Assistant Planning Director

From: Derek A. Dail, Assistant Public Services Director

Subject: Site Plan Review IV - Bermuda Bay PUD
Buildings 201 & 202 – Southampton Mews

The Town of Kill Devil Hills Public Services has performed a review of the site plan application for the proposed Bermuda Bay PUD Buildings 201 and 202 – Southampton Mews. Comments from Public services are provided in the following sections and are based on the resubmitted site plan package dated 11/03/2020.

Public Services has no further comments.

For the record, the applicant has made the following acknowledgements and observances of obligations to the Town with regards to water and sewer:

- Applicant acknowledges that water service will be provided through the Bermuda Bay PUD's existing 8" meters and private water infrastructure and that any site metering, taps, and any extensions or permits will be the responsibility of the developer.
- Applicant acknowledges the obligation to provide engineering and testing certifications to the Town for the construction of the drinking water infrastructure.
- Applicant acknowledges the required System Development fees of $448,000.00 for the 112 units.
- Applicant notes that the revised wastewater willingness to serve letter is forthcoming that will document the gallons per day the KDHWWTP is willing to serve and is to match the daily flow requirements listed on the engineered site plan. This should be a condition of any final site plan approval.

Ray, Cameron

From: Pete Burkhimer <PBurkhimer@american-ea.com>
Sent: Thursday, November 5, 2020 8:19 AM
To: Ray, Cameron; Albright, Steve; Dail, Derek; Elliott, Donna; Guns, Meredith; Harris, Dana; Lang, Ryan; Lindsey, Lynn Earl; Risoldi, John; Shaw, Marty; Thuman, Charles; Turner, Tote
Subject: RE: Conditional Site Plan Review (4) - Bermuda Bay P.U.D., Section 200A - Amend Site Plan for (2) Four Story Multi-Family Structures and Associated Site Improvements

Town Engineer's comments have been satisfied.

Pete Burkhimer, PE
Senior Consultant
AMERICAN Engineering
448 Viking Drive, Suite 170
Virginia Beach, VA 23452
(757) 468-6800 (office), (757) 478-5970 (cell)
pburkhimer@american-ea.com

From: Ray, Cameron <Cameron@kdhnc.com>
Sent: Wednesday, November 04, 2020 8:36 AM
To: Albright, Steve <Steve@kdhnc.com>; Dail, Derek <derek@kdhnc.com>; Elliott, Donna <DONNA@kdhnc.com>; Guns, Meredith <MEREDITH@kdhnc.com>; Harris, Dana <dharris@kdhnc.com>; Lang, Ryan <rlang@kdhnc.com>; Lindsey, Lynn Earl <LynnEarl@kdhnc.com>; Pete Burkhimer <PBurkhimer@american-ea.com>; Ray, Cameron <Cameron@kdhnc.com>; Risoldi, John <JOHNR@kdhnc.com>; Shaw, Marty <marty@kdhnc.com>; Thuman, Charles <charles@kdhnc.com>; Turner, Tote <TOTE@kdhnc.com>
Subject: Conditional Site Plan Review (4) - Bermuda Bay P.U.D., Section 200A - Amend Site Plan for (2) Four Story Multi-Family Structures and Associated Site Improvements
Importance: High

[ALERT: This is an External E-mail. Use caution when opening attachments or clicking links.]

Good Morning All,

Attached is the following: Conditional Site Plan Technical Review (4) - Bermuda Bay P.U.D., Section 200A. The proposed plan calls for a revision of the previously approved site plan to include (2) four story multi-family buildings (apartment style mostly 1 or 2 bedroom units) including 112 units with 192 overall bedrooms and associated site improvements including 232 parking spaces. Attached are the following revised submittals; Site Plan, Architectural Plan, and response to Technical Review (3) comments.

Please review the plans with respect to your department's responsibilities and submit written comments to the Planning Department by **CLOSE OF BUSINESS** on **Monday, November 09, 2020.** Your comments are important and will be reviewed by the Planning Board and Board of Commissioners.

One hard copy has been sent to each department. Additional copies can be provided upon request or reviewed here in the Planning Department.

Ray, Cameron

From: Risoldi, John
Sent: Monday, November 9, 2020 2:59 PM
To: Ray, Cameron
Cc: Lang, Ryan
Subject: RE: Conditional Site Plan Review (4) - Bermuda Bay P.U.D., Section 200A - Amend Site Plan for (2) Four Story Multi-Family Structures and Associated Site Improvements

The only comment that I have is that the fire sprinkler connection (FDC) is 50' of a hydrant and be coordinated with the fire sprinkler designer.

It looks like there are hydrants in front of the structures. This will work if the FDC's are located there.

John L. Risoldi, Sr.
Fire Marshal/Health & Safety Officer
Town of Kill Devil Hills
1634 N. Croatan Highway, P. O. Box 1719
Kill Devil Hills, NC 27948
252-480-4060 – Phone
252-480-4069 – Fax
johnr@kdhnc.com

"Everyday is a Fire Prevention Day"

From: Ray, Cameron
Sent: Wednesday, November 4, 2020 8:36 AM
To: Albright, Steve <Steve@kdhnc.com>; Dail, Derek <derek@kdhnc.com>; Elliott, Donna <DONNA@kdhnc.com>; Guns, Meredith <MEREDITH@kdhnc.com>; Harris, Dana <dharris@kdhnc.com>; Lang, Ryan <rlang@kdhnc.com>; Lindsey, Lynn Earl <LynnEarl@kdhnc.com>; 'Pete Burkhimer' <PBurkhimer@american-ea.com>; Ray, Cameron <Cameron@kdhnc.com>; Risoldi, John <JOHNR@kdhnc.com>; Shaw, Marty <marty@kdhnc.com>; Thuman, Charles <charles@kdhnc.com>; Turner, Tote <TOTE@kdhnc.com>
Subject: Conditional Site Plan Review (4) - Bermuda Bay P.U.D., Section 200A - Amend Site Plan for (2) Four Story Multi-Family Structures and Associated Site Improvements
Importance: High

Good Morning All,

Attached is the following: Conditional Site Plan Technical Review (4) - Bermuda Bay P.U.D., Section 200A. The proposed plan calls for a revision of the previously approved site plan to include (2) four story multi-family buildings (apartment style mostly 1 or 2 bedroom units) including 112 units with 192 overall bedrooms and associated site improvements

Ray, Cameron

From: Harris, Dana
Sent: Wednesday, November 4, 2020 10:12 AM
To: Ray, Cameron
Subject: RE: Conditional Site Plan Review (4) - Bermuda Bay P.U.D., Section 200A - Amend Site Plan for (2) Four Story Multi-Family Structures and Associated Site Improvements

Cameron

No additional comments from the Police Department on Somerset itself.

Just a Question:

Has the increased traffic flow leaving and going to Somerset from Colington Rd. at the Bermuda Bay Blvd. intersection been addressed (with DOT/Engineer)? School traffic in the mornings backs up past Bermuda Bay Blvd blocking traffic flow out of and into at that intersection and that could increase chances of collisions/complaints from the citizens about traffic problems there.

Dana

From: Ray, Cameron
Sent: Wednesday, November 4, 2020 8:36 AM
To: Albright, Steve <Steve@kdhnc.com>; Dail, Derek <derek@kdhnc.com>; Elliott, Donna <DONNA@kdhnc.com>; Guns, Meredith <MEREDITH@kdhnc.com>; Harris, Dana <dharris@kdhnc.com>; Lang, Ryan <rlang@kdhnc.com>; Lindsey, Lynn Earl <LynnEarl@kdhnc.com>; 'Pete Burkhimer' <PBurkhimer@american-ea.com>; Ray, Cameron <Cameron@kdhnc.com>; Risoldi, John <JOHNR@kdhnc.com>; Shaw, Marty <marty@kdhnc.com>; Thuman, Charles <charles@kdhnc.com>; Turner, Tote <TOTE@kdhnc.com>
Subject: Conditional Site Plan Review (4) - Bermuda Bay P.U.D., Section 200A - Amend Site Plan for (2) Four Story Multi-Family Structures and Associated Site Improvements
Importance: High

Good Morning All,

Attached is the following: Conditional Site Plan Technical Review (4) - Bermuda Bay P.U.D., Section 200A. The proposed plan calls for a revision of the previously approved site plan to include (2) four story multi-family buildings (apartment style mostly 1 or 2 bedroom units) including 112 units with 192 overall bedrooms and associated site improvements including 232 parking spaces. Attached are the following revised submittals; Site Plan, Architectural Plan, and response to Technical Review (3) comments.

Please review the plans with respect to your department's responsibilities and submit written comments to the Planning Department by **CLOSE OF BUSINESS** on **Monday, November 09, 2020.** Your comments are important and will be reviewed by the Planning Board and Board of Commissioners.

One hard copy has been sent to each department. Additional copies can be provided upon request or reviewed here in the Planning Department.

Sincerely,

Cameron Ray, CFM

Ray, Cameron

From: Casey Varnell <varnell@ncobxlaw.com>
Sent: Friday, December 4, 2020 10:48 AM
To: Guns, Meredith
Cc: Ray, Cameron
Subject: Bermuda Bay Opinion
Attachments: SKM_558e20120410300.pdf

Hey, guys:

I recognize that the HOA attorney wants a chance to respond, but I struggle to see how he is going to counter the points made in Crouse Gray's attached opinion.

1) As we discussed yesterday, the road issue is black letter law in North Carolina. Crouse cited one of the cases that I have relied on in many instances representing private clients, as the case makes clear that if an owner's property abuts a platted road, that owner has an irrevocable right to use of that road for ingress and egress to his/her property.
2) Now that I have been able to review the assignment of the development rights within Bermuda Bay to an entity controlled by the applicant, the provision from the covenants that I have highlighted in Crouse's opinion gives the applicant the ability to modify the site plan with only the approval of the Town of Kill Devil Hills.
3) Regarding the water system, I am satisfied that the attached agreement(s) tie up the loose ends we have been struggling with. In short, the applicant has the right to tie-in to the water infrastructure without HOA approval, and then the HOA (as owner of the water lines and infrastructure) can apportion the relative water costs to the applicant.
4) Concerning a build-out plan, I find it reasonable to require the applicant to provide us with a schedule for later development. My opinion on this particular issue is circumstantial, as it is based on my understanding that the proposed plans would jeopardize compliance with the initial overall site approval in the event total build out never takes place.

Don't hesitate to call me with any questions.

Casey

GRAY & LLOYD, L.L.P.
ATTORNEYS AT LAW
The Executive Center
3120 N. Croatan Hwy., Ste. 101
Kill Devil Hills, NC 27948
attorneys@grayandlloyd.com
www.grayandlloyd.com

E CROUSE GRAY, JR.*
BENITA A. LLOYD**
*Superior Court Certified Mediator
**Certified Family Financial Mediator

Telephone (252) 441-4338
Facsimile (252) 441-8414

Memorandum

TO: Sumit Gupta

FROM: E. Crouse Gray, Jr., Gray & Lloyd, LLP

DATE: December 3, 2020

RE: Bermuda Bay
File No. 10589-013

Sumit,

You have requested me to provide a Memorandum concerning several issues regarding the Bermuda Bay Planned Unit Development.

1. Are you required to have the approval of the Bermuda Bay Owners Association II, hereinafter the "Association", in order to use the roads within the Bermuda Bay P.U.D.?

The answer is no.

The original Bermuda Bay Development was created by a Declaration for Bermuda Bay, as recorded in Deed Book 1648, Page 10, Dare County Public Registry, hereinafter "Original Declaration". That Original Declaration dedicated a very small of parcel of land contained within the Bermuda Bay P.U.D. to the Declaration. As additional lands were added, then an Amendment was filed adding those additional lands to the Original Declaration as recorded in Deed Book 1648, Page 10.

The original Declarant was Bermuda Bay, LLC, a North Carolina limited liability company.

The Original Declaration, as is common for these multi-phase projects, reserved unto the Declarant numerous rights. Covering some of those, but not all of them:

a. Section 4.1, Section 1, provides "The Declarant intends to develop the Property substantially in accordance with the Development Plan. The Declarant reserves the right to modify the Development Plan subject only to approval by the City."

The term "Development Plan" is defined in the Original Declaration to mean the preliminary plan for development of the Property and additional property approved by the City of Kill Devil Hills (the "City"), as amended from time to time, and such additional development as may be approved for any additional property.

The Declarant, in Section 3.1, reserved a number of easement rights including, but not limited to, "a non-exclusive blanket easement, over, through and upon the Property and the Common Elements for ingress, egress, installation and upkeep of equipment for providing to any portion of the Property or Common Elements any utilities including, without limitation, water, sewer, drainage, gas, electricity, telephone, television, data transmission and computer service, whether public or private, or for any other purpose necessary or desirable for orderly development of the Property."

Section 3.1, Subsection 2, provides in part "Any and all conveyances made by the Declarant to the Association with respect to any of the Common Elements or the Property shall be conclusively deemed to incorporate these reservations of rights and easements, whether or not set forth in such grants."

Section 3.9 provides in part "The Declarant hereby reserves to itself and, on behalf of itself and its successors and assigns, grants to each Owner and each Person lawfully occupying a Lot a non-exclusive right and easement of use and enjoyment in common with others in the Common Elements."

Section 3.9 further provides "The Declarant hereby reserves during the Development Period and for so long as the Declarant is an Owner and also, on behalf if itself and it successors and assigns, grants to each other Owner and each Person lawfully occupying a Lot, a non-exclusive easement over all roads and walkways within the Common Elements for the purpose of pedestrian and vehicular access, ingress and egress, as appropriate, to any portion of the Property to which such Person has a right to go, subject to any rules and regulations promulgated by the Association pursuant to Section 8.3 hereof."

The Original Declaration provides in part a definition of Common Elements to mean and include: "(a) all of the real property, other than Lots, owned, leased or occupied by the Association or otherwise available to the Association for the benefit, use and enjoyment of the Owners; ..."

As you are well aware, the roads within the Bermuda Bay P.U.D. are private roads and are in fact part of the Common Elements.

The final point to be made is that all special and other Declarant Rights regarding Bermuda Bay (other than those associated with a portion of the Devonshire Development) have been assigned to your organization by Assignment recorded in Deed Book 1952, Page 468.

The bottom line is that the Original Declaration is very clear that the Declarant (and you as its successor) have no obligation to obtain approval from the Association regarding use of the roads.

There is an additional reasoning why the Association has no approval rights regarding your use of the roads within the Development. As parcels of land were conveyed, they were conveyed based on recorded plats. Our Courts have held that where lots are sold and conveyed by reference to a map or plat which represents a division of a tract of land into streets, lots, parks and playgrounds, a purchaser of a lot or lots acquires the right to have the streets, parks, and playgrounds kept open for his reasonable use and this right is not subject to revocation, except by agreement. It is said that such streets, parks, and playgrounds are dedicated to the use of the lot owners in the development. In a strict sense, this is not a dedication, for a dedication must be to the public and not to a part of the public. It is a right in the nature of an easement appurtenant. Whether it be called an easement or a dedication, the right of the lot owners to the use of the streets, parks and playgrounds may not be extinguished, altered, or diminished, except by agreement or estoppel. See *Nelms v. Davis (2006), 179 N.C. App. 206, 632 S.E.2d 823, 825.*

2. Are you required to have the approval of the Bermuda Bay Owners Association II, in order to develop any of the lands within the Bermuda Bay P.U.D.?

The answer is no. Please note what I stated before. Section 4.1 provides "The Declarant intends to develop the Property substantially in accordance with the Development Plan. The Declarant reserves the right to modify the Development Plan subject only to approval by the City."

The Declaration makes it clear that the Declarant (and you, since you are the Assignee of all rights) has the right to develop any portions of the Property as it deems appropriate without any approvals, other than by the City (Municipality of Kill Devil Hills).

3. Are you required to obtain written approval from the Bermuda Bay Owners Association II regarding water uses?

The answer is no.

The original developer, Bermuda Bay, LLC entered into a Water Meter Agreement with KDHWWTP, LLC as recorded in Deed Book 1614, Page 403, copy of which is attached as Exhibit "A". Section 1 of said agreement provides in part that each party shall have the right to hook into the Master Water Meters. Section 2 then provides that the parties agree that the Town [Town of Kill Devil Hills] shall submit to Bermuda [Bermuda Bay, LLC] water service bills for the Master Water Meters, and Bermuda shall be responsible for payment of the same. Bermuda shall have the right and option to assign at any time to Bermuda Bay Community Association, Inc. (the "Association")

[now Bermuda Bay Owners Association II] or to a similar assignee, or to one or more successor developers or home owners associations, the duty to receive and pay the Town's water service bills for the Master Water Meters. (emphasis added)

The town has acknowledged that Bermuda Bay, LLC has transferred to Bermuda Bay Owners Association II the management responsibilities for the Bermuda Bay communities. See agreement between Town of Kill Devil Hills, Bermuda Bay Owners Association and Bermuda Bay, LLC attached as Exhibit "B". That agreement further acknowledges that Bermuda Bay, LLC assigns all of its interest in the Water Meter Agreement to the Bermuda Bay OA.

There further has been recorded a deed from Bermuda Bay, LLC conveying the "Common Areas" of the development to the Association.

An inescapable conclusion in reviewing all of the documents in conjunction is as follows:

(a) The Association is presently the owner of the water distribution system from the two Master Water Meters.

(b) The Association then allocates the "Common Water Expense" as defined in the Water Meter Agreement (Exhibit "A") among its members based on a per member charge, not based on an amount of use charge.

(c) Pursuant to the Original Declaration, the developer has reserved the right (which has now been assigned to you) to continue to expand the development by adding additional homes/condominiums, etc. within the development.

(d) Included within the development rights within the Original Declaration is the right to receive water.

(e) In other words, at the time that a certificate of occupancy is issued for a new structure, the new structure becomes obligated to pay to the Association its proportionate share of the Common Expenses associated with water.

4. Can the Town require you to provide a "build out" time frame for your development?

It appears to me the answer is no. The Town's authority is solely based on their ordinances. I find nothing in the Planned Unit Development ordinances of the Town of Kill Devil Hills that states a specific requirement that a "built out" time frame be provided as part of the approval process by the Town.

Filed Book: 1614 Page: 403
02/16/2005 04:26PM
Doc Code: AGMT
BARBARA M GRAY, REGISTER OF DEEDS DARE CO, NC

Doc Id: 6160207
Receipt #: 133614

6160207
Page: 1 of 6
02/16/2005 04:26P

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Space Above This Line For Recording Data

WATER METER AGREEMENT

Prepared by and return to Robert B. Hobbs, Jr., Attorney
Hornthal, Riley, Ellis & Maland, LLP, PO Box 310, Nags Head, NC 27959

NORTH CAROLINA
DARE COUNTY

This Water Meter Agreement ("Agreement") is entered into this 30th day of January, 2005, by and between BERMUDA BAY, L.L.C., a North Carolina limited liability company ("Bermuda") and KDHWWTP, L.L.C. ("KDHWWTP").

Premises

Bermuda is the owner of Parcel C as shown on plat of Sunset Bay filed in Plat Cabinet F, Slide 247, Dare County Registry, and as described in Deed to Bermuda filed in Book 1578, Page 351, Dare County Registry ("Parcel C").

KDHWWTP is the owner of Parcel A as shown on plat of Sunset Bay filed in Plat Cabinet F, Slide 247, Dare County Registry ("Parcel A").

The Town of Kill Devil Hills, North Carolina (the "Town") has installed on the property of Bermuda (Parcel C) two (2) master water meters that are intended to serve all of Parcels A and C with public water from the Town's public water lines (the "Master Water Meters").

The parties desire to enter into an agreement relating to the metering of the public water supply into and between Parcels A and C.

NOW, THEREFORE, the parties enter into this Agreement concerning the distribution and metering of public utility water services by the Town.

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EXHIBIT
A

1. Each party shall have the right to hook into the Master Water Meters. Such hookup shall include one or more meters ("Subsidiary Water Meters") being placed on one or more buildings located on such party's property.

2. The parties agree that the Town shall submit to Bermuda water service bills for the Master Water Meters, and Bermuda shall be responsible for payment of same. Bermuda shall have the right and option to assign at any time to Bermuda Bay Community Association, Inc. (the "Association"), or to a similar assignee, or to one or more successor developers or homeowners associations, the duty to receive and pay the Town's water service bills for the Master Water Meters. Upon such assignment or succession, the parties hereto and their successors and assigns shall pay the water usage fees to such assignee or successor. In the event of default in payment, the Town may terminate water service as provided by the Town's policies in effect at the time of such default.

3. The payments for water service to the Association by any party to this Agreement, or by their successors and assigns, shall not in any way entitle the property owners within Parcel A to use or enjoy any facilities or amenities within Parcel C.

4. The water service indicated by each Subsidiary Water Meter located in Parcels A and C shall be paid by the owner(s) of each metered building to Bermuda or its assigns. Bermuda or its assigns shall have a nonexclusive, perpetual easement to access Parcels A and C in order to take periodic water usage readings from all Subsidiary Water Meters located thereon.

5. Bermuda or its assigns shall be responsible for all maintenance, repair and upkeep to all individual water lines and Subsidiary Water Meters located past the Master Water Meters and within Parcel C. Nothing in this agreement shall provide any independent property rights to or impose any obligations on Bermuda for any water lines or other improvements or facilities within Parcel A.

6. KDHWWTP or its assigns shall be responsible for all maintenance, repair and upkeep to all individual water lines and Subsidiary Water Meters located past the Master Water Meters and within Parcel A. Nothing in this agreement shall provide any independent property rights to or impose any obligations on KDHWWTP for any water lines or other improvements or facilities within Parcel C.

7. If one of the parties to this agreement further subdivides Parcels A or C and sells or otherwise conveys such subdivided parcel to another developer, such other developer shall be bound by and subject to the terms of this agreement.

8. If Bermuda or the Association incurs a Common Water Expense, Bermuda or the Association shall submit a bill to each Subsidiary Water Meter owner for the prorata share of such Common Water Expense. The prorata share shall be computed by Bermuda or by the Association based on the total approved number of units that is permitted in Parcels A and C, and any future subdivisions of same, based on occupancy permits issued by the Town or other occupancy records

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maintained by Bermuda or by the Association. For example, if the total approved occupancy at the time that Bermuda incurs a Common Water Expense consists of fifty single family units (each unit having its own Subsidiary Water Meter), and one multifamily building with an approved occupancy of fifty units but only one Subsidiary Water Meter for the building, the Common Water Expense would be divided by one hundred, with each of the fifty single family unit owners receiving a bill for one percent of the Common Water Expense, and the party responsible for paying the water bill for the Subsidiary Water Meter for the multifamily building would receive a bill for fifty percent of the Common Water Expense. For purposes of this Agreement, the term "Common Water Expense" shall mean any water expense associated with the water lines running between any or all of the Subsidiary Water Meters and the Master Water Meters, or associated with any other part of the water delivery system that is not directly attributable to a particular Subsidiary Water Meter. An example of a Common Water Expense would be the repair of a leak in a water line running from the Master Water Meters to one or more Subsidiary Water Meters. The definition of Common Water Expense shall not be limited to the specific example provided in this paragraph.

9. The easements, covenants, conditions, restrictions, liens and charges that are described in this Agreement shall run with the title to Parcels A and C, and shall be binding upon and inure to the benefit of all of the parties having any right, title or interest in Parcels A and C, their heirs, successors and assigns.

10. This agreement shall be binding on the parties hereto and their successors and assigns, if any. This Agreement shall be interpreted pursuant to the laws of the State of North Carolina. This Agreement may only be amended, in writing, and signed by the party or parties to be bound thereby. Wherever used herein, the singular shall include the plural, the plural the singular and the use of any gender terms will be applicable to all genders, as appropriate. This Agreement represents the entire Agreement of the parties concerning the subject matter of this Agreement. All prior negotiations, discussions and writings are merged herein.

11. This agreement shall not be amended, modified or terminated without the written consent of the Town of Kill Devil Hills.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be duly executed and delivered as of the day and year first above written.

(continued on the following page)

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BERMUDA BAY, L.L.C.

BY: _____
Manager

STATE OF N.C.
COUNTY/CITY OF Dare, Kill Devil Hills

I, a Notary Public, of the County/City of Dare, Kill Devil Hills and State aforesaid, certify that Denis Russotto, manager of Bermuda Bay, L.L.C., a North Carolina limited liability company, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and seal this 3 day of February, 20 05.

G. Sofia Decker
Notary Public

(AFFIX NOTARY SEAL)

G. SOFIA DECKER
Dare County
NOTARY PUBLIC
NORTH CAROLINA

My commission expires: 4/24/09

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KDHWWTP, L.L.C.

BY: George E Goodrich
Manager

BY: John W. Dixon
Manager

STATE OF North Carolina
COUNTY/CITY OF Currituck

I, a Notary Public, of the County/City of Currituck, and State aforesaid, certify that John W Dixon, manager of KDHWWTP, L.L.C., a North Carolina limited liability company, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and seal this 1st day of February, 2005.

Christina M. Mank
Notary Public, State of North Carolina
Qualified in Currituck County, NC
My Commission Expires Jan. 18, 2009

Christina M. Mank
Notary Public

(AFFIX NOTARY SEAL)

My commission expires: 1/18/09

STATE OF North Carolina
COUNTY/CITY OF Dare, Kill Devil Hills

I, a Notary Public, of the County/City of Dare, Kill Devil Hills and State aforesaid, certify that George E. Goodrich, manager of KDHWWTP, L.L.C., a North Carolina limited liability company, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and seal this 3 day of February, 2005.

G. Sofia Decker
Notary Public

(AFFIX NOTARY SEAL)

My commission expires: 11/24/09

G. SOFIA DECKER
DARE COUNTY
NOTARY
PUBLIC
NORTH CAROLINA

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NORTH CAROLINA, DARE COUNTY

The foregoing or annexed certificate(s) of Christina M. Mank & G. Sofia Decker, both Notaries Public.

is/are certified to be correct.

This 16 day of February, 2005.

BARBARA M. GRAY

Register of Deeds

BY: Andrian Y. Tullott

Deputy/~~Assistant~~ Reg. of Deeds

F:\USERS\ROBERT\Clients\Bermuda Bay\D2843-0 Water meter agreement v5.wpd
012005-1454

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NORTH CAROLINA
DARE COUNTY

AGREEMENT

THIS AGREEMENT, made and entered into by the Town of Kill Devil Hills, a body politic (hereafter "The Town"), Bermuda Bay Owners Association, a North Carolina Non-Profit Corporation (hereinafter "Bermuda Bay OA) and Bermuda Bay, LLC;

NOW, for and in consideration of the mutual promises and conditions set out hereafter, the parties do agree as follows:

1. On or about 16 February 2005 the Town and Bermuda Bay, LLC entered into a Water Meter Agreement which allowed water meters to be put on Bermuda Bay's property and for Bermuda Bay to pay for the water bills associated with such water meters. Such agreement was recorded at book 1614, page 403 of the Dare County Register of Deeds and required, among other things Bermuda Bay, LLC or the Bermuda Bay OA to pay for water supplied by the Town (hereinafter, "the Water Meter Agreement").

2. Bermuda Bay LLC has a contract with the Town to purchase water through two separate meters. The cost of the water is billed to Bermuda Bay LLC by the Town under account numbers 820013 and 820400 and Bermuda Bay LLC thereafter supplies the water to the residents of the Bermuda Bay communities (those communities include Bermuda Bay, Cambridge Cove, Devonshire Place and Hamilton Cay) through the Bermuda Bay LLC owned system and collects for the water used from the residents and to cover the water used in the Bermuda Bay common facilities.

3. The parties acknowledge that at various times, the Bermuda Bay LLC accounts with the Town have been delinquent and there is currently an outstanding balance on the two accounts in the amount of $96,888.13 for account number 820013 and $116,737.69 for account number 820400.

4. That excluding the April, May and June 2012 quarterly billing, the actual charges for water only from the time the accounts were created through April 2012 is $312,681.33. Bermuda Bay has made payments over time on the accounts in the total amount of $234,161.51 through April 2012. The remaining balance for actual water used is in the amount of $78,519.82. This sum excludes all accumulated late fees and charges that are permitted and provided for by the Town's Water Policies and Procedures.

5. That Bermuda Bay LLC filed for Chapter 11 Bankruptcy and that bankruptcy has now, upon information and belief, been closed.

6. That in June 2012, Bermuda Bay LLC transferred to Bermuda Bay Owner's Association the management responsibilities for the Bermuda Bay Communities. The Bermuda Bay Owners Association has assumed control and responsibility for the management of the community and with the agreement of Bermuda Bay LLC, desires to bring the Bermuda Bay LLC accounts current.

EXHIBIT
B

7. That the Town and Bermuda Bay Owner's association have agreed to resolve and compromise the outstanding accounts owed to the Town by Bermuda Bay LLC in order to insure the continued supply of water to the Bermuda Bay Communities and to bring the delinquent accounts current.

8. The Town agrees to accept a lump sum payment of $78,519.82 in full settlement of the outstanding balance on the Bermuda Bay LLC accounts provided that said amount is paid in full by October 25, 2012. The Town acknowledges that the most recent of quarterly billing ending in June 2012 was timely paid.

9. That in the event the payments called for herein are not made by October 25, 2012, then the total outstanding balance in the amount of $213,625.82, which includes all water, accrued penalties and charges through July 27, 2012, plus any additional penalties and charges for water that may accrue shall be due and immediately payable and the Town may pursue all remedies as may be provided by law.

10. Bermuda Bay, LLC hereby assigns all of its interest in the Water Meter Agreement to the Bermuda Bay OA and consents to the use of the deposits on file with the Town from Bermuda Bay, LLC towards the $78,519.82 settlement obligation.

11. Upon payment of the above amount by the Bermuda Bay OA, Bermuda Bay LLC accounts will be closed and the Bermuda Bay OA will open new accounts simultaneously with the payment of the funds on October 25 and the Bermuda Bay OA will deposit the sum of $2,200 for each of the two new accounts.

12. This Agreement has been approved by a vote of the Board of the Town and the Board of Bermuda Bay, Owner's Association and said Boards have authorized the execution of said Agreement by their officers or agents whose signatures are affixed hereto.

This the 24 day of [illegible], 2012.

[signatures on following page]

ATTEST:

Mary E. Quidi
Town Clerk

TOWN OF KILL DEVIL HILLS

By: _____

BERMUDA BAY OWNERS ASSOCIATION

By: _____

BERMUDA BAY, LLC

By: _____

ATTEST:

Marly E. Quidley
Town Clerk

TOWN OF KILL DEVIL HILLS

By:

BERMUDA BAY OWNERS ASSOCIATION

By:

BERMUDA BAY, LLC

By:

CONDITIONAL SITE PLAN TECHNICAL REVIEW 3-RESPONSE TO COMMENTS DATED 10-27-20
Bermuda Bay P.U.D. - Section 200A
Amend Site Plan for (2) Four Story Multi-Family Structures and Associated Site Improvements
Comment response dated 11-03-20 in Blue Bold Text

Planning—Cameron Ray (252-449-5311)

1. Phasing: Propose timeline that the proposed Bermuda Bay PUD site can be expected to be completed and built in compliance with the overall site plan. This is important as these changes will make the site nonconforming until built out to completion.
   Phasing Lines have been added to all plan sheets and a Phasing Schedule is noted on sheet 2.

2. Provide Owner Authorization from Bermuda Bay PUD Homeowners Association. The proposed changes are a change to the overall site plan for all of the Bermuda Bay PUD and require authorization from the homeowner's association as they all share the same site amenities.
   Note from the Applicant: "Applicant is surprised to see this comment come up again. We have already addressed this multiple times but here is our reasoning once again. Somerset does NOT share the amenities tied to the master association so this statement is incorrect. Somerset will NOT be part of the master association. Somerset will be similar to Run Hill, which is part of the PUD but has NOTHING formal to do with the Master association. Similarly as Spring Arbor. Applicant has never had to in prior cases receive any authorization from the Master association for any construction, development or changes within the PUD this far. The applicant is the Declarant and has the development rights in this PUD, not the master association which only has jurisdiction over the properties that have formally joined this master association. The master association does not have authority over what can be developed within this PUD. Rather, the applicant does. Further, the applicant has a great working relationship with the master association board members and talks to this board monthly. The board is well aware of the development intentions for Somerset and never, themselves, even brought up to the applicant that they have any authority or need to provide authorization on this. Yet the Town staff keeps requesting this. The applicant would like the clear legal reasoning behind this request per code. Further, is this the position of the Town attorney as well? Applicant wants to get a clear position from the Town on this. Applicant plans to adamantly defend their position in this matter. Regardless, the applicant desires to proceed forward with our application to the Planning Board and Board of Commissioners with our position being clear on this."

Public Services—Derek Dail (252-449-4085)

Water System

1. There are no further comments with regards to the proposed water system. Public Services will need copies of the Engineering Certification and testing of cross connection prevention devices upon completion of construction. No further action required.
   Certification requirements noted.

Wastewater

1. There are no further comments with regards to the wastewater system. Public Services looks forward to receiving the updated Willingness to Service Letter from KDHWWTP noted in the resubmittal package.
   No response required

Engineering—Pete Burkhimer (757-478-5970)

1. On Sheet S4 of 11, just northwest of the northwest corner of Building 201, there is an extraneous note "PROPOSED 4" RPZ CHECK VALVE ASSEMBLY..." which should be deleted.
   The extraneous text has been deleted.

2. On Sheet S6 of 11, a couple of drainage structures have incomplete ID, Rim and/or Invert info (curb inlet between 7 and 8; curb inlet upstream of 22)
   The structures have been renumbered and the rim/invert data added.

Town of Kill Devil Hills Planning and Inspections
Commercial Site Plan Review Application*

Applicant

Name: BB SOUTHAMPTON MEWS, LLC

Address: PO BOX 90
KILL DEVIL HILLS NC 27948

Phone: 252-441-9008

Fax:

Cell: 252-207-8997

Property Owner

Name: Same as applicant

Address:

Phone:

Fax:

Cell:

Property Location

Address: Bermuda Bay Boulevard

Lot, Block: Additional Real Estate-Future Development

Subdivision: Bermuda Bay P.U.D.

Pin#: 988310371341

Zoning District: ☐ Commercial ☐ LI-1 ☐ LI-2 ☐ OIR ☒ G/I

Total Lot Size: 331,910 Sq. Ft.

Disturbed Area: 127,000 Sq. Ft.

Contractor

Company Name: to be determined

License Number:

Name:

Phone:

Address:

Cell:

Fax:

Town Privilege License Number:

Construction Information

Type of Construction:

☐ Assembly ☐ Business ☐ Educational ☐ Factory/Industrial ☐ High Hazard

☐ Institutional ☐ Mercantile ☒ Residential ☐ Storage ☐ Utility/Misc.

☐ New Construction ☐ Addition ☐ Repair/Replace ☐ Remodel ☒ Other: MULTIFAMILY

Square Footage Proposed:

Interior Space: 45,300 Sq. Ft. Covered Deck(s): 8,100 Sq. Ft. Storage: Sq. Ft.

Garage: N/A Sq. Ft. # of Bedrooms: 192 # of Open Deck(s):

Proposed Square Footage: 26,628 + Existing Square Footage: 0 = 26,628 Total Sq. Ft. (BLDG.)

% Impervious Coverage: + % Pervious Coverage: = per sw permit Total % Coverage

# of Parking Spaces: *Existing:* *Proposed:* 232 *Total:* 232

Septic Tank Permit #: KDHWWTP, LLC Construction Type:

Estimated Construction Cost (including labor and materials): TO BE DETERMINED ON PLAN COMPLETION

Flood Information

Flood Zone: ☐ VE ☐ AE ■ X

Base Flood Elevation: N/A

Proposed First Floor Elevation: 8' min.

Sq. Ft Below Base Flood Elevation:

**This form is designed as a guide for Commercial Site Plan Review.*
Additional plans and information will be required prior to building permits.

Project Description

Bermuda Bay, Section 200A, Currently known as Southampton Mews. The project includes two - four story multifamily structures wih associated infrastructure.

Required Site Plan Information Checklist:

- ☐ Permit Application (Completed)
- ☐ Site Plan Including the following
  - Submittal Requirements:
    - ☒ Vicinity Map
    - ☒ 15 Copies of Site Plan & Building Plan Elevations – Front, Side, and Rear
    - ☐ Tentative Health Department Approval
    - ☐ Site Plan Development Review Fee Paid in Full
  - Existing Conditions:
    - ☒ Boundary of Entire Lot
    - ☒ Width and Location of Existing Right of Ways
    - ☒ Nature, Purpose, Locations, and Size of Existing Easements
    - ☒ Iron Pins and Concrete Monuments
    - ☒ Scale (1" = 50" Minimum)
    - ☒ North Arrow
    - ☒ Streets Including Width of Pavement
    - ☒ All Underground Utilities, Gas/Propane Below or Above Grade
    - ☒ Dare Co. Register of Deeds Map Book/Subdivision Ref.
    - ☐ Street Address PENDING ASSIGNMENT
    - ☒ Present Recorded Owner, Developer, Engineer contacts
    - ☒ Adjacent Property Owners, Adj. Use & Zone
    - ☒ Corp. of Engineers Report / Wetland Study N/A
    - ☒ NFIP Flood Zone (ref: Elevation Datum (NAVD 1988))
    - ☐ Minimum, Lot Size indicated N/A
  - Proposed Improvements:
    - ☒ Zoning Use Compliance/Setbacks labeled
    - ☐ Landscaping Plan / Buffers / Screening (per section 153.073)
    - ☐ Lighting Plan - photometric showing point output (section 153.074)
    - ☒ Sedimentation & Erosion Control Plan including details CURRENT S&EC PLAN
    - ☒ Disturbed Areas delineated & areas calculated
    - ☐ Location of Sidewalks on the Croatan Highway and Curbs N/A
    - ☒ Location of Sewer Facilities and Drain field
    - ☒ Proposed Building Type, # of Floors and dimensions, floor area ratio, Height
    - ☐ Existing and Finished Grades of Entire Site PENDING SURVEY
    - ☒ Storm Water Management Plan including calculations CURRENT SW PERMIT
    - ☒ Total Units and Density per Acre (Multi-Family) or floor area ratio (in OIR)
    - ☒ Lot Size and Lot Coverage Calculation
    - ☒ Utility Plan indicating location & sizes of proposed improvements
    - ☐ Water Service Sizing Checklist WILL BE COMPLETED BY PM&E CONSULTANT
    - ☒ Layout, Size and Number of Parking Spaces including handicap w/ setbacks (Each Space Numbered)
    - ☒ Fire Lane and Driveways
    - ☐ Loading Zone (Commercial Sites) N/A
    - ☐ Mail Delivery Cluster Sites (Multi-Family)

- ☑ Proposed First Floor Elevation 8.1' MIN.
- ☑ Dumpster Pad Location
- ☐ Proposed Sign Location N/A
- ☐ Sight triangle shown
- ☐ Commercial Building Plans showing architectural compliance N/A
- ☐ Plans to N.C.D.O.T. (if required) N/A
- ☑ NC Engineer/Land Surveyor Seal on Site Plan

*** The items listed in the Site Plan portion of the above checklist represent information that must be indicated on any site plan submitted for review by the Kill Devil Hills Planning Department, Planning Board, and Board of Commissioners. All of the above required documents shall be submitted on or before the 3rd Tuesday of each month. Upon completion of review, the Planning Board shall transmit its recommendations to the Board of Commissioners. The Board of Commissioners shall review site plans on the second Monday of each month.

Signature of Applicant: _____ **(Date)** 8/25/2020

KDHWWTP, LLC
P.O. Box 3629
Kill Devil Hills, NC 27948
NCUC W-1160

Willingness to Serve

September 9, 2020

SAGA Construction
P.O. Box 90
Kill Devil Hills, NC 27948

Re: South Hampton Mews, Bermuda Bay PUD

To whom it may concern:

SAGA Construction has sufficient paid for Sewer Capacity for the above referenced section of Bermuda Bay.

My best regards,

Eddie Goodrich

Eddie Goodrich
Member Manager