

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
August 12, 2009**

The Planning Board for the Town of Duck convened at the Duck Municipal Offices at 6:30 p.m. on Wednesday, August 12, 2009.

Present were Chairman Jon Britt, Vice Chair Joe Blakaitis, Ron Forlano, John Fricker and Don Kingston.

Absent: None.

Also present were Director of Community Development Andy Garman, Council Liaison Dave Wessel and Permit Coordinator Sandy Cady.

Others Present: Town Manager Christopher Layton and Fire Chief Donna Black.

Absent: None.

Chairman Britt called to order the Regular Meeting of the Planning Board for August 12, 2009 at 6:30 p.m.

PUBLIC COMMENTS

None.

Chairman Britt stated that he would like to move the Hazard Mitigation Plan item up on the agenda. It was *consensus* of the Board to move the item up in the agenda for discussion.

NEW BUSINESS

Town of Duck Hazard Mitigation Planning Committee – Overview of the Process to Prepare the Required Five-year Update to the Town of Duck Hazard Mitigation Plan

Director Garman stated that the Hazard Mitigation Committee was established by the Town Council at their August 5, 2009 meeting. He stated that Council considered a resolution, which was a staff recommendation to have the Town of Duck Hazard Mitigation Plan update be part of the Dare County Multi-jurisdictional Hazard Mitigation Plan. He stated that as part of the process, Duck would continue to evaluate its own needs as a Town and forward recommendations to the County to be added to their plan. He stated that a committee would need to be established since it was an update to the plan. He added that it seemed practical to coincide the Hazard Mitigation Committee with regular meetings of the Planning Board and add members to assist with the process. He stated that Council agreed with the recommendation to move forward, recognizing that Councilor Wessel would be part of the committee. He added that Fire Chief Donna Black and Town Manager Christopher Layton would also serve on the committee since they were both involved with the development of the original plan.

Director Garman stated that this would be the first meeting to kick off the process for the update to the Hazard Mitigation Plan. He noted that the Board had the original adopted Plan in their packets for review. He stated that the meeting would be a discussion on what has changed in the last five (5) years, what natural events may have caused the Town to rethink things and what the Committee may want to focus on to incorporate into the Plan.

Member Kingston asked if there was any documentation that stated what the Committee's responsibility would be. Director Garman stated that the Plan would continue to exist however the Committee would provide input during the update effort. He stated that some of the items in the Duck Plan are redundant with other local Hazard Mitigation Plans, and since Duck shares similar risks and vulnerabilities as Dare County, it would rely on the County's plan to describe in detail the hazards we face on the Outer Banks. He stated that staff's responsibility would be to update the vulnerability assessment, which has not been completed yet. He stated that he would present it at a later meeting. He stated that the main thing the Committee had to do was develop and agree upon the goals and objectives and discuss how well the Town implemented the ones from last time, along with any new policies they thought should be put in place.

Chairman Britt asked if any other towns were participating in the Plan. Director Garman stated that the only other town was Manteo. He stated that it depended on when each town was up for their five (5) year update and whether they wanted to decide to join the County plan at that time. Town Manager Layton noted that there was pressure from the State to combine the plans county-wide.

Director Garman went on to review the events that had occurred in Town in the past five (5) years with the Board and Committee members.

Fire Chief Black asked if the Committee had to come up with more questions or just wanted to point out the ongoing things that will be completed. Director Garman stated that they will have met some of the items, but some may be ongoing. He stated that there will always be new goals and objectives for the Plan. He reviewed a list of standard questions for municipalities to answer when updating their hazard mitigation plan.

Director Garman, the Planning Board and the Committee members suggested items to add to the Plan as well as major events and milestones that have occurred over the past five years. They also reviewed what was currently in the plan.

Director Garman stated that he would like to draft an implementation status report based upon the discussions (review of the current action plan) as well as the updated hazard vulnerability assessment. Member Kingston asked what the key dates were that the Committee should be working towards. Director Garman stated that he would be working in the next few weeks to get a draft to the County. He stated that he would like give the County a draft within the next month that they can start reviewing. He added that by December 2009, he would like to have a draft to Town Council for their review and adoption. He stated that the State will need a few months to review before the County deadline.

Director Garman stated he would bring everything back for their review at an upcoming meeting. He thanked the Board and Committee members for their input.

OLD BUSINESS

Discussion/Consideration of an Ordinance to Amend Town Code Section 156.071, Non-conforming Lots of Record

Director Garman noted that October 5, 1992 was an important date because prior to that date, any residential lot in Duck had the same coverage. However, in 1992 Dare County adopted the non-conforming lots of record ordinance (which gave greater coverage to lots that were recorded prior to November 20, 1975).

Director Garman stated that the Town Council had considered and denied the request by the South Snow Geese property owners, agreeing with the Planning Board's recommendation to send it back for further review. He stated that now the Board would need to focus on some of the lot coverage issues and hash out what the implications would be as well as what information would be needed from staff to help make a decision on the issue. He went on to give a short presentation on non-conforming lots of record.

Chairman Britt asked the Board how they felt about the issue. Vice Chair Blakaitis stated that he would not have a problem working with the approximately three hundred sixty (360) lots, but if the other two hundred eighty (280) were put in, it would make him nervous. He stated that reasonable lot coverage will still require a major change.

Member Fricker thought it would be relevant to know how many homeowners knew they were buying property where they had a slight disadvantage due to the size and date the property was platted.

Member Kingston stated that he liked consistency and would like to take a look at the lots that were nonconforming today and grandfather them at the percentage they were presently at.

Director Garman thought fifty percent (50%) lot coverage was way too high for any residential lot, especially when trying to manage stormwater with an infiltration-type drainage system. Vice Chair Blakaitis stated that he understood, but noted that smaller lots would have problems meeting the thirty percent (30%) coverage.

Director Garman discussed how the change in coverage would impact a property owner with coverage in excess of what is adopted. He stated that grandfathering could apply, so long as the nonconformity is not increased.

Vice Chair Blakaitis agreed that fifty percent (50%) lot coverage for a residential lot was too high. He clarified that if the Board addressed that and left Snow Geese South hanging, they would be left with the three hundred sixty-one (361) lots. Director Garman stated he was correct. Chairman Britt cautioned the Board that they couldn't get wrapped up with the issue being about Snow Geese South. He stated that the Board needed to make a decision about what was right and whatever happens with Snow Geese South is what happens. Vice Chair Blakaitis

agreed. Member Fricker didn't think it was a mandate of Council but thought Council was charging the Board with exploring the issue and making a recommendation. Vice Chair Blakaitis thought the Board should make a recommendation that they do nothing.

Director Garman pointed out that one of the fundamental fairness issues was that a 9,500 square foot lot has more coverage available than a 15,000 square foot lot under the current rules. He stated that it did not make sense to him.

Chairman Britt asked what the Board thought of a maximum coverage of forty percent (40%) for all lots. He thought the issue should be left alone. Member Forlano asked if the forty percent (40%) was for all lots across the board. Chairman Britt stated it wasn't, but would be for all lots that were operating as nonconforming ones. Director Garman noted that Snow Geese South would receive fifty percent (50%) coverage if they were considered a lot of nonconforming record.

Member Forlano stated that he looked at Snow Geese South's statement that the issue was a matter of fairness. He stated that he looked at it differently since the fairness issue did not seem to work when it's looked at from the other side. He noted that Snow Geese South was allowed to do a lot more than he could on his property, yet he paid more for his. Member Fricker agreed.

Member Kingston asked how many lots had existing coverage of greater than thirty-five percent (35%). Director Garman stated that there were a handful of lots that were above 35%.

Member Fricker thought there were so many variables with the issue that the Board should try to avoid spending a lot of time on those that would be considered imponderables. He noted the staff report asked how many properties would actually take advantage of additional coverage. He thought the better question was what was best for the Town rather than who would take advantage of it. Chairman Britt agreed. He stated that if the Board felt that fifty percent (50%) coverage was too much, they should pursue it as a goal.

Vice Chair Blakaitis asked if staff had an opinion on whether the Board should concentrate on Snow Geese South's plea or work with what Council had suggested to try to come up with something that would be fair. Chairman Britt reiterated that the Council had requested that the Planning Board explore the possibility of providing a uniform standard that would apply to all lots that were less than 15,000 square feet, regardless of when they were recorded. He wondered if a uniform standard could be created that would be fair.

Member Forlano stated he would like to follow what the Land Use Plan states. Vice Chair Blakaitis agreed and suggested that the Board go with the premise that the changes would be made for the good of Duck. Director Garman stated that the basis for the suggested uniform standard was not increasing net coverage overall while still meeting the fairness objective. He added that for the two hundred sixty (260) lots that were currently not considered nonconforming, it would provide additional coverage to them while reducing coverage for the existing non-conforming lots of record.

Chairman Britt asked the Board if they were in agreement with Director Garman to draft a proposal to provide a set coverage for lots less than 15,000 square feet. Director Garman stated

the way this issue was originally handled by Dare County seemed strange. He thought a more appropriate way to provide more coverage to smaller lots would have been to rezone them and come up with a different standard that would apply in those areas. He stated that some communities were currently considering allowing additional coverage in exchange for on-site stormwater management improvements. He stated it was an idea the Board could think about. He added that the stormwater plans should include features that would not require a lot of maintenance.

Chairman Britt stated that he saw two (2) positions with the issue – leave it alone or try to set a uniform standard for all of the lots and see what comes from it. He felt the issue should be left alone. Director Garman stated that the ordinance inherited from Dare County did not really fit with the quality of ordinances the Town has been trying to draft.

Chairman Britt wanted to see some scenarios and ideas drafted by staff. Member Kingston asked how easy it would be to come up with scenarios. Director Garman stated that it would not be too hard. He added that he could run a tiered scenario as well as one that would be straight across the board. Member Fricker stated that he was uncomfortable with making it all uniform. He felt the issue should be left alone. Chairman Britt suggested that Director Garman bring something back to the Board at their next meeting.

Member Fricker stated that he was worried about equal protection rules. Chairman Britt thought it would only need to apply to lots below 15,000 square feet. Director Garman stated that under the current ordinance, there would be more equal protection arguments than if it were changed. Member Fricker stated that he would like the Town Attorney consulted on the issue. Member Forlano agreed with Member Fricker. He added that if the Board decides to go with thirty-five percent (35%) coverage across the board, it should be reviewed by the attorney.

Director Garman and the Board went on to discuss setbacks for nonconforming lots of record and decided to table the issue for now.

APPROVAL OF MINUTES

Planning Board Meeting June 10, 2009

Chairman Britt directed the Board to review the minutes from the June 10, 2009 meeting.

Member Fricker moved to approve the minutes as presented. Vice Chair Blakaitis seconded.

Motion carried 5-0.

OTHER BUSINESS

Member Fricker asked if there would be a joint Council meeting planned for September to discuss renewable energy. Director Garman stated that it was currently set for Wednesday, September 23, 2009 at 1:00 p.m. He added that there will be a presentation on the Town Hall as well as renewable energy and LEED certification. He stated that no decisions were expected to

be made at the meeting. Chairman Britt stated that he's been hearing from people in the community that the Town should be moving forward with the renewable energy issue.

STAFF COMMENTS

None.

BOARD COMMENTS

Member Blakaitis stated that he may have a problem with attending next month's Planning Board meeting. He stated that he did not think he would be available.

ADJOURNMENT

Chairman Britt moved to adjourn the meeting. Member Fricker seconded.

Motion carried 5-0.

The time was 8:49 p.m.

Approved: _____
 /s/ Jon Britt, Chairman