

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
December 9, 2009**

The Planning Board for the Town of Duck convened at the Duck Municipal Offices at 6:30 p.m. on Wednesday, December 9, 2009.

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

Absent: None.

Also present were Director of Community Development Andy Garman and Permit Coordinator Sandy Cady.

Others Present: Don Kingston, Ken Forlano, John and Patty Wander.

Absent: Council Liaison Chuck Burdick.

Chairman Britt called to order the Regular Meeting of the Planning Board for December 9, 2009 at 6:28 p.m. He noted that Council Liaison Burdick was absent.

PUBLIC COMMENTS

Don Kingston of 135 Fawn Court was recognized to speak. Mr. Kingston noted that Chuck Burdick was the new Council Liaison to the Planning Board, however; since Mr. Burdick was absent, he was available to represent the Council in an unofficial capacity.

OLD BUSINESS

Discussion of Renewable Energy Ordinance

Director Garman asked the Board what their thoughts were on the presentation he gave at the Town Council meeting with regard to the next steps.

Member Fricker stated that he understood why a dialogue did not occur at the Council meeting. He stated he was not sure the Planning Board members should move forward, but also felt that all members may not have the same view as to where they were with the issue. He thought it would be hard to get a dialogue going at another Council meeting or even at the Retreat. He stated that his impression was that the Planning Board was willing to encourage the use of renewable energy sources, but only to the extent that they would be consistent with the Town's Vision Statement and Land Use Plan. He stated that, in theory, the Board may want to recommend renewable energy in practice but wondered if it was practical.

Chairman Britt stated that the focus had been on wind turbines but really it was about renewable energy. He did not think the Board needed to meet with Council again. He stated that he would

like the Board to embrace renewable energy but thought there were big hurdles with regard to residential properties. He suggested that the Board break the issue down into pieces and move forward.

Vice Chair Blakaitis did not think the Board needed to sit down with Council at this time. He thought it was a little early but did eventually want Council's input. He thought it was early because there were new Council members that were not privy to a lot of the discussions. He stated that the Board would need Council's input at some point but Member Gilbreath would need to be brought up to speed on the issue. He didn't think the issue was a high priority item at this time.

Chairman Britt thought it would be nice for the Board to have a game plan to possibly discuss at the Council Retreat.

Vice Chair Blakaitis noted that every town has adopted some type of ordinance to deal with renewable energy to suit their needs. He thought Duck needed to adopt one as well if possible.

Member Forlano thought Member Fricker's overview of what the Board has accomplished to date and what the feedback has been should be presented to the new Council members at the Retreat. He added that specifics would not be needed but more generalized comments to find out from Council if they want the Board to continue moving forward with an ordinance. He stated that he would prefer to hear specifically from Council that the Board should move forward.

Member Fricker clarified Member Forlano's comments that he wanted the new Council educated through the Retreat. Member Forlano stated he was correct. He added that the discussion at the Council meeting did not give much information to them at all. Chairman Britt agreed and suggested letting Council know what the Planning Board has accomplished, the survey results and staff's opinion. Vice Chair Blakaitis suggested that the Board specifically ask for direction from the Council.

Member Gilbreath asked if the survey results were available online. Director Garman stated that he had the results and could email them to him. Member Gilbreath asked if people were requesting information on the availability of installing wind turbines. Director Garman stated that staff received five to ten (5 – 10) inquiries but wasn't sure if they were serious about installing the turbines. Member Gilbreath stated that he saw a liability issue with the setbacks.

Director Garman stated that he was looking at the Land Use Plan and one of the initial staff reports referred to height and community appearance as the biggest issues. He went on to read the memorandum from the August 6, 2008 meeting to the Board and audience. He noted that Paul Quinlan stated that, in the long term, he did not see turbines as an integral part of energy.

Director Garman suggested preparing a set of values of what the Town believes in. Chairman Britt asked if a short presentation could be put together for the Retreat with the way the Board felt about the issue. Member Fricker suggested taking his comments and summarize what the Board has accomplished so far, with a few threshold questions and pose the question to Council if this is what they want. Director Garman thought he could take several questions, as well as

items from the survey and Land Use Plan and put a short presentation together by the next Planning Board meeting.

Vice Chair Blakaitis thought the Board would run into a brick wall when dealing with wind turbines as it related to the Land Use Plan. He wondered how the Board could reconcile the issue and asked if it should be presented to Council as well. Chairman Britt stated that it wouldn't be a complete brick wall but thought the next Land Use Plan would have to address renewable energy. Director Garman noted that there were only a few things that were exempt from the height limitations. He stated that the Board will need to determine the basis for treating one differently than another, such as wireless communications.

Director Garman stated he would draft something and bring it back to the Planning Board for their next meeting.

NEW BUSINESS

Discussion of Ordinance Amendment regarding Replacement of Non-conforming Signs

Director Garman stated that the issue was brought up at a Board of Adjustment hearing. He stated that it was an ancillary issue that was discussed as far as how to determine the appraised value of a sign as it was not common for an appraiser to have expertise in determining the appraised value of a sign. He stated that the Town's ordinance stated that once a sign was damaged or deteriorated more than fifty percent (50%) of the appraised value, it would have to become conforming. He thought the applicant at the Board of Adjustment meeting had their opinion on the issue but that the Board of Adjustment had a different opinion. He thought it would be easier if the ordinance referred to replacement value or some other method instead of appraised value. He stated that this was why the issue was in front of the Planning Board. He added that the Board could consider the total area of the sign and went on to review ordinances from other municipalities with the Board.

Member Gilbreath thought taking the percent of a sign square footage made sense. Chairman Britt agreed and added that the numbers could be tweaked.

Vice Chair Blakaitis thought the Board should focus on replacement value of signs as well as the percentage of the sign. He thought it should be one or both. He stated that he did not know when the Board could determine when a sign should be replaced unless it was based on one or both.

Member Forlano pointed out that one of the oldest ordinances the Town had was the sign ordinance. He stated that it was designed with the help of the business community. He stated that many businesses have taken the time and money to bring their signs into compliance. He stated that he did not know how many signs in Town were non-conforming but thought there had been ample time given to those that had non-conforming signs to bring their signs into conformance. He thought the Board should take all the arbitrary nonsense out of when a sign should be replaced and put in the ordinance that if the sign was destroyed or knocked down for any reason except for re-painting, it would have to come into conformity.

Chairman Britt echoed Member Forlano's comments. He thought the Board should take a hard line on the issue. He stated that if the signs were damaged and they were already non-conforming, they would need to be brought into conformity. He and Vice Chair Blakaitis felt it needed to be made very clear. Member Fricker wondered who determined the replacement value of a sign. He agreed with Chairman Britt and Member Forlano's comments.

Chairman Britt felt the gray areas needed to be taken out of the ordinance. He suggested having a certain percentage such as twenty-five percent (25%) for damage as to when a sign should be brought into conformity. Member Forlano felt it should be zero percent (0%). Director Garman noted that cost estimates could be questionable.

Member Forlano wondered why the Board was discussing the issue when it only pertained to two to three percent (2-3%) of the business owners that would give the Town a hard time no matter what.

Member Fricker suggested the following language: "Any deterioration, damage or loss of the signage which cannot be corrected simply by repainting the sign is a destruction of the sign and would require coming in..." Director Garman asked what would constitute deterioration. Member Fricker stated it could be a sign rubbing up against a tree or another sign and taking off part of the wood. He suggested the following language: "...cannot be corrected simply by repainting the sign to its original condition..."

Member Gilbreath agreed with Member Forlano's comments. He stated that if a sign came down, before it was put back up, it must come into conformity.

Chairman Britt asked if the Board was in agreement on the zero percent (0%). Member Fricker asked if there would be a new section added to the ordinance or would a section of the ordinance be amended. Director Garman stated that the Board would be amending Section B. Member Forlano noted that the fifty percent (50%) rule would need to be taken out of the ordinance as it was already stated in Section B. Chairman Britt agreed. Director Garman stated that the second sentence in Section B would be stricken from the ordinance.

Director Garman asked if the new language would be something that the Board would want brought back at their January meeting. Chairman Britt thought the Board was in agreement with their position on the issue and felt that Director Garman should come back to the next meeting after having a little more time to contemplate the loopholes and look at other language. He thought the Board could consider Member Fricker's language as a basis.

Member Fricker suggested the language read as follows: "...however, if the sign suffers any deterioration, damage or loss of the signage which cannot be correctly simply by repainting the sign to its original condition, it must be removed or brought into conformance with this chapter..."

Chairman Britt noted that the second sentence under #2 that should be stricken if the proposed language would work. Vice Chair Blakaitis pointed out that minor repairs would not be allowed with the new language. It was *consensus* of the Planning Board to strike #2 completely from the ordinance.

Director Garman stated he would bring the ordinance back at the Board's January meeting.

Discussion of Ordinance Amendment to Include Specific Penalties for Tree and Vegetation Management Ordinance Violations

Director Garman stated that the issue was brought up as a housekeeping item, but pointed out that the ordinance stated that a homeowner could not do certain things such as taking down a tree greater than twenty-four (24) inches in diameter without a permit; on a vacant lot a tree bigger than six (6) inches in diameter could not be taken out without a building permit. He stated that the ordinance did not have clear and specific penalties, but were more generalized and not severe enough to make someone comply. He stated that staff was suggesting a penalty be put in the ordinance to cover taking down trees. He went on to review ordinances from other municipalities with the Planning Board and audience. He asked how the Board would like to get started on the issue.

Member Fricker asked Director Garman for his suggestions and why he made the suggestions. Director Garman stated that the twenty-four (24) inch in diameter rule seemed to be something that should have a higher penalty along with some combination of fine and mitigation penalty as something to consider. He noted that the City of Wilmington had a fine of \$400 per tree or \$50.00 per inch diameter. He stated that the Town did not have a tree inventory so it would be hard to know what's presently out there.

Chairman Britt noted that Council was very clear that they wanted the ordinance to have teeth. Member Gilbreath asked how many vacant lots were left in Duck. Director Garman thought there were approximately 300 left. Vice Chair Blakaitis pointed out that it wasn't just the vacant lots, but also lots with homes on them.

Member Forlano stated he did not have a problem with the vacant lots, since the owners have to come to the Town for a Land Disturbing permit before they start on any work. Director Garman agreed but noted that it was under the assumption that the owner actually came in to obtain a permit.

Director Garman stated that the Board may want to think about different means of penalties for vacant lots since staff may not have any way to know how much vegetation was removed. Vice Chair Blakaitis thought the Board also needed to address penalties for topping trees as well. Director Garman noted that on a developed property, a permit was not needed to take out trees if they were less than twenty-four (24) inches as long as the property owner had the required canopy coverage. He added that having a penalty for topping a tree would be hard to enforce.

Vice Chair Blakaitis stated that the Board needed to make sure the ordinance had teeth. He thought twenty-four (24) inches was too generous, especially when looking at a multi-trunk live oak with none of the trunks exceeding twenty-four (24) inches.

Director Garman asked if the Board wanted to consider an ordinance that had both fines and mitigation. Chairman Britt and Vice Chair Blakaitis stated that they would. Chairman Britt thought the ordinance should focus on the twenty-four (24) inch diameter and heritage trees and

maybe look at penalties for other acts harmful to trees. Director Garman noted that the City of Wilmington actually places a value on certain trees, acknowledging that different trees grow differently.

Member Forlano pointed out that the vegetation ordinance was a knee-jerk reaction to clear cutting vacant lots. He asked if clear cutting had been a problem since the ordinance was passed. Director Garman stated that there have not been any complaints, nor has staff seen any clear cutting. Member Forlano wondered if it hadn't been a problem, why have a penalty when it may not be needed. Permit Coordinator Cady stated that there were instances where trees were cut down without a permit.

Chairman Britt stated he was in favor of something for the large trees. He agreed that small trees would be difficult from an enforcement standpoint. Vice Chair Blakaitis suggested levying a large fine such as \$1,000. Member Gilbreath suggested a fine for any tree over twenty-four (24) inches.

Vice Chair Blakaitis thought two (2) things needed to be done – penalties for trees over twenty-four (24) inches and for any clear cutting done to a vacant lot. Chairman Britt stated he would like to see teeth in the ordinance for clear cutting a lot.

Member Forlano thought a high fine should be levied for those that clear cut a lot. Member Fricker asked if the penalty should be at least \$5,000. Member Forlano thought it should be. Member Fricker thought \$100 per inch was a rational fine. Chairman Britt stated he would like to stay with a flat fee so it would be kept simple. He suggested \$1,000 fine for a tree over twenty-four (24) inches. Member Gilbreath asked if the penalty should be \$5,000 for clear cutting a lot. Chairman Britt stated it should be.

Director Garman asked if it was worthwhile to define what clear cutting meant. Member Fricker recommended amending the section of the ordinance and to define clear cutting. He suggested the following language: "...to remove all or substantially all of the vegetation on a lot..."

Member Forlano asked if a homeowner left one (1) large live Oak tree that provided the thirty percent (30%) canopy coverage, everything else could be clear cut except for that one tree. Member Gilbreath thought it would be fine but pointed out that it would be as long as the homeowner had a permit.

Chairman Britt asked Director Garman to bring something back to the Board's next meeting. Director Garman clarified that the Board was looking for a flexible standard for clearing undergrowth on a vacant lot and a range of fines for the number of trees that were removed from a lot. Member Gilbreath stated he wanted the fine to be \$5,000 for clear cutting a lot.

Director Britt thought the only way to prevent clear cutting was to have the ordinance not have any gray areas with the way clear cutting was defined in the ordinance. Member Fricker thought the definition needed to be more clearly defined. He suggested that if vegetation was taken out of an undeveloped lot, trees that can be identified as having been in excess of six (6) inches, the fine should be by X dollars per inches. However, if it cannot be done that way, if there was other evidence of any nature/type/origin, then the fine would be based upon a percentage of coverage

of loss. Chairman Britt thought Member Fricker's suggestion was making the ordinance more complicated. Member Fricker suggested not addressing the percentage of loss at all. Director Garman thought the penalty should fit the crime. Chairman Britt agreed. He asked if a range could be established as he thought it should be quantitative.

Chairman Britt suggested that Director Garman come up with a flexible standard as he didn't want to change the definition of clear cutting, but didn't want an owner stuck with a fine that they didn't deserve. Member Fricker stated that he liked the definition of clear cutting as it has been defined in the ordinance. Chairman Britt agreed and felt that any other wording would generate gray areas in the ordinance.

Vice Chair Blakaitis suggested changing the ordinance to state that clear cutting was not allowed and then simplify the section by adding a section as to what a person could or could not do on a vacant lot. Member Fricker suggested Part B be titled: "Clearing of Vacant Lots" and Subsection 1 would be "Clear cutting", as well as what currently existed would become Subsection 2.

Chairman Britt thought the Board should discuss fines and then tweak the language. Director Garman stated that he would come back with language that would establish a \$1,000 penalty for cutting a tree that was more than twenty-four (24) inches in diameter and with no mitigation and look at Section B, split it into two (2) sections with one describing clear cutting and the prohibition of clear cutting and the second section would describe what can and cannot be done to a vacant lot. He stated that he would also try to come up with a penalty that fits the action.

APPROVAL OF MINUTES

Planning Board Meeting October 14, 2009

Chairman Britt directed the Board to review the minutes from the October 14, 2009 meeting.

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

Motion carried 4-0. Member Gilbreath could not vote on the motion since he was not present for the meeting.

OTHER BUSINESS

None.

STAFF COMMENTS

Director Garman noted that the January Planning Board meeting would be held on Wednesday, January 6, 2010 at 6:30 p.m.

BOARD COMMENTS

Chairman Britt asked what the resolution was regarding the sign issue that the Board of Adjustment had heard. Director Garman stated that Superior Court granted an indefinite continuance of the case. He added that the signs were being modified and staff expected the final renderings shortly.

Member Fricker, Member Forlano and Vice Chair Blakaitis welcomed Member Gilbreath to the Board.

ADJOURNMENT

Chairman Britt moved to adjourn the meeting.

Motion carried 5-0.

The time was 8:10 p.m.

Approved: _____
/s/ Jon Britt, Chairman