

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
February 10, 2010**

The Planning Board for the Town of Duck convened at the Duck Municipal Offices at 6:30 p.m. on Wednesday, February 10, 2010.

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 Council Liaison Chuck Burdick.

Others Present: None.

Absent: Permit Coordinator Sandy Cady.

Chairman Britt called to order the Regular Meeting of the Planning Board for February 10, 2010 at 6:31 p.m.

PUBLIC COMMENTS

None.

OLD BUSINESS

Discussion of Wind Turbine Ordinance

Director Garman stated that the Town Council adopted a moratorium at their February 3, 2010 meeting for wind turbines for a period of ninety (90) days. He stated that it gave the Board several months to discuss the issue and come up with a draft ordinance for the Town Council's April 7, 2010 meeting. He noted that if the Board felt they needed more time, they could always request an extension to the moratorium. He stated that the Board could schedule a mid-month meeting for February if they wished. He went on to review the issue of wind turbines with the Board.

Vice Chair Blakaitis asked how the ordinance changed from a renewable energy ordinance to a wind turbine ordinance. He asked if it would be completed in pieces. Director Garman thought it would be a renewable energy ordinance but for now because of the moratorium, wind turbines would be discussed first. Chairman Britt noted that the wind turbine portion was the only part of the ordinance that had the moratorium on it.

Council Liaison Burdick noted that the Council wanted only the wind turbine ordinance by the end of the ninety (90) day moratorium. He added that wind turbines were just a piece of the

whole plan. Chairman Britt agreed and thought the Planning Board could complete the ordinance before the moratorium is up.

Chairman Britt stated that he was under the impression that Council did not want an expansion of the thirty-five (35) foot height limit in residential areas. He noted that Conditional Use Permits were technically allowed uses with conditions. Director Garman agreed and noted that certain findings had to be made.

Member Fricker asked if the way the Board approached the issue was dependent upon whether they want to go with a straight ordinance that people seek to obtain a permit from versus a Conditional Use Permit approach. He asked if it was a threshold issue or one the Board could address at the end of the discussion. He stated that he wasn't sure whether he agreed with a Conditional Use Permit. He stated that he would be opposed to going that route.

Member Forlano thought if the ordinance was written tight enough with enough limitations/restrictions, it would be unnecessary to require a conditional use permit. He stated that the only thing he could see with a Conditional Use Permit was that there was an element of time associated with it. Chairman Britt thought it was a good point. Member Forlano noted that the ordinance could be revised in the future if it is necessary to require a conditional use permit.

Member Fricker asked if the Board wanted to discuss the ordinance one element at a time. Chairman Britt stated that the Board could review each item one by one. Member Fricker suggested the Board discuss residential districts first. Chairman Britt thought it was good idea. Director Garman and the Board went on to discuss residential districts and height limitations.

Member Forlano asked where the thirty-five (35) foot height limit would come into play if a person wanted to put a wind turbine on the roof of their home. He asked if it would be taken from the bottom of the wind turbine or the bottom of the building. Member Fricker stated he did not know. He asked if the answer to the question would influence Member Forlano's position with regard to the threshold question as to whether the Board should establish a height limit that was uniform throughout the residential district. Member Gilbreath thought the turbine would be added to the total height of the building.

Member Fricker asked the Board if they were in agreement that they wanted to establish a height limit in residential areas for wind turbines and that it should be thirty-five (35) feet. Member Forlano stated that he agreed with Member Fricker. Chairman Britt stated that he was in agreement as well. Vice Chair Blakaitis stated that he was in agreement except for how the Board may clarify or allow wind turbines on rooftops. Member Fricker thought the answer to that seemed to focus on utility or effectiveness of the wind turbine.

Council Liaison Burdick thought his impression from the Council Retreat was that the thirty-five (35) foot height was the absolute highest anything could be built or erected. Chairman Britt thought there was some flexibility. He stated that the utility aspect had no bearing on the way he looked at the issue. Director Garman stated that there were several building features in the residential district that were exempt from the height limitation. He stated that a structure could go five (5) feet above the height limit in certain instance (i.e., solar panels, chimneys, cupolas and observation towers). He thought that wind turbines could be given the same exemption.

Chairman Britt thought the wind turbine could be put on the slope of the roof to stay within the height limitation.

Member Fricker clarified that the Board tentatively agreed that in residential districts, the height would be thirty-five (35) feet with the exception of a roof-mounted wind turbine, which could go an additional five (5) feet. He asked if it would apply to the fifty-two (52) foot residential areas as well. Chairman Britt stated this is correct. Member Fricker asked if any Board member had an argument that in the residential areas where fifty-two (52) foot houses were permitted, that the thirty-five (35) foot turbine would be included or did they have to look at turbines that would sit on top of a fifty-two (52) foot house. Chairman Britt stated that the 52 foot height limit would apply in those districts. Director Garman thought the ordinance read that the five (5) foot exemption also applied to free-standing structures. He added that the ordinance didn't state that the wind turbine had to be mounted on the roof of a building. Director Garman and the Board discussed setback ratios.

Director Garman and the Board discussed the number of wind turbines that would be allowed on a property. Council Liaison Burdick thought the decision regarding aesthetics will need to be made. Member Forlano stated that the Board could not do that. He added that they could not rule against what a property owner liked. Councilor Burdick stated that the noise associated with wind turbines would be another limiting factor. He stated that he was concerned if a property owner had sufficient space to put up 2-3 freestanding wind turbines and what the safety impact and flicker would be on neighboring properties. Member Forlano stated that the setbacks would take care of the flicker and noise. Vice Chair Blakaitis agreed with Member Forlano's comments. Council Liaison Burdick thought Director Garman could obtain input on what noise issues would be associated with wind turbines to help the Board. Director Garman stated he would research the issue and bring something back to the Board. Council Liaison Burdick stated that he would like to see something that addressed any continuous noise such as noise from air conditioning units. He thought if this wasn't included, there would be a situation something could be permitted for one person and not for another. Vice Chair Blakaitis suggested having something in the ordinance to state that maintenance and upkeep of the unit is the responsibility of the homeowner so that it does not exceed the noise limits.

Director Garman and the Board discussed tower design and appearance. Member Fricker stated that he didn't have any problem with what has been proposed. Council Liaison Burdick stated that he didn't like that they would be white in color. Vice Chair Blakaitis asked Council Liaison Burdick what was wrong with the color white. Council Liaison Burdick stated that it would stand out. He thought that they should blend in and added that white would not blend in very well. Vice Chair Blakaitis asked Council Liaison Burdick what he would suggest for a color. Director Garman stated that the language that was used in the commercial ordinance could be used, which calls for neutral, subtle or earth tones. Council Liaison Burdick thought it would make sense.

Chairman Britt suggested that the Board discuss the appearance of wind turbines. Director Garman noted that some ordinances do not allow lattice-type towers. The Planning Board agreed to allow monopole type towers only.

Chairman Britt directed the Board to discuss lighting. He asked the Board if they wanted to go with having no lighting on the turbines. It was *consensus* of the Board to not have lighting on wind turbines. Council Liaison Burdick asked if signage should be included. Chairman Britt felt the language in the ordinance wasn't strong enough for signage. Director Garman noted that the language in the Pine Knoll Shores' ordinance would work better in this instance (regarding signage and lighting). It was *consensus* of the Board to use the language from the Pine Knoll Shores ordinance.

Chairman Britt directed the Board to discuss the decommissioning requirements. Member Fricker noted that that the ordinance referred to owners or occupants. He asked why it would be anyone other than the owner. Chairman Britt thought the language came from ordinances that address utility scale turbines where the owner of the turbine may not be the owner of the property. Member Fricker noted that if the Town gave the occupant notice, it was still requiring the owner to hold the entire responsibility. He thought it should be a "short leash" if the wind turbine was not being used or maintained. He didn't think there should be a lot of leniency. Member Fricker agreed. Council Liaison Burdick asked about owners who only lived in Duck part-time. Chairman Britt thought there could be language crafted with regard to seasonal owners. Member Fricker asked how long the wind turbine had to be out of service before the time starts ticking for the owner to decommission it. Vice Chair Blakaitis noted that the ordinance had language giving the owner ninety (90) days if it wasn't operational for a continuous ninety (90) day period. Chairman Britt thought the language should be strict and if there was a situation that required leniency, it could happen. It was *consensus* of the Board that they wanted the timeframe for decommissioning to be relatively short.

Chairman Britt asked the Board if they thought anything was missed in the ordinance. Member Fricker stated that the additional findings and conditions section and the waivers and exceptions spoke to Conditional Use Permits as a way of going at the issue. He added that the Board had decided to wait to make a decision at the end of the discussion. He wasn't sure if it was at the end of the meeting or at the end of the whole discussion. Chairman Britt thought once the rules were established, it could be set up as an administrative or Conditional Use Permit. Member Fricker stated that the Board was leaning towards a permitted use. Director Garman suggested that the Board consider a special exception if there ordinance permitted wind energy facilities by-right. Director Garman and the Board went on to decide what was desired and then discussed whether it should be a Conditional Use Permit, Special Exception or administrative.

Chairman Britt asked the Board if they wanted to discuss commercial uses at this meeting or at a later meeting. He thought there needed to be a discussion about commercial uses and another discussion regarding the Town Park property. Member Forlano asked if everything would be put in one (1) ordinance with three (3) sections. Chairman Britt thought so and thought it was one way to keep it clean and simple.

Director Garman and the Board discussed commercial uses. Director Garman stated that the biggest issue would be height. He suggested keeping the standards the same as residential or as a permitted use. He suggested discussing some sort of increased height as a conditional use. Chairman Britt stated that he liked the idea of an edict of an exception or CUP if the owner wanted to go above the thirty-five (35) foot height limit. Member Forlano reminded the Board that they had to come up with a Village Commercial ordinance because the lots in Duck were so

small and irregular in size. He added that there were only a couple properties like the Waterfront Shops or Scarborough Faire that had the area necessary for a taller wind turbine.

Member Fricker stated that he did not make a big distinction between aesthetic considerations in residential areas or the business areas. He thought one of the things that was most striking about Duck was that in the business district, all the power lines were underground or out in the sound. He stated that Aqua-S having three (3) wind turbines sitting on their front lawn was not appealing to him and made the place look tacky and industrial. Chairman Britt thought there would be opposition to the whole issue.

Chairman Britt thought the Board needed to think about things a little more. He stated that he did not object to Director Garman's thought in that if the turbine is above thirty-five (35) feet, it became a CUP, so the applicant would have to come before the Board and could obtain more input. He thought the Board would recommend what they thought was right and then the Town Council could decide if they want to change the height limit.

Chairman Britt asked if it was consensus of the Board to direct Director Garman to draft an ordinance that would allow a higher height but that the applicant would have to come before the Board. Director Garman pointed out that the Commercial Design Guidelines spoke to placement of mechanical and utility equipment. He stated that the guidelines would, in theory, apply to wind turbines. He added that there would be a separate ordinance for wind turbines, but the Board would still review a commercial project in light of the guidelines, including the wind turbines. He suggested amending a section of the ordinance to directly deal with it. Chairman Britt noted that it would be utility equipment. Director Garman indicated that the ordinance specified that utility equipment did not include overhead power lines, light poles or similar equipment. He asked the Board if they wanted to specifically amend that section to deal with wind turbines. Chairman Britt asked the Board if they wanted to put further restrictions on the owner. He suggested that the Board draft their own language for turbines. Vice Chair Blakaitis noted that turbines weren't utility lines. Member Forlano noted that the turbines fell under utility equipment. Vice Chair Blakaitis stated that he didn't think they fell under utility equipment.

Council Liaison Burdick asked the Board if they thought Duck wanted to be a "green" town. Chairman Britt stated he would not like to see wind turbines go before the Board of Adjustment for the decision on height, as that Board doesn't know a lot about the issue. Director Garman stated that the Planning Board had to make a decision on whether to make the issue a CUP or not. He added that the Board was leaning towards a permitted use. Chairman Britt thought both commercial and residential uses could be achieved as a permitted use. Vice Chair Blakaitis noted that there would be a double height standard. Chairman Britt suggested having the uses as permitted ones.

Member Forlano asked if there could be an ordinance with part of it having residential as a permitted use and the commercial use through a CUP. Chairman Britt stated that it was possible. Member Forlano stated that he had envisioned the ordinance to be written that way. Chairman Britt agreed.

Member Fricker stated that he liked the look of the Village Commercial district as well as the rest of the residential area. He stated he would like to try to preserve it to the extent that the

Board could. Council Liaison Burdick pointed out that the Board hadn't addressed the Municipal area. He thought the question was if the Board wanted to allow anything in the Town Park. Member Forlano stated it would be handled as a CUP. Chairman Britt agreed.

Chairman Britt directed Director Garman to bring a draft ordinance back. He stated that based on the discussion at the March 10, 2010 meeting, it will be decided whether a mid-month meeting would be needed in order to send it to Council. Vice Chair Blakaitis pointed out that the Board had ninety (90) days to send it to Council. Chairman Britt reminded the Board that he would not be attending the March meeting. Director Garman stated that he would work on the ordinance and forward it to the Board well in advance of the March meeting.

Chairman Britt thought the Board made a lot of progress. Council Liaison Burdick suggested having a February mid-month meeting. Chairman Britt noted that he hoped that Council would look at the ordinance at their April 7, 2010 meeting. Member Fricker agreed. Council Liaison Burdick thought it would be worthwhile for Director Garman to draft an ordinance now and bring it back at a mid-month meeting so they wouldn't go to the April Council meeting and ask Council to make up their minds about the ordinance. Chairman Britt stated that the Board wouldn't, as Council would see it at their April 7, 2010 meeting and then schedule the public hearing for the May 5, 2010 meeting. Vice Chair Blakaitis agreed and noted that Council would need to schedule a public hearing. Council Liaison Burdick reminded the Board that the moratorium ends on May 5, 2010. Chairman Britt stated that the Board was aware. Council Liaison Burdick noted that the Board may not be at a final point for Council to schedule the public hearing. Chairman Britt and Director Garman noted that Council could extend the moratorium by thirty (30) days. Director Garman stated that the draft ordinance would be able to be presented to Council at their April 7, 2010 meeting. He added that there could be a moratorium extension drafted at the same meeting so Council could make a decision.

Chairman Britt thought giving it to Council at their April 7, 2010 meeting would give them enough time to decide whether or not to extend the moratorium. Member Fricker asked if the Board was contemplating having two (2) additional meetings before the draft ordinance is presented to Council in April. Chairman Britt thought the Board would have one (1) meeting in mid-March if they needed based on the results of their regular March meeting. He thought the Board accomplished a lot and didn't think a second meeting was needed for February. Vice Chair Blakaitis clarified that Chairman Britt would be able to attend the mid-month meeting in March. Chairman Britt stated that he would. Member Fricker suggested that rather than have the mid-month meeting in March, it would be good to have a second meeting on February 24, 2010 and only one (1) meeting in March – the regularly scheduled one. Chairman Britt asked if Director Garman would be able to have information ready for a February 24, 2010 meeting. Director Garman stated he would. It was *consensus* of the Board to have a mid-month meeting on February 24, 2010 at 6:30 p.m.

NEW BUSINESS

None.

APPROVAL OF MINUTES

Planning Board Meeting January 6, 2010

Chairman Britt directed the Board to review the minutes from the January 6, 2010 meeting.

Council Liaison Burdick stated he had one change. Vice Chair Blakaitis pointed out that Council Liaison Burdick was not a member of the Planning Board. Council Liaison Burdick stated he wanted the minutes corrected because he was misquoted. He had two changes to Page 5.

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

Motion carried 5-0.

OTHER BUSINESS

None.

STAFF COMMENTS

Director Garman stated that in light of the recent rainfall the area has experienced, the Town has had a lot of problem areas and has learned of several properties considering raising their homes to resolve drainage issues. He stated that if a property owner was going to take an existing house built on a slab and elevate it and build it on a wood floor system, the wood floor system would be elevated to the base flood elevation with the bottom of the joist at base flood elevation, which adds a foot to the entire house. He added that the Town had received multiple cases where the property owner needed an extra foot of height since they would be building on a wood floor system versus a slab. He thought it could be something the Board could consider allowing without having to go through the variance process. Chairman Britt asked if it would be considered an administrative one (1) foot exception. Director Garman stated it would.

Director Garman stated there was another case in the Four Seasons subdivision where the owner had his house on a slab located at seven (7) feet above sea level and wanted to elevate his house to ten and one half (10½) feet. He added that the base flood elevation was at nine (9) feet. He stated that the owner wanted to be one and a half (1½) feet above base flood elevation because the owner thought he would need to be this high to get out of the flooded area. He noted that if the owner raised his house using pilings, which from a flood damage prevention perspective was preferential, he couldn't do it since the Town measures from base flood elevation, not from where the finished floor was. He added that the Town's fill ordinance allows the owner to fill three (3) feet, so he could fill the property to ten and one half (10½) feet and Town staff would measure from the center of the slab instead of from the base flood elevation. He stated that it favors someone that wants to use fill, as they wouldn't have to obtain a variance.

Chairman Britt stated that the only way to fix the problem would be to make it easier for the variance process.

Director Garman stated that he could bring the issue back at a future Board meeting so it could be reviewed in detail. Chairman Britt stated it could be brought back at a later meeting. He

added that he would like to see some flexibility in the ordinance to keep people from having to jump through unnecessary hoops.

BOARD COMMENTS

None.

ADJOURNMENT

Chairman Britt moved to adjourn the meeting.

Motion carried 5-0.

The time was 9:04 p.m.

Approved: _____
/s/ Joe Blakaitis, Vice-Chair