

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

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

Present were Vice-Chair Joe Blakaitis, Ron Forlano, John Fricker and Randy Gilbreath.

Absent: Chairman Jon Britt.

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

Others Present: None.

Absent: None.

Vice-Chair Blakaitis called to order the Regular Meeting of the Planning Board for March 10, 2010 at 6:32 p.m.

PUBLIC COMMENTS

None.

OLD BUSINESS

Continuation of Wind Turbine Ordinance Discussion from February 24, 2010

Director Garman stated that the Board had a draft of the revised ordinance in their packets. He explained that staff made a number of adjustments that were suggested at the Board's last meeting including revisions to the noise section to deal with adjacent property owners. He went on to review the changes to the ordinance with the Planning Board.

Vice-Chair Blakaitis stated that there were two (2) major issues from the last meeting – the number of turbines per lot and noise. He stated that he would like to review the ordinance point by point like the Board did at their February 24, 2010 meeting.

Vice-Chair Blakaitis directed the Board to review the definitions section of the ordinance.

Council Liaison Burdick pointed out that the ordinance stated that only one (1) wind energy facility was allowed according to the definitions. Vice-Chair Blakaitis explained that it wasn't a limitation, but a definition.

Member Fricker suggested that the last definition on Page 2 should read: "...not exceeded ten percent (10%) of the time. Director Garman stated that the L-90 standard is used to define

ambient conditions since this is the sound level that is exceeded ninety percent (90%) of the time. He stated that if it is exceeded ninety percent (90%) of the time, it would mean that most everything was exceeding that sound level. He stated that the ambient level is considered the background noise level.

Vice-Chair Blakaitis asked Council Liaison Burdick if Director Garman answered his question regarding ambient noise. Council Liaison Burdick stated that it was a statistical indicator. Director Garman stated that a lot of ordinances use it to define ambient noise. Director Garman and the Planning Board went on to discuss ambient noise, the definition of L-10 and how it was referenced in the ordinance.

Vice-Chair Blakaitis asked if the definition of ambient noise should be left in the ordinance. It was *consensus* of the Planning Board to leave the definition in the ordinance.

Vice-Chair Blakaitis noted that Item A was noticeably absent in the ordinance. He asked why it wasn't in the ordinance. Director Garman explained that the reason that he did not include a purpose in Item A was because the title of the section was renewable energy and thought the Board could establish a purpose for the entire ordinance once they worked through the rest of the issues. He stated that he left it blank for now. He stated that the purpose at this point, was simple since the Board was discussing only wind turbines. He stated that it was up for discussion with the Board, but he would interpret from past discussions that the Board wanted to balance private property rights with Land Use compatibility by allowing people to benefit from installing wind energy facilities, while at the same time preserving a property owner's enjoyment of their property.

Vice-Chair Blakaitis clarified that the current ordinance was specifically a wind energy ordinance and would later be a part of the more comprehensive renewable energy ordinance that the Board would be working on. Director Garman stated he was correct. Vice-Chair Blakaitis stated that any purpose in the current ordinance should be specifically oriented to wind.

Vice-Chair Blakaitis directed the Board to review Item C2 of the ordinance. Member Fricker asked if the Board should consider setbacks between two (2) free-standing turbines on a lot. He thought there was a decent distance between each turbine in other areas. He wondered if the Board should consider a minimum distance between multiple free-standing turbines. A gentleman from the North Beach Sun paper was recognized to speak. The gentleman thought it was an engineering issue and one that would be self-correcting. Council Liaison Burdick suggested the language should read: "...multiple towers should be based on sound engineering practices..."

Vice-Chair Blakaitis stated that he did not have an objection to the way the section was written. He suggested that once the Board reviewed Item C3, and they decided not to permit more than one single wind energy facility per lot, there wouldn't be an issue with the setback problem. He added that if the Board did allow more than one, they could revisit the setback portion of the ordinance. Member Fricker stated that he did not feel strongly about internal setbacks between turbines.

Member Forlano noted that in Section C2 the reason for setbacks from public or private roads was for public safety considerations. He asked about commercial lots where there was a parking lot for the general public to congregate. He asked if it was the same scenario as a public or private street. Member Gilbreath stated that private properties have insurance to cover liability situations. He thought the concern was with public properties. Member Forlano asked what would happen if an owner had insurance and wanted to put a turbine next to the public road. Member Gilbreath stated that as a Town, it had the right to say the turbine could not fall on a public road. Director Garman and the Board went on to discuss public and private rights-of-way with regard to wind turbines. It was *consensus* of the Board to change the language of Item C2(b) and leave C2(a) as is.

Vice-Chair Blakaitis directed the Board to review the roof-mounted wind turbines section of the ordinance. It was *consensus* of the Board to leave the roof-mounted turbines section in the ordinance.

Vice-Chair Blakaitis directed the Board to review Section C3 of the ordinance. Member Forlano disagreed with the language regarding limiting the number of turbines allowed. He thought an owner should be allowed as many as they can fit on their lot while still meeting the setback requirements. He added that it would relate to noise and added that the sum of the parts needed to be thought about. Member Fricker noted that there would be a synergistic effect with multiple turbines on one lot. Director Garman thought Member Fricker made a good point. He stated that flexibility up front could become a little more subjective with regard to how multiple turbines were measured. It was *consensus* of the Board to strike Section C3 from the ordinance.

Vice Chair Blakaitis directed the Board to review the noise portion of the ordinance. Member Fricker clarified that in order to limit the noise, it would require pre-permit testing. Director Garman stated he was correct. Member Fricker suggested the language in C4(a) read: "...the maximum allowable sound resulting in all wind energy facilities on a single lot shall be fifty-five (55) decibels or five (5) above the pre-existing ambient noise..." Director Garman stated that he had researched the issue and talked to another town planner that developed their wind energy ordinance which was similar to the one the Board was discussing. He noted that an upfront detailed noise assessment would add a huge expense to the property owner. He thought it was something that the Board should consider.

Member Forlano stated that he was concerned about the potential for the future with wind turbines. Director Garman stated that the ordinance was not going to be a perfect one. Member Fricker stated that he wasn't concerned about the ordinance being imperfect; but that he wasn't sure it was enforceable. He stated that the Board could look at a conditional use permit. He noted that the Board was looking at the wind turbines as one that would be permitted by right. He added that they could always require a Conditional Use Permit application. Member Fricker asked if every case for a Conditional Use Permit would be decided depending on facts and circumstances. Director Garman stated he was correct. Member Fricker thought that would not be the way to go.

Member Fricker suggested the following language: "...multiple facilities are permitted as long as they meet the setback..." He further suggested: "...in no event will the sound for all facilities on a given lot exceed..." Member Gilbreath thought the ordinance could stick with the same

number. He suggested the following language: "...the sum of all wind producing turbines could not be more than what was currently allowed..." Director Garman and the Board went on to discuss ambient noise and decibel levels.

Member Fricker suggested the following language: "...the maximum noise, ambient and source, permitted during the day is sixty-five (65) decibels." He stated that it could be a different number. He stated by having that language, ambient noise would not need to be measured and would just set a limit above which it could not go for more than ten percent (10%) of the measureable duration. Vice-Chair Blakaitis thought it was self-retracting. Director Garman stated that it was what he was trying to achieve with the fifty-five (55) decibels. Member Fricker agreed, but thought the Board's hang up was the five (5) over ambient and that the Board was trying to figure out how to measure a moving target. Member Forlano clarified that "ambient" should be stricken from the ordinance. Member Fricker stated he was correct. Council Liaison Burdick thought the ordinance would be too restrictive with fifty-five (55). Director Garman stated it would be restrictive on Duck Road in that it may increase the setbacks.

Vice-Chair Blakaitis felt the Board was going in a big circle with the discussion. Member Gilbreath stated that he liked the new wording but thought the original language also needed to stay in the ordinance. Director Garman suggested the following language: "...the maximum audible sound resulting from all wind energy facilities kept on the same lot shall be fifty-five (55)..." Member Gilbreath stated that he liked Director Garman's proposed language.

Director Garman pointed out that the premise behind the ordinance was that mechanical noise had the ability to produce a certain amount of noise and also took into account areas that have greater ambient noise by giving them additional flexibility. Member Fricker asked Director Garman if he was prepared to enforce the ordinance and require homeowners to spend the money. He added that he would support the language. He didn't think Director Garman felt comfortable with doing that. He proposed taking out the X above ambient.

Member Fricker suggested that an ordinance be recommended that would have an absolute number and see how it worked. He added that if people became litigious, the Town could always adopt more regulations if necessary. Director Garman asked Member Fricker if he was suggesting that the owner measure noise before the turbine was installed. Member Fricker suggested that the homeowner obtain a certification from the manufacturer of what noise the turbine would produce and measure it against what the maximum was in the ordinance. He further suggested having an ambient noise test performed with a decibel meter.

Member Forlano thought the studies should be performed up front. He suggested that the responsibility be put on the manufacturer. Vice-Chair Blakaitis stated that he liked the idea of having the manufacturer provide the specs for the turbine. He thought it should be kept simple and put something down with numbers and let it fly. Member Forlano stated that if it was going to be done that way, it should be left as is. He suggested that as part of the permit process, the owner would be required to show a two (2) day study of what ambient conditions were.

Vice-Chair Blakaitis clarified that the Board wanted to keep Paragraph A and B as is and add something that stipulated that the homeowner had to provide data to the Town. Director Garman stated that he would add the language on Page 5 F2(d).

Member Fricker stated that he liked the position but did not like the terms “estimated” and “measured.” Director Garman stated that “estimated” would be the noise level from the wind energy facility while “measured” would be ambient. Member Fricker stated that the manufacturer could certify how much noise a turbine would put out. Director Garman and the Board went on to discuss ambient noise.

Member Fricker suggested the following language: “...when it is deemed necessary by the office of X to measure noise generated by wind turbines as a result of...” He further suggested that the word “valid” be stricken from the ordinance so the sentence would continue as: “...by a complaint reported in accordance with the procedures...” Director Garman and the Board continued their discussion on noise. Director Garman reviewed the new language in the ordinance with the Board. It was *consensus* of the Board to use the new language in the ordinance.

Vice-Chair Blakaitis directed the Board to review Structural Requirements of the ordinance. Member Fricker stated that D1 – “all wind energy systems” – be changed so it would be consistent with the rest of Section D of the ordinance. Director Garman suggested the language be changed to “wind energy facilities” instead of “wind energy systems.” He stated that he would like to leave “wind energy facilities” as it was more consistent with the entire ordinance. Member Forlano agreed. It was *consensus* of the Board to make the language change.

Director Garman and the Board discussed wind energy certification standards. Director Garman suggested that when the Small Wind Certification Council adopts their standard for small wind energy systems, that wind facilities in Duck shall meet the certification requirements as adopted by the Small Wind Certification Council. Member Forlano thought it should be part of the permitting process. Vice Chair Blakaitis agreed. Member Fricker asked if something was going to be added to the list of permitting requirements. Member Forlano suggested it be added to the end of D3 with regard to wind energy requirements. Member Fricker suggested it be added to F2 as (k). It was *consensus* to put it under D3 as well as the section regarding AWEA standards.

Member Fricker moved to recommend to the Town Council that it adopt the ordinance as amended and in so doing, the Planning Board makes the finding that the ordinance was consistent with the CAMA Land Use Plan. Member Forlano seconded.

Motion carried 4-0.

NEW BUSINESS

None.

APPROVAL OF MINUTES

Joint Planning Board/Town Council Discussion from Town Council Retreat – January 19, 2010

Vice-Chair Blakaitis directed the Board to review the minutes from the January 19, 2010 meeting.

Member Fricker moved to approve the minutes as presented. Member Forlano seconded.

Motion carried 3-0.

Planning Board Meeting February 10, 2010

Vice-Chair Blakaitis directed the Board to review the minutes from the February 10, 2010 meeting.

Member Fricker moved to approve the minutes as presented. Member Forlano seconded.

Motion carried 4-0.

Planning Board Mid-Month Meeting February 24, 2010

Vice-Chair Blakaitis directed the Board to review the minutes from the February 24, 2010 meeting.

Member Fricker had a change to Page 5 of the minutes.

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

Motion carried 3-0.

OTHER BUSINESS

None.

STAFF COMMENTS

Director Garman thanked the Board for their hard work on the wind turbine ordinance. Vice-Chair Blakaitis thanked Director Garman for his hard work.

BOARD COMMENTS

Member Forlano thanked Director Garman for his hard work on the ordinance. Members Fricker and Gilbreath echoed Member Forlano's comments.

ADJOURNMENT

Member Gilbreath moved to adjourn the meeting. Vice Chair Blakaitis seconded.

Motion carried 4-0.

The time was 9:12 p.m.

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