

**TOWN OF DUCK
PLANNING BOARD
RECONVENED MEETING
November 16, 2010**

The Planning Board for the Town of Duck reconvened at the Duck Municipal Offices on Tuesday, November 16, 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, Council Liaison Chuck Burdick and Permit Coordinator Sandy Cady.

Others Present: None.

Absent: None.

Chairman Britt reconvened the Regular Meeting of the Planning Board for November 16, 2010 at 2:04 p.m.

NEW BUSINESS

Continued Oceanfront Development/Beach Policy Discussion

Director Garman stated that he had given the Board a completed copy of the draft (sandbag) ordinance. He explained that the findings establish the basis for adopting the rule and each “whereas” statement encompasses a different portion of the ordinance. He went on to review the draft ordinance with the Board. He noted that sandbags were supposed to be kept covered and if they do their job, they could remain in place and would not have to be removed. However, if they become uncovered and the two year timeframe expires, they would have to be removed.

Vice Chair Blakaitis asked if there were any cases where homeowners have filled on top of sandbags to keep them from becoming uncovered. Director Garman stated that he did not know of any. Member Forlano asked if the practice would be allowed. Director Garman thought CAMA had not taken too many enforcement actions on it, but if they did, they would just document the condition.

Member Forlano asked if a property owner felt strongly about sandbags, even if the Town adopted an ordinance prohibiting them, they could go through an appeal process with CAMA. Director Garman stated that he spoke to several people at CAMA and was told that if the Town adopted an ordinance prohibiting sandbags, they would not issue a permit for them because it had to be consistent with local regulations. He stated that he would check with Town Attorney Hobbs on it. He added that if the Board considered sandbags as a use, a property owner could not appeal to the Board of Adjustment for a variance as they could not legally hear use variances.

Vice Chair Blakaitis clarified that the only change to the ordinance amendment was the addition of Item E. Director Garman stated that he was correct. He continued his review of the draft ordinance with the Board. Chairman Britt thanked Director Garman for drafting an ordinance in such a short timeframe.

Member Fricker asked if the Board was not obliged to discuss and research other potential considerations. He thought it was the Board's responsibility. Vice Chair Blakaitis thought the Board's responsibility was to let property owners know where they could move their home.

Chairman Britt asked if any other towns have passed an ordinance prohibiting sandbags. Director Garman stated that there weren't any. He added that Currituck County was considering it for the four-wheel drive area, but have not adopted anything yet. He stated that he completed extensive research before the meeting and could provide his results to the Board for their review so they could either agree or disagree with the statements in the ordinance regarding impacts to the beach as well as the strategies the Town would utilize.

Director Garman thought that the ordinance would probably blindside some of the Council members as he didn't think they were expecting it. Member Fricker stated that they would only be blindsided if they didn't know about it until they receive their agenda. He thought they should be alerted after the meeting about it. Director Garman stated that he would do so.

Vice Chair Blakaitis asked if the draft ordinance would have to go to a public hearing. Director Garman stated that it would since it was drafted as a zoning ordinance. Member Fricker clarified that it would be presented at the Council's December 1, 2010 meeting and they could either consider moving forward with a public hearing or send it back to the Board for further consideration. Director Garman stated that he was correct. Member Fricker stated that he keeps going back to the moratorium process. Director Garman explained that it would still need a public hearing and a sense of urgency would have to be established in the moratorium.

Chairman Britt noted that sandbags have a long history of not working and seemed to go against its own intent. He thought sandbags could be singled out as something that could be prohibited. Member Fricker wondered if Director Garman found anything that proved that they were useful.

Member Forlano asked if a good attorney could make a point between using sandbags or losing a house. He stated that he was concerned that CAMA was willing to pass the issue off to the towns. Director Garman stated that he could get some advice from Town Attorney Hobbs on the issue. He thought it would be easier for the Town to prohibit sandbags on the front end than adopt a regulation allowing them with enforcement on the back end.

Vice Chair Blakaitis stated that sandbags have done some good, but it was temporary and was only to the individual property. Director Garman stated that it becomes the property owner versus the public and the beach. Member Fricker stated that the Town needed to look out for the welfare of the public and the beach.

Vice Chair Blakaitis asked if language in the ordinance should be added that would prohibit sandbags unless another option existed. Director Garman reviewed alternative options to banning sandbags with the Board.

Chairman Britt stated that other towns were dealing with the sandbag issue and struggling with the language because they already have sandbags in place at properties. He noted that the Town did not have any. He stated that the Board can look up and down the coast and determine that it is an antiquated rule. He added that it was not the end of the Board looking at beach issues. They are identifying something that they do not like and can get rid of and then plan to continue looking at other language. Director Garman stated that it was one piece to look at. He stated that the Board would also need to discuss the nuisance aspect of it as it was important. Vice Chair Blakaitis stated that the Board needed to impress upon the Town Council the importance of dealing with sandbags now since they do not work. Director Garman thought it would be helpful to have some of the Board members present at the Council meeting.

Member Fricker stated that the Board could go through the process of approving a motion sending the issue forward, but suggested that the Board may want to do more with a resolution or letter to the Mayor to explain how uniquely significant the issue was to the future of the community and that the Board wanted to do something that was comprehensive. He felt there needed to be a focus on an affirmative education process as well. Chairman Britt noted that the Board was not done looking at the issue, but that it was just the beginning. Council Liaison Burdick felt that if the issue was going to be presented to Council, it should be presented in a forceful manner with pros and cons noted.

Chairman Britt stated that if the Board decided to send the item to Council, it would behoove the Board to attend the Council meeting. He stated that it should be made clear that this was not the end of the Board discussing beachfront issues and that they were not trying to ruin oceanfront homes or take away options, but that it was a unique opportunity to take care of the issue.

Member Gilbreath moved to have the Planning Board recommend that Town Council adopt the amendment to Ordinance #10-14 as drafted subject to the findings. Member Fricker seconded.

Motion carried 5-0.

Director Garman stated that he would draft a letter to the Council that would include certain points: that the Board was trying to get ahead of the problem and that this was the first step to a more holistic approach and that there would be an education process throughout. Chairman Britt added that the Board would continue to work with the oceanfront property owners to help them protect their properties within reason.

OTHER BUSINESS

None.

STAFF COMMENTS

None.

BOARD COMMENTS

Chairman Britt stated that he would be unavailable to attend the Council meeting.

ADJOURNMENT

Chairman Britt adjourned the meeting.

The time was 3:18 p.m.

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