

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
January 12, 2011**

The Planning Board for the Town of Duck convened at the Duck Municipal Offices on Wednesday, January 12, 2011.

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: Town Manager Christopher Layton.

Absent: Council Liaison Chuck Burdick.

Chairman Britt called to order the Regular Meeting of the Planning Board for January 12, 2011 at 6:35 p.m.

PUBLIC COMMENTS

None.

OLD BUSINESS

Continuation of Beach Policy/Ordinance Discussion

Director Garman stated that in previous meetings the Board had discussed the use of sandbags, the relocation of erosion threatened oceanfront structures, and now they were ready to discuss ordinances to facilitate the removal of storm damaged or erosion threatened structures that encroach onto the publicly used portion of beach. He asked if the Board was in agreement that this issue should be addressed and suggested that the Town should have a means to ensure that the public beach remains open and free of structures and debris.

Member Fricker stated that he had the impression that it would be easier said than done as far as getting an owner to remove a structure. He asked why the Town of Nags Head ordinance was in the Board's packets. He further asked if it was something that the Board should be seriously considering and if so, what was the problem with enforcement of the Nags Head ordinance. Director Garman stated that the Town of Nags Head ordinance was a recent one. He added that Nags Head had adopted a similar ordinance years ago that allowed them the authority to remove a structure that was impeding access on the beach and titled it a "minimum housing ordinance". He stated that the ordinance was adopted; enforcement actions were taken and then the Commissioners ended up retracting the ordinance because of the number of complaints received

at the meetings. He stated that Nags Head recently decided to try to ramp up the policy again and adopted the latest ordinance at the end of 2010.

Member Gilbreath felt that the only way an ordinance would work would be to put a lien on the property once it's in the public trust. Member Fricker stated that the problem with that is that by the time the house falls into the ocean, the property is deemed worthless since there would not be any way to build on it. Member Gilbreath stated that the Town could collect from the insurance company. Member Fricker noted that a lien is usually held on real property and not on rights, actions or insurance proceeds. Director Garman stated that he needed to complete more research on the issue of trying to collect costs associated with demolished structures on the beach. He wasn't sure how successful they were or what type of methods were used to do it.

Member Fricker stated that the other issue was conflict in that a homeowner would not collect any insurance proceeds until the house has fallen into the ocean as they would not be paid the proceeds until then. He thought it was too late and thought the Board should consider the prospect of requiring the homeowner to take remedial action before the house becomes threatened.

Vice Chair Blakaitis stated that he had a problem with the definition of "public trust". He stated that it seemed that there were varying degrees of understanding of what it exactly was. He wasn't sure he understood the definition in the Town of Nags Head's ordinance but thought they made a good attempt to clear it up.

Director Garman explained that, with regard to oceanfront development, CAMA requires an AEC hazard notice to be signed by an oceanfront property owner if their structure becomes imminently threatened. He added that the structure must be moved or relocated within two years of it being threatened. He noted that the regulation has never been enforced. He stated that staff contacted CAMA about it and were told that the issue has never been enforced and that CAMA has never made a declaration when the structure is threatened. He stated that the only time CAMA would do it was if an owner applied for a permit for sandbags.

Vice Chair Blakaitis asked if it was possible for a locality to use the definition of "imminently threatened" for sandbags or for any issue. Director Garman thought it could be done.

Member Fricker asked if it was consensus of the Board to take steps to act sooner rather than later in terms of putting a timeframe on the issue. Chairman Britt thought there needed to be a way to warn homeowners. Director Garman asked the Board if they wanted to go a step further and try to enact something. Member Fricker and Chairman Britt agreed and felt the Board should be proactive in the approach. Vice Chair Blakaitis agreed. Member Fricker thought that the Board should be looking to do everything that the Town could do legally to be proactive in requiring a homeowner to take action before a house is lost to the ocean. Chairman Britt thought there should be a timeframe and accessory structures should be included.

Director Garman stated that there would be a process started to notify an owner at some point in time when their structure is within a certain distance of the beach. He added that the notification would state that the house would be documented as imminently threatened and within two years would need to be relocated or removed based on the Town's regulations. He further added that if

the house wasn't relocated or removed, enforcement may be necessary. Member Fricker thought the Board needed to focus on what could be done to encourage people to do something to save their home. Chairman Britt thought it could be discussed at the Council Retreat.

Director Garman stated that it needed to be defined what a homeowner could do so their home would not become imminently threatened. He wondered if at the end of the two year timeframe, what should be done if the escarpment had not moved. He asked if the Town should still require the house to be moved or if enforcement action should be taken. Member Gilbreath wondered if the Town should issue another two year notice. Member Fricker stated that if the situation had not changed, the time had run out and something should be done. Director Garman stated that while the Town would try to be proactive, there would be a limit to the Town's legal authority if there weren't any impacts. Member Fricker thought the Town's attorney should be consulted.

Chairman Britt thought there should be language to address Acts of God in the draft ordinance. Director Garman stated that the Building Code addressed the issue. He added that this issue would be considered a public nuisance for other reasons such as the position of the structure on the beach. Chairman Britt wondered how it could be defined.

Member Forlano asked what would happen if a homeowner did not have any money to relocate the structure after the two year timeframe expired. Chairman Britt thought the Town would need to be in a position to help. Member Forlano didn't think it should be the Town's responsibility to help. Chairman Britt thought bringing in fill and rebuilding dunes would be a proactive measure on the Town's part. Member Forlano agreed. Member Fricker thought that there may not be a perfect answer to Member Forlano's question. He added that the Board could at least learn looking forward on how to do better. Director Garman thought the goal would be in an ideal situation, to have any structure relocated or removed before it started encroaching beyond the dune escarpment. Chairman Britt agreed.

Director Garman stated that the purpose of the discussion was to flush out what direction the Board wanted to go and what questions should be answered in order to move forward. Chairman Britt thought it should be what the Town could do, what the Town could force homeowners to do and if people could be put on a timeframe. Member Forlano thought the issue should be discussed at the Council Retreat. Chairman Britt agreed and thought the Board would receive some answers from the discussion. Vice Chair Blakaitis thought at some point, the Board was going to need to consult with Town Attorney Hobbs on the issue. Chairman Britt agreed.

Director Garman stated that this issue will ultimately become the Town's problem with regard to keeping the beach the way it currently exists, especially if the State was not willing to enforce their rules. Chairman Britt stated that the Town already made a statement about the beach with the adoption of the sandbag ordinance. Member Fricker noted that he did not want the Town to act recklessly on the issue. Chairman Britt agreed. Director Garman stated that the Town would need to obtain as much information as possible and then move forward.

Member Forlano asked what alternatives oceanfront owners had other than moving a house or pool. Chairman Britt stated that fill could be brought in. Permit Coordinator Cady added that a beach push could be completed or beach grass could be planted. Chairman Britt thought beach

pushes were horrible. Director Garman and the Board went on to discuss fill, beach pushes and beach grass planting.

Chairman Britt asked if there was anything else to discuss. Director Garman thought he had enough information to do research.

Update on Town Council Public Hearing Regarding Sandbags

Vice Chair Blakaitis and Member Fricker commended Director Garman and Permit Coordinator Cady for their hard work on getting the notifications out. Director Garman stated that he had received a lot of positive comments.

NEW BUSINESS

Director Garman reminded the Board to attend the Council Retreat on January 26, 2011 as a Planning Board work program and ordinances and polices related to oceanfront development would be discussed. He added that beach nourishment would be discussed in the afternoon.

APPROVAL OF MINUTES

Planning Board Meeting December 8, 2010

Chairman Britt directed the Board to review the minutes from the December 8, 2010 meeting.

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

Motion carried 4-0.

OTHER BUSINESS

None.

STAFF COMMENTS

None.

BOARD COMMENTS

None.

ADJOURNMENT

There was no vote to adjourn the meeting.

The time was 8:02 p.m.

Approved: _____
/s/ Jon Britt, Chairman