

**TOWN OF DUCK  
PLANNING BOARD  
RECONVENED MEETING  
July 20, 2011**

The Planning Board for the Town of Duck reconvened at the Duck Municipal Offices on Wednesday, July 20, 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; Council Liaison Chuck Burdick; Town Attorney Robert Hobbs; and Permit Coordinator Sandy Cross.

Others Present: Mayor Dave Wessel and Ed Sadler.

Absent: None.

Chairman Britt reconvened the meeting at 6:36 p.m.

**OLD BUSINESS**

**Continued Discussion/Consideration of Revisions to Ordinance 11-04, an Ordinance Regulating Erosion Threatened Structures on the Ocean Beach**

Director Garman stated that several points were made by Town Attorney Hobbs to the Council at their July 6, 2011 meeting regarding the ordinance. He stated that Town Attorney Hobbs would be discussing those points with the Board, adding that there were other points brought forward to staff by some of the oceanfront property owners concerning certain aspects of the ordinance. He stated that he had met with Ed Sadler, who had concerns about how the Town would make a determination on the seaward toe of the frontal dune. He went on to show the Board and audience photographs of the erosion that was present on the beach as well as where the seaward toe of the frontal dune was in each photograph. He stated that staff had suggested a simple change to Page 4 of the ordinance so that the language would read: "...no more than 10 feet beyond the seaward toe of the frontal dune or more than 20 feet beyond the first line of stable natural vegetation, whichever is less..." Member Gilbreath suggested looking at it from the high water mark landward. Vice Chair Blakaitis pointed out that the high water mark changes. Director Garman stated that staff had not looked at it from the point Member Gilbreath was suggesting.

Member Forlano clarified that the natural vegetation definition for the seaward toe came into play only when there was no visible drop off escarpment and that the new language replace that definition. Director Garman stated that it did not replace it, but could in certain cases. Chairman Britt felt the proposed language simplified things. Vice Chair Blakaitis thought it reduced the ambiguity of the situation. Chairman Britt stated that he liked the new language.

Member Forlano felt that a homeowner should be given as much time as possible to correct the situation if their house becomes threatened. Chairman Britt agreed, but thought it should be as much time as reasonable. Director Garman stated that the way the ordinance read was discretionary. He stated that if a homeowner was given 180 days to correct the situation, the Town Manager did not have to give the homeowner that long and could give a shorter timeframe if the situation could be corrected in a shorter time period. Chairman Britt added that the language was designed to give some discretion.

Director Garman thought that if the ordinance addressed every situation, a house could not be more than a certain distance east of the seaward toe of the first line and the walkovers could not be more than a certain distance east of the seaward toe of the first line. He suggested striking the language that spoke of structures and walkovers being on the wet sand beach.

Member Fricker noted that there wasn't anything said specifically by any Council member at their last meeting regarding what specific language needed to be tightened up in the ordinance. He pointed out that the ordinance was sent back by the Council because certain changes needed to be made, however, he did not know what Council's pleasure was in that regard. He asked if they would be happy with giving homeowners more leeway/flexibility at the expense of the beach. He added that if there was no sentiment expressed by Council, maybe the ordinance did not need to be looked at further. Council Liaison Burdick thought the whole way Council wanted to approach the issue was to ensure that the homeowners had leeway and sufficient rights; i.e. helping the homeowner instead of penalizing them. Member Fricker noted that Council Liaison Burdick's comments were not enunciated at the Council meeting. Town Attorney Hobbs stated that he wished to hold a Closed Session to give advice and elaborate on the issues that Member Fricker had brought up. Member Forlano agreed with Member Fricker's comments and thought Council wanted the Board to review the definition of one aspect of the ordinance and thought the Board had accomplished that at this meeting.

Vice Chair Blakaitis suggested stopping the meeting and not having any further discussion until after the Closed Session. Chairman Britt stated he was happy to do that.

### **CLOSED SESSION**

Member Fricker moved to enter Closed Session in accordance with Section 143-318.11(a)(3) to consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body which privilege is hereby acknowledged. Vice Chair Blakaitis seconded.

Motion carried 5-0.

The time was 7:11 p.m.

Upon return from Closed Session, Town Attorney Hobbs had some grammatical changes to the draft ordinance. He added that, on the advice of counsel, the Board directed Director Garman to make changes to the draft ordinance to be brought back at a later date. Chairman Britt suggested that Director Garman change the language under Number 4 to give more discretion.

**ADJOURNMENT**

There being no further business to discuss, Chairman Britt recessed to adjourn the meeting.  
Vice Chair Blakaitis seconded.

There was no vote.

The time was 7:56 p.m.

Approved: \_\_\_\_\_  
/s/ Jon Britt, Chairman