

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
February 13, 2013**

The Planning Board for the Town of Duck convened at the Duck Meeting Hall on Wednesday, February 13, 2013.

Present were: Chair Joe Blakaitis, Vic-Chair John Fricker, Ron Forlano, Tim McKeithan and Marc Murray.

Absent: None.

Also present were: Director of Community Development Andy Garman and Permit Coordinator Sandy Cross.

Others Present: None.

Absent: Council Liaison Chuck Burdick.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for February 13, 2013 at 6:32 p.m.

PUBLIC COMMENTS

None.

OLD BUSINESS

Discussion of Lot Coverage Regulations for Permeable Pavements

Director Garman stated that the Board had expected him to come back to this meeting with ideas for a draft ordinance dealing with commercial lot coverage for permeable pavement and after thinking about it, he realized that a different approach may be in order. He stated that he talked to Chair Blakaitis and Vice Chair Fricker and they agreed that it would be a good approach to take. He stated that he wanted to present to the Board something that would constitute a more comprehensive program to deal with stormwater for commercial applications. He stated that he prepared a draft ordinance to deal with the residential side and included it with the Board's packets. He asked the Board if they had questions or concerns about the draft ordinance.

Member McKeithan noted that Vice Chair Fricker had recommended porous concrete and porous asphalt. He asked if porous asphalt needed to be in the draft ordinance. Director Garman stated that he could include porous asphalt, but staff did not research the installation requirements for it. He added that staff looked at the Town of Nags Head's ordinance where they specifically referred to porous concrete with specific guidelines for installation that they referred to, which were included in the State stormwater manual. He didn't think they addressed porous asphalt, but this Board could include it; however, he would have to come up with standards to deal with

porous asphalt as far as the installation. Vice Chair Fricker clarified that, as proposed, porous asphalt would not be allowed. Director Garman stated that he was correct. Vice Chair Fricker asked if it could be added later. Director Garman stated that it could. He stated that he would have to research it to figure out what type of standards the Board would want to look at before they started approving it. He stated that he had a good example for porous concrete but couldn't find any for porous asphalt, nor was he aware of any instances on the Outer Banks where someone had installed porous asphalt. He stated that he could go back and pull up information on porous asphalt to bring back to the Board at their March meeting.

Director Garman stated that the intent was not to move forward with the information right away; he wanted to show the Board the draft language and get their thoughts. He thought the commercial aspect of it will take quite a bit more time and added that the Board was not being rushed to finish the ordinance. Member Murray asked if they would go to Council together – residential and commercial. Director Garman stated that there was a lot going on with the LID issue and the State was reevaluating their stormwater rules for LID and it would probably take a year for it all to take effect. He added that they were creating a lot of new tools for engineers to use to design new projects in order to meet State stormwater rules. He stated that the Board could write a LID ordinance but it would be best to time it with what the State was doing. He added that there was a training opportunity in March that the Board could attend at the Dare County Administrative Offices in Manteo.

Member McKeithan asked if porous asphalt was an option in order to offer as many possibilities as possible. Director Garman thought it was appropriate to look at but was a matter of performing some research. Chair Blakaitis thought the Board should look at it just to see what the differences were. He stated that he was under the impression that the Board was discussing both at the last meeting and including porous asphalt and concrete together. He felt it would be good for the Board to decide whether or not to put it in the ordinance.

Vice Chair Fricker noted that “any accessory use” was listed in the draft ordinance. He added that the draft ordinance listed a number of things and asked what was meant by “any accessory use”. Director Garman stated that in the zoning ordinance, accessory uses were defined as anything other than the principal structures. He added that the principal structure was a single family dwelling. Vice Chair Fricker pointed out that the language states; “any accessory use or structure”, asking if it was not a structure, what the accessory use would be. Director Garman wasn't sure but thought it meant items such as a swimming pool, shed or patio deck.

Vice Chair Fricker noted that “similar paved driveway” was used several times in the draft ordinance. He thought that asphalt should be used. Director Garman noted that anything not underlined in the draft ordinance was part of the original ordinance. He added that there could be changes if the Board found anything that did not read clearly. Vice Chair Fricker thought the sentence should read: “...asphalt or similar paved private sidewalks...” He suggested that under Lot Coverage, the language should read: “...or equivalent standard...” and take the comma out.

Member Murray asked why “paving block and pavers” were stricken from the draft ordinance. Director Garman stated that it was because permeable interlocking concrete pavers were added and it was essentially the same thing.

Member McKeithan asked if “similar materials” leave the draft ordinance too open-ended if porous asphalt was not put in it. He asked if similar materials would be too vague. Chair Blakaitis thought it would cover porous asphalt, but added that the language was not supposed to cover it. Vice Chair Fricker suggested striking “similar materials”. It was *consensus* of the Board to strike the language.

Director Garman stated that he wanted to discuss Low-Impact Development (LID) with the Board. He stated that he spoke to the Coastal Federation about it and attended a presentation that they gave on LID and obtained a lot of the information from that. He stated that one of the things that brought it to his attention was when he was thinking about the Wee Winks project and how that whole project could have been designed differently using the LID techniques. He stated that what the engineer did with the Wee Winks project was not bad in that they utilized curb and gutter around the parking lots, along with large basins for the stormwater. He added that more permeable pavement would have helped reduce the size of the basins substantially as well as it would have opened a whole new range of choices for their design.

Director Garman stated that with regard to LID techniques, it would look to design stormwater to infiltrate more closely where it falls and would allow the property owner more flexibility for the use of their property instead of dedicating a large portion of it for stormwater control.

Vice Chair Fricker stated that it seemed to him that primarily they were looking at developments that have yet to exist, where there were large tracts of land. He asked how many situations and properties in the Village Commercial District would be eligible for a potential approach to the LID technique. Director Garman stated that there weren’t too many, but the Town has had some redevelopment of sites such as the Aqua Restaurant, Twiddy Real Estate, Wee Winks and Duck Deli. He added that there will be some other projects coming up and noted that some of the existing sites could be retrofitted. He stated that if an applicant goes through the permitting process for stormwater and there is a LID ordinance in place, then they would have to look at things such as permeable pavement. He pointed out that the Town did not have an existing stormwater ordinance in place so staff relies on the CUP process to require stormwater controls in cases where there is no State permit required and most projects wouldn’t rise to the level of requiring the State stormwater permits.

Member McKeithan clarified that the Town could have an ordinance that went below the 10,000 square foot requirement. Director Garman stated that it could be required for any new development, adding that that was what most towns did. Member Murray asked if it would apply to residential as well. Director Garman stated that it would most likely be for commercial, as most communities do not regulate stormwater for residential site development. Member Murray thought it would be nice to provide an incentive at the residential level. Director Garman stated that some communities are doing that and added that the Board could certainly consider it.

Member Murray asked what would trigger the requirement for revision of a site plan if an existing commercial property was going to do a redevelopment. He asked if it was more than 50% of the value. Director Garman stated that he did not have an answer and it would be something that the Board would have to discuss. He stated that a new development, at a minimum, should meet the state stormwater requirement. He wasn’t sure if the Board wanted to

make them go back and retrofit the whole site for stormwater. He added that there could be a threshold if it was more than 50%. Member Murray thought it could be a prorated retrofit. He noted that stormwater management was not as expensive as people think and thought it was critically important. Director Garman stated that one of the reasons there isn't more flooding in the Village Commercial District was because of the drop inlets in the right-of-way that flow right out to the sound.

Chair Blakaitis asked if the LID technique was just an introductory issue that the Board was going to watch the next several months and discuss. Director Garman stated that it was a very flexible system in order to design a stormwater system. He stated that the State Division of Water Quality was working with the Coastal Federation to develop a new tool for engineers in order to design LID projects to meet the State stormwater rules. He went on to review a spreadsheet on LID techniques to the Board and audience.

Director Garman recommended that the Board follow what the State was doing with LID techniques and craft language as they move forward, in line with the spreadsheet. Member Murray asked if the Town would be waiving setback requirements. Director Garman stated that the Town has the Village Commercial Development Option, which essentially does not have setbacks. He thought if the ordinance was geared toward a LID approved stormwater plan, one of the first things to look at would be permeable pavement.

Chair Blakaitis asked the Board how they felt about the approach. He asked if they should go along with it or just move forward since there was nothing that could be done at this time. Director Garman stated that the Board could postpone making a determination and perhaps go to the training in Manteo before taking a position on the issue.

Member Murray thought it was a good direction to move in. He added that the outfall pipes needed to be a part of the long-term urban waterfront discussion. Member Forlano stated that the Board looked at the LID techniques approximately seven years ago. He added that he had seen them before and nothing was done, but felt it was something that should be done. He didn't know whether it would be done now. Director Garman stated that he had been told that it would be done in the next year because the State is finally acting on it. Chair Blakaitis thought that things were moving forward and suggested that the Board wait for the training meeting before making any decisions.

Member Forlano noted that most of Duck was sandy soil, with the biggest variable being the water table. He thought that was the variable in project developments that needed to be looked at. Director Garman thought it was a huge variable and was one that they acknowledged, but noted that it was a variable not just for LID techniques but for traditional stormwater as well. Member Forlano asked why the Town could not require a certain level of LID principles. Director Garman stated that it could but the Town needed to come up with a standard. He added that the issue was that most sites did not have to meet the State standards.

Vice Chair Fricker stated that at the last meeting, Member Forlano was fine with providing an incentive in residential situations, but he was not getting that sense with commercial situations. Member Forlano stated that the stormwater issues were in commercial areas and not residential.

Chair Blakaitis suggested that the Board wait until after the meeting before doing anything. Director Garman noted that the meeting will be held on March 21, 2013 from 10:00 a.m. – 2:00 p.m. in room 168 at the Dare County Administrative Offices. Chair Blakaitis thought it would be prudent to have something on the Board’s agenda for their April 10, 2013 meeting.

NEW BUSINESS

Review of Planning Board Related Items for Town Council Retreat on February 27, 2013

Discussion of Incorporating Town Vision Statement into CAMA Land Use Plan

Director Garman stated that it would be helpful if members of the Board were able to attend the Council Retreat on Wednesday, February 27, 2013 from 9:45 a.m. to 12:00 noon. He suggested that the Board members arrive at 9:00 a.m. to listen to the discussion on the Vision Statement and then Council would segue into a discussion of the Vision Statement as the Town may incorporate it into the Land Use Plan. He noted that each Board member had a copy of the Vision Statement and thought the intent was that it would replace the Town’s current Vision Statement, which was in the Land Use Plan. He felt it was a good Vision Statement as it included 3-5 year goals and thought the primary discussion was to sift through the Land Use Plan, not only replacing the Vision Statement, but seeing how the Town could strengthen some of the goals and objectives or add new ones as they would apply to the items in the Vision Statement. He stated that he did not envision this to be a complete rewrite of the Land Use Plan, but a tweak of some of the goals and policies based upon the new Statement.

Chair Blakaitis asked how it would be discussed at the Retreat. Director Garman stated that he would be making a presentation and review what he proposed could be done as well as providing some examples of things that could be looked at. He noted that it would just be an overview as to what it would entail to revise the Land Use Plan as there was a process that had to be followed and it would have to be approved by the Coastal Resources Commission.

Chair Blakaitis noted that this year’s Retreat did not have a lot of planning items on it. Director Garman agreed but added that there were items that the Planning Board would be involved with. Chair Blakaitis asked if there would be public discussion. Director Garman stated that there would and added that Council may ask for input. He recommended that the Board review the Land Use Plan prior to attending the Retreat to get some ideas on what they thought could be tweaked.

Discussion of Urban Waterfront Designation

Chair Blakaitis asked why the Land Use Plan needed to be updated if the Town considered urban waterfronts. He added that some of the verbiage stated that if the Town considered making the Commercial District an urban waterfront classification, that it would require a revision of the Land Use Plan. Director Garman stated that the genesis of the urban waterfront discussion came from a request and the Council asked the Board to investigate it to see what the pros and cons would be. He added that they have not made a decision and were most likely not close to taking that step. He stated that there were probably issues with the Town being able to do it. He stated that Council wanted a presentation at the Retreat, but thought the Board should move forward

with incorporating the Vision Statement into the Land Use Plan. He didn't think the urban waterfront was ready for primetime.

Vice Chair Fricker asked for an explanation on the pros and cons of an urban waterfront and why Jim Braithwaite wanted Council to consider it. Director Garman stated that one of the basic items about CAMA regulations when dealing with the sound front was that a building had to be 30 feet back from the water. He added that there was a lot of development in the Village Commercial District that was built prior to the 30 foot buffer rule, which came about in 1999. He added that prior to that, a building could be built up to the normal water line as long as wetlands were not filled. He stated that the current waterfront properties in Duck that were built prior to 1999 are: Aqua Restaurant, Sun Realty, Soundside Shops and the Waterfront Shops, adding that their development was right up to the normal water line.

Director Garman thought it was brought to the Council due to a concern that if a storm or fire destroyed the buildings, they could not rebuild. He stated that after doing some research on the issue, he found that it was not true. He added that CAMA rules state that if there was existing pervious coverage that was grandfathered prior to the buffer rule, it could be built back.

Member Murray asked if there was a footprint restriction. Director Garman stated that there was. Member Murray asked what would happen if an owner wanted to build the building back at three stories instead of two. Director Garman didn't think it could be done as he thought the owner could only build back what he had originally. He thought CAMA would see that as an expansion of a non-conformity. He stated that if the Town became an urban waterfront, the 30 foot buffer rule would no longer apply, meaning that one could build to the normal water line and vertical expansions would be allowed.

Member McKeithan asked what was behind allowing a group development to become an urban waterfront. He thought it was going against CAMA requirements. Director Garman stated that the urban waterfront was written to apply to old, historic waterfront communities who have all of the development on the water where it was not practical to meet a 30 foot buffer requirement. He didn't think it was envisioned to allow a town like Duck to be designated as an urban waterfront just so they don't have to meet the buffer requirements.

Director Garman noted that there was special legislation adopted in 2004-2005 to allow new urban waterfront communities, due to a large development being planned near Edenton, where they would use innovative concepts and have waterfront development, along with waterfront housing with boat parking. He added that it never happened but the State did adopt rules to allow them to designate themselves as a new urban waterfront community. He explained that to build a structure out over the water, it would need to be considered water dependent; such as a pier, dock or platform, but not a deck for dining or retail purposes. He added that with the urban waterfront rules, a deck for dining or retail purposes could be done, up to 20 feet beyond the normal water line. He thought it was one reason why Jim Braithwaite was interested in the designation.

Member Forlano asked if the Board or Council looked at this as a negative issue. Director Garman stated that it hasn't been determined. He added that some people may see it as a positive while others may feel it's a negative. He stated that the values for it have not been

established yet. Member Murray thought it was potentially a great thing. Vice Chair Fricker thought that the downside would be the catastrophic effects if the structure was lost due to a fire. Member Forlano agreed and asked what the negative would be for the Town. Chair Blakaitis wasn't sure.

Director Garman stated that Member Forlano just defined why they were having the discussion. He stated that he would lay out the current rules, the rules if the Town was an urban waterfront as well as the pros and cons, and if the Town would even be interested in doing it. He added that when he spoke to CAMA, he was told that the Town did not qualify for the designation because Duck was not a municipality on the date the rules were adopted. Member Forlano asked if the Town would have to be approved by the State if it was decided that Duck wanted the urban waterfront designation. Director Garman stated that it would since the State was involved with it and would have to approve it. He thought that the main thing the Council would want to do was decide what the possibilities were, what the downsides were, if it was something the Town was interested in and if so, take it as step further.

Chair Blakaitis asked what role the Planning Board would play if the issue moves forward. Director Garman stated that there would have to be a recommendation to the Council; amendments to the Land Use Plan; amendments to the Land Use map; ordinances; and additional policies adopted specifically stating if it should be allowed unfettered or have additional regulations associated with it.

Member Murray asked how much influence the Board would have in putting caveats and restrictions on it. He stated that if the Board could see there were more pros than cons with becoming an urban waterfront, additional limitations could be put on it in order for the development to be more responsive; however, the upside would be that the development would be able to be built all the way to the shoreline. He thought it was a carrot-stick approach. He asked if the Board could do that. Chair Blakaitis thought the Board would be able to do part of it. Director Garman agreed and thought that once the cons were identified, the Board would need to look at ways to mitigate it. He added that the Town could adopt an additional layer of rules to help minimize the impacts. He stated that the 30 foot buffer was supposed to help with stormwater filtration into the sound.

Vice Chair Fricker thought the LID technique and the urban waterfront designation would take a lot of education for people if the Board was going to recommend one or both. Director Garman agreed and added that a lot of the stakeholders will need to be involved.

APPROVAL OF MINUTES

Planning Board Meetings – January 9, 2013

Member McKeithan moved to approve the minutes from January 9, 2013 as presented. Vice Chair Fricker seconded.

Motion carried 5-0.

OTHER BUSINESS

None.

STAFF COMMENTS

None.

BOARD COMMENTS

Chair Blakaitis reminded the Board to attend the Council Retreat at least on Wednesday, February 27, 2013.

ADJOURNMENT

There being no further business to discuss, Chair Blakaitis adjourned the meeting. There was no vote.

The time was 8:03 p.m.

Approved: _____
/s/ Joe Blakaitis, Chairman