

**TOWN OF DUCK  
PLANNING BOARD  
REGULAR MEETING  
May 8, 2013**

The Planning Board for the Town of Duck convened at the Duck Meeting Hall on Wednesday, May 8, 2013.

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

Absent: Tim McKeithan.

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

Others Present: John Stell, Ed Sadler, Jackie Orsulak, Bryan Smith, Sam Taylor, Jeff Shields, Willo Kelly, Caryl Brackenridge, and Ben Vorndran.

Absent: None.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for May 8, 2013 at 6:37 p.m.

**PUBLIC COMMENTS**

None.

**OLD BUSINESS**

**Review/Update on Low-Impact Development Planning Efforts**

Director Garman stated that on May 1, 2013, the Planning Board held a special meeting to discuss low impact development. He stated that the purpose of this meeting was to discuss with the Coastal Federation the process for developing a LID ordinance and possibly a LID manual. He stated that the Board met with members of the Coastal Federation on May 1, 2013 and had a good discussion and thought they came up with a number of things that the Board could focus on in the Town's current ordinance to help improve the ordinance as it related to implementing LID techniques. He noted that the discussion focused on driveway standards that would prevent runoff into the street; downspouts directed to yards; and disconnecting impervious surfaces. He stated that they looked at other communities in North Carolina with LID regulations to see what might be implemented in Duck. He stated that beyond that, they discussed a process for developing a LID ordinance for commercial properties and agreed that it would coincide with what the State was doing and would incorporate the State's technical manual by reference. He stated that they discussed developing a LID manual that would be more of an educational item to help promote LID throughout Town as the stormwater ordinance was drafted.

Director Garman thought the Planning Board had some time – probably 8 to 10 months – before the State finished their process. For this reason, it was agreed that the Town could work on this over time and did not need to focus on it immediately.

Chair Blakaitis felt it was a good meeting and supplemented the workshop that was held in Manteo. He added that they did not review all of the same things that were at the workshop but the representatives from the Coastal Federation did bring a great brochure which the Board could excerpt from for the draft ordinance. He noted that the Town needed to wait for the State because it would make the work easier for the Board.

## **NEW BUSINESS**

### **Discussion of Regulating Oceanfront Accessory Structures (Pools, Dune Decks, Gazebos, Dune Walkovers)**

Director Garman stated that there has been quite a bit of discussion regarding accessory structures, especially since Hurricane Sandy. He noted that several pools had been destroyed along the oceanfront north of the pier and in some cases, those pools have been put back. He stated that staff was finding that some of the CAMA regulations were somewhat subjective when it came to regulating these items and thought Council felt a stronger need to take a look at how they are permitted. He stated that at their May 1, 2013 meeting, Council asked the Planning Board to look at options that could be considered to create additional rules to provide some sort of setback for these types of structures from the first line of stable natural vegetation, which was the line currently used to regulate dwellings.

Director Garman stated that staff prepared some materials for the Board to look at with one of the items being a copy of the Pine Island Association regulations as well as an update on what they have been doing with their association. He stated that they were proposing to regulate beach access ways and dune decks. He thought it was something that the Board could look at as a framework for their discussion. He noted that Jeff Shields of Seaside Management was present, adding that they manage the Pine Island Property Owners Association. He stated that Mr. Shields had agreed to talk about it and provide some perspective on the thought process they went through to come up with the rules.

Director Garman stated that beyond that, there was one option with regard to regulating pools and how close they could be built to the first line of stable natural vegetation. He added that staff had pulled some surveys from some oceanfront lots in order to get a sense of the average dune width from the first line of stable natural vegetation to the landward toe of the dune as well as get a sense of the area of the dune that the Board may want to have protected throughout the community in order to establish a less subjective line for protection. He stated that staff created a map that showed all of the pools in Town and measured how close each one was to the first line of vegetation post- Hurricane Sandy. He noted that this would give the Board and Council an idea of the number of structures affected if a setback is adopted.

Director Garman stated that in the staff report, several alternatives were included to establish a setback from the first line of vegetation upon which there would be limited exceptions to build structures. He added that access ways or some of the provisions from the Pine Island regulations

could be included. He stated that landward of the setback, the Board may want to discuss additional regulations to limit the overall amount of development in that area as well as the pool construction regulations.

Vice Chair Fricker clarified that Council wanted the Planning Board to recommend what structures, if any, should be permitted in the CAMA setback. He stated that he recalled from the Council meeting that the Board was to look it and include the most extreme regulation of precluding altogether reconstruction of some or all of the structures that were now permitted in the CAMA setback, with the possible exception being a boardwalk going over the dune. He asked if that was the understanding of the scope of what the Board was to discuss. Director Garman stated that Council was looking at a range of alternatives; from providing the most protection to the dune system, to providing the minimal level of dune protection. He added that they wanted to see a menu of things that they could choose from. He thought the Board could come up with several tiers of options to look at.

Vice Chair Fricker asked which structures are the most detrimental to the dune system if they are allowed to be rebuilt. He further asked if pools would be the most detrimental. Director Garman thought that pools tended to be the largest structures. He added that pools, dune decks, gazebos and regular decks were allowed in the CAMA setbacks. He stated that pools and pool decks usually are the largest structures in the setback and require the most excavation. He added that it would depend on where they are located.

Member Murray thought that the problem seemed to be that CAMA regulations required that the primary dune not be disturbed. He stated that the issue in this case was that the primary dune was already gone. He added that since the primary dune could not be disturbed, it may make the issue moot except in places where a primary dune did not exist. Chair Blakaitis stated that that was the problem in Duck as there were situations where there wasn't a dune; pools were being rebuilt and the dune was recreated. He added that essentially there wasn't any more vegetation. Member Murray asked if that was the issue. Director Garman stated that it was. He understood that when the CAMA regulations were drafted, he thought they were meant to encompass pools as well. The setback is based on a 30 year amortization schedule. However, an owner is not usually willing to abandon their house in 30 years. He stated that if a pool was built east of that line, then in 10-15 years the water would be lapping at the edge of the pool since they are exempt from the setbacks.

Chair Blakaitis noted that the Town did not want to punish a specific section of Town. He thought the Board needed to look to the future as to where they would spread. Member Murray thought if the Board was going to define setbacks and if some portion of Town had a vegetation line while in another portion there wasn't one, the setback could not be defined based on the vegetation line. Chair Blakaitis agreed. Director Garman stated that staff interpolates the vegetation line from the property corners of the property or from an adjacent if there is no vegetation line. He thought this methodology would be useful and not difficult to administer.

Chair Blakaitis asked what the Town would do if there was a broad area of no stable vegetation line. Director Garman stated that CAMA has in their rules a way that they do that; however, it was not something he was familiar with and he would have to research it.

Vice Chair Fricker felt that the Board was putting the cart before the horse. He added that the Board was addressing how they may define and enforce certain regulations via use of a destroyed first line of stable natural vegetation. He thought the threshold question was what the Board wanted to accomplish with respect to the CAMA setback. He asked if the Board wanted to just put a band-aid on it or say no to reconstruction of anything other than a dune walkover. He stated that he was in favor of not allowing reconstruction of anything other than a dune walkover. He added that based on all research he has seen so far, including information from Council, oceanfront owners, and literature, that anything involving excavation or the driving of pilings up to 20 feet into the ground would be damaging.

Chair Blakaitis asked the Board members if any of them felt that nothing should be done at this time. It was *consensus* of the Board that something should be done.

Member Murray pointed out that when looking at the aerial photos, the beach was wider any place where there was a condominium or townhouse with no pool and separated from the beach. He added that for the extent of Pea Island, where there was no development, there was no vegetated dune. He thought it looked like it was all a matter of luck and added that there could be evidence found that dune decks or pools were damaging. He thought the Board should do something but didn't know who could give good, responsible advice about the damage the Town would or would not be doing by allowing pools and pilings. Director Garman stated that the location of where the structures were being placed was key. He added that if a pool was built and it was 60 feet back from the first line of vegetation, it would be in a scrubbier, back dune area. He stated that there would be a pretty significant area east of the pool that would still be stable with thick areas of consolidated sand and vegetation as well as a dune structure. He stated that the issue in Town was that the structures were so close to the dune that they were excavating out the dune itself, putting in the structure, and then rebuilding the dune, leaving unconsolidated sand with no stable vegetation. He thought the minimum option would be to define a certain width of the dune and not allow anything in that area.

Chair Blakaitis thought Jeff Shields should speak as to what was done in Pine Island and what thought process they had. Vice Chair Fricker thought that Mr. Shields could probably speak about accessory structures such as walkovers.

Jeff Shields of Seaside Management was recognized to speak. Mr. Shields stated that the Pine Island Association had looked at, with regard to Vice Chair Fricker's concern, the option of "less is more". He added that if there was a dune system that was being actively maintained and had some form of beach nourishment, Pine Island had an active dune program that was monitored, measured and supplemented. He added that they put back a secondary dune shortly after Hurricane Sandy. He stated that they were trying to minimize the impact on the dune system and have worked through the North Carolina State Insurance Commission State Code. He explained that the code stated that anything greater than four feet in width on the dune had to have 16 foot pilings in the ground. He stated that it was looked at as detrimental to that system. He stated that they have looked at the science, talked with the Army Corps of Engineers and private engineers, and science showed that hardened structures east of the crest of the dune was damaging and accelerated erosion.

Jeff Shields stated that they looked at CAMA's regulations and CAMA was not happy with the North Carolina Insurance Commission's take on it because the State Code was put in to make the structures so that they would not move during storm events. He added that they were worried about the structure damaging an insured piece of property, which was where the 16 foot rule came into play. He stated that CAMA was fine with any structure that was four feet or less with a five foot piling and that was what they wanted. He stated that there were two forces going at each other with CAMA finally bowing to the State code.

Jeff Shields stated that Pine Island was looking at beach access structures and dune decks. He added that they were working with CAMA and the State code to try to minimize the impacts. He stated that it became cost effective in the long-term for the owners in that they were not losing huge structures that cost \$10,000-\$20,000 to construct. He stated that they also developed an engineered plan to place dune benches on the walkways. He stated that they do not do dune pushes in Pine Island and were actively beginning the research for a full beach nourishment program. He stated that, looking at the long-term, beach nourishment was the key.

Chair Blakaitis asked if there was any future activity planned for structures. Jeff Shields stated that they have moved from allowing an 8x10 dune deck to prohibiting them altogether as they were too detrimental. Chair Blakaitis asked if a structure would be permitted further westward. Jeff Shields stated that they have regulations that dictate what could be built east of a swimming pool. He added that gazebos are prohibited and that they try to keep as many hardened structures away from the dune line. Chair Blakaitis asked if he had met with any resistance from the homeowners. Jeff Shields stated that anytime a person is told how to use their property, there would be some resistance. He added that they implemented a program this year where the association paid to take a nonconforming dune deck that was hanging east of the crest of the dune and had 2/3 cooperation out of 50+ dune decks. He thought that, when the time was taken to talk to individuals and explaining the process, they would be on board, but there would continue to be some resistance.

Member Murray clarified that the Pine Island homes did not extend to the mean high water line. Jeff Shields stated he was correct as there was a common strip of land between the owner's eastern part of their property. Member Murray noted that a few years back, some of the dune decks were taken out for a portion of the dune management program. He asked if that was nourishment or fill that was brought in. Jeff Shields stated that fill was brought in.

Member Forlano clarified that all dune replenishment procedures for Pine Island were just trucking procedures and not beach pushes. Jeff Shields stated that he was correct, but it was only since the active dune restoration program got underway. Member Forlano asked if there was a scientific study for not allowing beach pushes. Mr. Shields thought that Pine Island knew they had an elevation problem as well as a narrowing of the beach. He added that he was not opposed to dune pushes as he felt they all served a purpose. He stated that in Pine Island, they felt it was detrimental in trying to maintain the elevation of the dune and have not moved forward with any type of beach push, but have been trucking in sand that was CAMA compatible, which was more costly.

Ben Vorndran of 100 South Snow Geese Drive was recognized to speak. Mr. Vorndran stated that everywhere he has seen beach pushes; they were in areas that were considered hot spots. He

thought beach pushes needed to be 150% monitored. Chair Blakaitis clarified that Mr. Vorndran was not in favor of beach pushes. Ben Vorndran stated that he was correct. He wondered if the Town should look into suspension walkovers as they did not touch the dune. He stated that if the Town was looking at protecting the dunes, they needed to come up with a better design for constructing the walkovers.

Member Forlano stated that Director Garman had alluded to innovative engineering structures for the replacement of pools. He asked what other innovative pool construction have been showing up besides the 16 foot pilings. He further asked if the Town was being faced with hardened structures such as reinforced concrete walls that would eventually become a problem. Director Garman stated that there were concrete pools that were being built above grade as well as below grade. He added that staff was now seeing pools built on foundations with cradles so that they do not collapse even if the dune erodes. Council Liaison Burdick noted that there was nothing in the CAMA regulations or the Town's regulations that allows the regulation of this kind of construction. He added that the last thing Council wanted was to have structures that would have the potential for damaging any beach nourishment that may be done.

Vice Chair Fricker stated that it was more than just damaging what might be done in the future to re-engineer the beach and dune; it was also what was being done to damage the existing dune. He stated that the Town needed to be very aggressive even if it was driven by the acute situation in the hot spot area. He added that he would speak in favor of applying any changes to the ordinances Town-wide when it came to replacing walkovers, such as what Pine Island had done.

Sam Taylor of 111 Skimmer Way was recognized to speak. Mr. Taylor thought it would be in the interest of the Town to add sand to the west of the primary dune whenever it could if they wanted to strengthen the dune. He added that the Board needed to think about the long-term and look at how the dune could be strengthened to the west. Council Liaison Burdick stated that there wasn't a west side dune to strengthen, especially in the hot spot areas. He stated that the beach profile was very flat and any storm will erode the dune because of that. He added that this was one of the primary driving forces for a beach nourishment project. Mr. Taylor agreed.

Chair Blakaitis thought the Board had four items to talk about – swimming pools, 500 square feet of allowable decking, decks surrounding pools and 200 square foot gazebos. He thought it made no sense because if the dune was to be protected, gazebos should not be allowed in the setbacks. He felt that the 200 square feet for gazebos could be used for something else. Vice Chair Fricker asked for clarification. Chair Blakaitis stated that he wasn't saying they should be allowed; rather it was one thing that could be taken off the table. He added that if the Board was going to decide on a setback to start with, it needed to be discussed. He wondered how many feet should be in the setback. He asked if it should be 20 or 60 feet and if so, what the implications would be. He didn't think the Board should be discussing engineering solutions to the beach. Vice Chair Fricker agreed, but added that the public, such as Sam Taylor, were talking about the opposite side of the coin. He added that they were saying the Town needed to do everything possible to strengthen the west side of the dune and that the Board should be focusing on how not to damage the west side of the dune. He thought Director Garman could tell the Board what it would mean to each homeowner if he went lot by lot as to whether or not they would be allowed to have a pool and why. He stated that whether it was done or not, everyone

who was faced with a situation where they have lost their pool and had the prospect of not being able to rebuild it would be upset.

Vice Chair Fricker stated that just because the hot spots were an issue this year, it was time to do something. He didn't feel that he was trying to be draconian or insensitive to the needs and desires of owners who bought property for investment purposes or primary residences. He added that what one homeowner did affected others. He stated that it was not good management of the natural resources. He stated that he would like to discuss whether pools should be allowed east of the residential structure at all and if so, within what area.

Member Murray thought that the consensus was that the reason that the hot spot was there was because of the soil makeup and not because of development. Council Liaison Burdick and Vice Chair Fricker disagreed. Council Liaison Burdick added that there wasn't a consensus as to why the hot spot was located where it existed. Member Murray pointed out that there was only one area in Town where there was major erosion. Council Liaison Burdick stated that 60% of the pools in Duck were outside of the 50 foot mark; while 40% were inside that mark. He added that there was a problem with 28% of the pools that were at 30 feet or less. Member Murray asked if pools were causing the problem or if they were in an unfortunate area. Council Liaison Burdick stated that they were, but if the Board was to discuss replacing them, it would tear up the dune further.

Member Murray suggested that the entire hot spot area be looked at. Vice Chair Fricker agreed. Council Liaison Burdick explained that the discussion started with whether the Board should allow anything within the CAMA setback, which was the 60 foot line. Vice Chair Fricker stated that if there was more room in those 60 feet, he did not have a problem with a pool being there. Council Liaison Burdick stated that it was the second level of what could be considered, which was not putting the pool in the CAMA setback and it could not be put in at all on the east side of a house. He thought they were the levels of thought. Vice Chair Fricker clarified that not putting in the pool on the east side of the house would be the more draconian and most extreme choice. Council Liaison Burdick stated he was correct. Vice Chair Fricker clarified that the less extreme choice would be nothing within the CAMA setback, or at least no pools. Council Liaison Burdick agreed. He added that Council was asking the Board to think about those options in terms of progression of what could be done.

Member Murray felt that an area where a setback line could not be defined because the first line could not be defined; it should be as limited as possible. He added that then, an imaginary line did not need to be defined or setbacks based on it. He suggested legislating something that would affect people that had a healthy dune and beach south of the pier. Vice Chair Fricker thought it was a good suggestion.

Member Forlano asked if the Board came up with a 60 foot setback for pools, they would make all of the existing pools that were within or less than 60 feet, nonconforming structures. He further asked if they would be considered nonconforming structures that would be grandfathered until they were destroyed. Director Garman stated that they would. He added that the owner could probably repair some minor damage to the pool, but it all depended on how the Town drafted the regulations.

Vice Chair Fricker stated that he liked Member Murray's idea and would propose three scenarios – ideal scenario from conservation of the dune; a doable solution and one that would be the most political. He urged the Board to find consensus in choosing one of the three scenarios for new or reconstruction of pools. He added that they should only be allowed east of the residence if they were outside the CAMA setback. Chair Blakaitis thought they should not be allowed in the CAMA setback. He asked Vice Chair Fricker if he was referring to pools alone. Vice Chair Fricker stated that he was. Chair Blakaitis asked about other structures.

Member Murray thought it was alluded to in the document that people were building as close to the ocean as they could because they wanted a view. He thought they needed a pool because it was what the market demanded and that they needed a septic system which pushed things east. Vice Chair Fricker stated that the Town could not go back and undo the decisions of construction that had been completed. He added that the Town was losing the dune and beach and felt that there was something that could be done to slow the damage. He stated that if it meant that a pool could not be reconstructed, it wasn't the Town's fault. Member Murray agreed with regard to reconstruction. He didn't think it was fair or prudent to allow pools in the 60 foot setback. He felt the Town should concentrate only on the pools that needed repairs as it would deal with the problem. Council Liaison Burdick thought Council wanted the Board to deal with the entire issue and not just damaged pools.

Vice Chair Fricker clarified that there has been dune loss on Duck's oceanfront over the last 15 years. Chair Blakaitis stated he was correct. Director Garman disagreed. He added that south of the pier; there were areas that had accreted. Vice Chair Fricker stated that the Town didn't want to unreasonably limit the options in terms of the design and size of the house as well as whether or not there was a pool on the property. He stated that those issues needed to be confronted at some point. Member Murray stated that he understood Vice Chair Fricker's point, but added that if the Town was going to nourish the beach and make an investment, the Town should regulate very heavily what would be allowed in that area and the setback. He stated that he was uncomfortable making a regulation for something occurring in the hot spot area that will detrimentally affect others areas of Town which were not currently adversely affected. He felt it was unfair.

Vice Chair Fricker stated that, until the Town makes a decision on beach nourishment, an option needed to be available for homeowners in the short term. He stated that the reason he was on the other side of the coin was due to the damage that was occurring at the hands of individual homeowners, dropping pilings 20 feet into the ground to rebuild pools. Member Murray agreed and felt that an ordinance should be written that dealt only with that and did not limit the options of the homeowner. Vice Chair Fricker suggested that if a property owner did not have the full CAMA setback (less than 60 feet), they would not be allowed to do anything to disturb the ground. Member Murray didn't know how practical it would be.

Director Garman stated that Council asked the Board to come up with options ranging from most restrictive to least restrictive. He thought the Board was bouncing between them. He suggested that rather than debating the options, the Board could talk about developing different options and then go from there. He thought it was better to develop the options now as there will probably be another meeting where the options would be widely advertised with a significant amount of input received for the Board to consider. He thought that would have a big impact on where the issue



went. He thought that laying the options out in front of people rather than debating on which ones were better, may be a better way to go. He stated that staff sent out an email on the issue and had received telephone calls about it.

Vice Chair Fricker stated that he wanted to deal with the most severe, acute problem, which were pools. He stated that he would like to have a mid-month meeting with draft ordinances that the Board could discuss so they could be sent to Council for their decision. Council Liaison Burdick thought Council wanted the Board to address all of the issues. Vice Chair Fricker agreed.

Chair Blakaitis thought the Board should not address walkways except for the dune decks at this point. He suggested not allowing anything in the 30 foot setback, no gazebos and reducing the 500 square feet of decking. Member Murray clarified that decks and pools would not be allowed in the setback. Chair Blakaitis stated that he was correct. Director Garman clarified that beach access ways would be allowed. Chair Blakaitis stated he was correct, but only as an option. Vice Chair Fricker asked if it was only for reconstruction or new construction. Chair Blakaitis stated it would apply to both.

Vice Chair Fricker stated that Chair Blakaitis did not want any new or reconstruction of pools, dune decks or gazebos within the 30 foot setback and only wanted access ways allowed. Chair Blakaitis stated he was correct. He thought gazebos should be eliminated altogether.

Member Forlano asked how the Board should handle the primary structure if it fell. Chair Blakaitis stated that if the primary structure fell, it would be considered threatened. Director Garman noted that the primary structure was regulated by the CAMA setback, which was easier to address. Member Forlano stated that he was in favor of a 40 foot setback. Chair Blakaitis thought it could be another option.

Vice Chair Fricker clarified that Option A would be no new or reconstruction of any pool, dune deck or gazebo within a 60 foot setback; Option B would be the same language but within a 40 foot setback; and Option C would be the same language but within a 30 foot setback. Chair Blakaitis stated he was correct, adding that something needed to be done with some sort of setback from the first line of stable vegetation. Member Murray asked if the Board was abandoning the option of rebuilding pools that were taken by the ocean. Chair Blakaitis disagreed. Vice Chair Fricker stated that if an owner lost a pool, they were probably within the 30 foot setback. He added that he was not in favor of Option C.

Vice Chair Fricker stated that the options were completed in terms of distances but not in terms of types of structures. Chair Blakaitis stated that for now, he was excluding walkovers. He asked if there were many large sized dune decks in Duck. Director Garman thought there were quite a few, adding that they were mostly 10x10 or 10x12. Chair Blakaitis clarified that they were part of a walkover. Director Garman stated that they weren't as they usually are set off to the side. Chair Blakaitis asked if the dune decks had 16 foot pilings. Director Garman stated that they did, but added that some pre-dated the current building code requirements.

Chair Blakaitis stated that he would amend one of the options to include dune decks. He didn't feel the walkways should be any different than what Pine Island was trying to achieve. Member Murray agreed and thought walkways should only be four feet. Council Liaison Burdick noted

that Pine Island was encouraging neighboring properties to put in common walkways to minimize the number of crossovers on a dune. Chair Blakaitis stated that Duck has tried that as well. Chair Blakaitis thought the Board was in consensus that walkways should be four feet.

Ed Sadler of 161 Buffell Head Road was recognized to speak. Mr. Sadler thought four foot walkways were fine and anything beyond that was not necessary. He felt that pools at the 40 foot setback would be fine. He noted that the pool at 143 Buffell Head Road did a lot of damage to the beach and dune after it was destroyed by Hurricane Sandy.

Willo Kelly of the Outer Banks Association of Homebuilders was recognized to speak. Ms. Kelly noted that the housing market was what drove the installation of all of the pools. She added that back then, a house with a pool rented quicker than one without. She felt that having a blanket rule that would penalize property owners that did not have a pool or wanted to reconstruct their pool was like a taking of a property. Chair Blakaitis pointed out that with new rules, there would be situations where a pool could not be reconstructed.

Caryl Brackenridge of 156 Marlin Court was recognized to speak. Ms. Brackenridge stated that there were a lot more homeowners in Duck that were not oceanfront owners and what happens to the dunes affected everyone. She added that the Town would receive a lot of grief from the oceanfront owners, but a lot of the non-oceanfront owners will be delighted if the Town did anything to help preserve the dunes.

Vice Chair Fricker stated that the three options would preclude new or reconstruction of pools, dune decks and gazebos. He added that Chair Blakaitis had mentioned that he wanted to allow some form of dune deck. Chair Blakaitis disagreed and added that he did not want to discuss the issue at this time. He thought dune walkovers should be left alone except to have them the same way Pine Island did them to encourage people to share them. Vice Chair Fricker asked if any of the Board Members should come up with a second set of scenarios that would take something out or put something in other than excluding pools, dune decks and gazebos. Member Murray didn't think the Board touched on dune decks enough as he was not sure it was clear. He thought house decks should be a separate issue as he didn't want them inadvertently included. Chair Blakaitis stated that he wasn't intending to include house decks.

Vice Chair Fricker suggested getting a preliminary opinion from the Town Attorney. Director Garman asked what opinion he was looking for. Vice Chair Fricker stated that he wanted to know the notion that a Town-wide ordinance designed to preserve a dune system by regulating accessory structures between the dune and a house was somehow unlawful or wrongful taking for which money damages could be awarded. Director Garman stated that if the Board wanted staff to list the pros and cons of the options, a con against the 60 foot option was that it would impact the decks that people would put on the rear of a house that were allowed in the setback.

Chair Blakaitis stated that the Board could consider limiting the size of the swimming pool in one of the options. Director Garman stated that the Board could come up with an option that limits total development square footage between the town's new setback and the CAMA setback and then let the homeowner choose what they want to build. Chair Blakaitis stated that he liked Director Garman's suggestion.

Member Murray noted that the options did not deal with the setbacks but rather with reconstruction. He stated that pools or accessory structures taken by the ocean, except for four foot walkovers, should not be allowed to be rebuilt. He thought it was the most liberal option to give people. Chair Blakaitis stated that if the Board picked 30 or 40 feet for the setback, there were only 30-35% of pools in that area and if one of those was threatened, the owner would not have the 40 feet anymore. Director Garman stated that he saw the setback option to be easier for staff to administer because it does not require the Town to conduct historical research on what has been previously built east of houses.

Vice Chair Fricker stated that he was looking at the entire discussion as a stop gap measure, given the immediate danger that some homeowners were doing to their property and possibly the adjacent property. He stated that he could not believe that Council would not move forward with a beach nourishment project. He suggested that the discussion be treated as a stop gap and prohibit all new or reconstruction if there wasn't a 60 foot setback. He added that once the beach nourishment project was completed, the Board could revisit the issue. Director Garman stated that if the Town did a beach nourishment project, there would be some sort of static line that would be established. He added that once a beach nourishment project was completed, there was no longer a first line of stable natural vegetation as CAMA surveyed in a line that becomes the measurement line. Vice Chair Fricker clarified that it would only be in the area that received nourishment. Director Garman stated he was correct. He added that if the Board wanted to address the most immediate concern, it would be establishing either the setback or protecting the dune. He stated that the immediate goal was to prevent what has been happening to protect the dune.

Vice Chair Fricker summarized the discussion – (1) no reconstruction of any accessory structure except for dune walkovers which would be reduced to four feet in width and (2) with regard to new construction, no pool could be closer than X feet from the first line of stable vegetation, which could be either 30, 40 or 60 feet. Director Garman clarified that the second option meant no pool, gazebo or decking in the setback. Vice Chair Fricker reiterated that there would be no reconstruction of any accessory structure that has been lost except for replacing walkovers no wider than four feet. He stated that the second option would be that newly constructed swimming pools must be at least X feet from the first line. Member Murray suggested that it be 60, 40 or 30 feet. He thought it could be any of those. Chair Blakaitis suggested that it be from the setback of the first line of vegetation rather than specifying where the pool could be. Member Murray thought the Board may decide on a different setback for decking and pools. Chair Blakaitis agreed. Member Murray suggested that a deck that services a house could have a more limited setback. Vice Chair Fricker thought the pool and the deck should be X number of feet back. He added that he did not want any land disturbance within a reasonable distance. Member Murray asked if it would apply to pool fences. Chair Blakaitis thought that any appendage of a pool should not be within the setback.

Vice Chair Fricker asked if new construction could include gazebos. Chair Blakaitis stated that it could not. Director Garman confirmed that the Board wanted no structure except for the four foot wide walkway that could be within the setback. Chair Blakaitis agreed. Director Garman thought if the Board established the setback, there should be no structure east of the setback except for the four foot wide walkway. Vice Chair Fricker asked if the setback should be 40, 30 and 20 feet. Director Garman stated that he would include the numbers in the draft ordinance

language and the Board could decide. He asked the Board if they wanted to have, as an option, an exception for a limited deck in the setback. Member Murray thought it depended on what number for the setback that the Board chose.

Vice Chair Fricker suggested that Director Garman and Member Murray come up with language that would reasonably address the issue of repairs rather than total replacement. Director Garman stated that he could come up with language as the Town has several standards that are used in the current ordinances that he and Member Murray could look at in order to come up with scenarios and craft some language.

Council Liaison Burdick suggested that language be put in the ordinance that included the restoration of the dune as part of a repair. Member Murray agreed. Vice Chair Fricker asked if Council would be receptive to the suggestion. Council Liaison Burdick thought they would. Director Garman asked if they were requesting that staff should come up with a rule that would require people to do some sort of dune restoration even if they were not rebuilding or repairing a structure. Council Liaison Burdick thought it was a valid question. Chair Blakaitis thought Council Liaison Burdick's suggestion could be tied in with the restoration.

Vice Chair Fricker asked if the Board should recommend how walkovers should be designed. Member Murray thought it would help. Director Garman thought that the way Pine Island was recommending building beach stairs would be something that staff would agree with. Vice Chair Fricker asked if it could be included in the draft ordinance. Director Garman stated that it could. Vice Chair Fricker asked the Board if they had consensus on staff drafting a proposed ordinance modifying what was allowed in terms of new or reconstruction of beach walkovers to conform with what Pine Island did. Member Murray stated that he would not recommend the requirement for landings and steps that turned south. Director Garman stated that the Town already had a rule stating that if there was more than a certain vertical drop from the walkway to the beach, a landing had to be installed and it had to be turned. He thought the four foot width as well as the minimum piling embedment could be included in the new language.

Vice Chair Fricker wondered if grandfathering should be addressed. He thought it didn't apply. Chair Blakaitis thought that it did. Director Garman stated that the Board agreed to allow staff to draft some language to deal with it. Vice Chair Fricker stated that one of the suggestions was to consider incentivizing with regard to common access ways. Chair Blakaitis stated that it could be required to be put in at the end of the property. Director Garman stated that staff could come up with some kind of dune structure manual to promote through Town. He wasn't sure if it could be addressed from a regulatory standpoint. He added that staff regulating it would be difficult.

Director Garman asked the Board if they wanted to consider a standard for pool construction. He stated that it would eliminate the pools that were built on very large foundations. He asked if the Board would rather see simple, in-ground pools being supported by the earth and not by large foundations. Chair Blakaitis clarified that Director Garman was not talking about a change but to disallow what has been done. Director Garman stated he was correct.

Vice Chair Fricker suggested that Director Garman draft language to not allow the two types of pools – concrete pools or pools on cradles – for new construction or reconstruction on oceanfront properties. Chair Blakaitis agreed, adding that the Planning Board would have a second meeting

to review the draft language. Director Garman clarified that the Board would hold a mid-month meeting on May 22, 2013 at 6:30 p.m. Chair Blakaitis stated he was correct. Permit Coordinator Cross thought the Town Council was holding a meeting that evening. Council Liaison Burdick stated that the meeting was during the day. The Planning Board clarified that the mid-month meeting would be held on May 22, 2013 at 1 pm.

### **APPROVAL OF MINUTES**

#### **Planning Board Meeting – April 10, 2013**

Chair Blakaitis suggested striking two sentences from Page 9.

Vice Chair Fricker moved to approve the minutes from April 10, 2013 as amended. Member Murray seconded.

Motion carried 4-0.

#### **Planning Board Special Meeting – May 1, 2013**

Chair Blakaitis moved to approve the minutes from May 1, 2013 as presented. Member Forlano seconded.

Motion carried 3-0 as Vice Chair Fricker was not present for the meeting.

### **OTHER BUSINESS**

None.

### **STAFF COMMENTS**

None.

### **BOARD COMMENTS**

None.

### **ADJOURNMENT**

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

The time was 9:22 p.m.

Approved: \_\_\_\_\_  
/s/ Joe Blakaitis, Chairman