

**TOWN OF DUCK
PLANNING BOARD
MID-MONTH MEETING
May 22, 2013**

The Planning Board for the Town of Duck convened at the Duck Meeting Hall on Wednesday, May 22, 2013

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

Absent: None.

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

Others Present: Mayor Don Kingston, Mayor Pro Tempore Monica Thibodeau, Town Manager Christopher Layton, Building Inspector Cory Tate, Ed Sadler, Jackie Orsulak, Olin Finch, Caryl Brackenridge, Allan Grossman, Annette Grossman, and Theresa Cullen.

Absent: None.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for May 22, 2013 at 1:04 p.m.

PUBLIC COMMENTS

None.

OLD BUSINESS

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

Director Garman stated that at the May 8, 2013 meeting, the Planning Board discussed the business of regulating oceanfront structures including dune walkovers, pools, gazebos and dune decks. He stated that these structures are allowed within the CAMA setback. He noted that houses were not allowed in the CAMA setback, but CAMA exempted the other structures. He stated that there was a desire to create some sort of setback from the first line of vegetation for these structures. He stated that after Hurricane Sandy, several pools were destroyed and were placed back in an area that was immediately threatened by erosion and because of this; there was a desire to create a limit on how close to the dune line a structure could be located.

Director Garman stated that staff created a draft ordinance based on the Planning Board's request that would create two options for establishing a setback – (1) a setback that was very similar to the setback applied to houses. He noted that several options were given to the Planning Board for consideration – a setback of 20, 30, 40 or 60 feet. He explained that a measurement line

would be established at the first line of vegetation, measuring back whatever distance was decided upon and then no structure could be placed in that area between the first line of vegetation and the decided distance. (2) any structure that was destroyed from either a hurricane or any other means could not be placed back if it was located east of the house.

Director Garman stated that the Planning Board had discussed dune walkover construction standards, based on a presentation that was given by Jeff Shields of Seaside Management. He noted that Mr. Shields' company manages the Pine Island Homeowners Association and that the association has chosen to regulate themselves with regard to structures on the beach. He stated that they came up with very specific standards for the way dune walkovers should be constructed. He thought the Planning Board agreed that they liked some of the things they heard and asked staff to look into writing an ordinance that would emulate some of those standards. He added that staff tried to do so. He stated that for residential structures, dune walkovers could not be more than four feet wide, since anything more than four feet would trigger building code requirements for 16 foot deep pilings and would create a significant disturbance to the dune. He stated that the idea was to keep them less than four feet wide so the pilings would only have to go down five feet and the walkover would be the only thing allowed in the dune system beyond the setback line.

Director Garman stated that, with regard to pools, he had discussed with Building Inspector Cory Tate language that was established to eliminate the ability to build pools on a piling and girder system foundation within the oceanfront erodible area as defined by CAMA. He stated that the concern was that when the land eroded beyond a pool and it was on the beach, it would be the Town's desire to have the structures removed. However, these type of structures built on such a rigid foundation would create problems for the Town when these structures need to be removed. He stated that he and Building Inspector Tate agreed that it would be good to eliminate pools constructed on piling foundations on the oceanfront.

Director Garman stated that he met with Member Murray and discussed the issue of nonconforming structures. He reminded the Board that there was discussion regarding when a structure would be required to be removed that would be made nonconforming by any type of setback. He thought they both agreed that the existing ordinance that pertained to nonconformities would be used in combination with another ordinance that was in place that dealt with encroaching structures on the oceanfront beach. He stated that with the combination of those two ordinances, they didn't feel that anything additional needed to be crafted to be able to enforce it. He explained that an existing structure could be used until the end of its useful life, but at any time it was destroyed by a storm or encroached out onto the beach, it would have to be removed.

Director Garman explained that there was a slight tweak to the beach and dune management ordinance to make it consistent with the new ordinance that was drafted. He added that there was a slight tweak to the ordinance pertaining to encroachment of structures on the ocean beach to make it consistent with the new language. He stated that it would state that pools would have to be removed once they encroach beyond the first line of vegetation. He noted that previously, the ordinance applied to non-pile supported structures, but he thought the Board wanted to clarify that it was meant for pools in those situations. Member Blakaitis asked if it applied to

pools whether they were damaged or not. Director Garman stated he was correct and added that it would apply once they encroached beyond the first line of vegetation.

Director Garman stated that staff emailed a copy of the draft ordinance out to all of the oceanfront property owners and advertised it on the Town's website. He added that a fact sheet was also sent to the oceanfront property owners via email broadcast, which described why this was being discussed. Chair Blakaitis asked if a large number of responses were received. Director Garman stated that staff did not receive a lot of responses. He stated that there were some telephone calls prior to the May 8, 2013 meeting, with the crux of the discussion being that oceanfront property owners were concerned about certain rights being taken away. He added that there were no follow up communications since then.

Vice Chair Fricker clarified that since the Planning Board's last meeting, no comments or telephone calls have been received. Director Garman stated he was correct. Permit Coordinator Cross stated that she received one email, but it was only to say thank you.

Chair Blakaitis stated that in the draft ordinance it noted that beach walkovers could be four foot in width with an allowable six foot cantilever. He asked if Director Garman meant to put a two foot cantilever for benches. Director Garman stated that Jeff Shields had discussed it at the Board's May 8, 2013 meeting. Chair Blakaitis stated that he understood, but didn't think a six foot cantilever from a four foot walkway made sense. Director Garman agreed. Chair Blakaitis thought he meant a four foot walkway with a two foot cantilever. Director Garman stated that it was a six foot wide structure with a one foot cantilever on each side. He explained that it would be a four foot wide walkover and a one foot cantilever on each side for a total of six feet. Chair Blakaitis clarified that six feet would not be allowed for a private dwelling, only for commercial. Director Garman stated he was correct. He added that he had discussed it with Building Inspector Tate and they didn't feel that limiting it to four feet was fair because commercial has to meet ADA requirements with landings and things of that nature. He stated that for residential, they felt that four feet was consistent with building code for keeping the structure from having to meet V Zone requirements. He stated that it was Building Inspector Tate's opinion that allowing the six foot wide deck as part of the walkover would not exempt the structure from the V Zone requirements, which was why it was not in the draft ordinance.

Chair Blakaitis stated that the Board had discussed piling foundation pools at their last meeting and made brief mention of concrete pools. He thought Director Garman was of the opinion that concrete pools may not be as dangerous or as much of a problem as piling supported pools. He asked Building Inspector Tate if he wished to have concrete pools be considered by the Planning Board. Building Inspector Cory Tate was recognized to speak. Building Inspector Tate stated that building inspection departments do not speak for or against concrete swimming pools. He added that the safety created by putting in a concrete pool from the homeowner made them a nuisance from the public safety perspective because they are not destroyed during a storm and were difficult to remove once they encroached on the ocean beach. He stated that he tried to convey in the draft language that the Town wanted to encourage construction of pools that were level with the adjacent grade whether they were concrete, fiberglass or vinyl. He stated that the issue he has seen in recent months was that in order to build the pile supported pools, massive alterations have to be created to the dune, which causes more erosion. He thought it was best to

prohibit pile supported swimming pools as it would be less of an issue for the homeowner to remove it if it was destroyed from a storm.

Chair Blakaitis clarified that Building Inspector Tate was saying that a concrete pool would destroy itself and become a nuisance as far as taking it away. Building Inspector Tate stated he was correct. He added that it would not be as easy to remove as a fiberglass pool either, but would be easier to demolish.

Council Liaison Burdick clarified that concrete pools, as long as they were not pile supported, would be allowed. Building Inspector Tate stated he was correct. Council Liaison Burdick thought the Board was trying to prohibit them. Building Inspector Tate stated that, with pile supported pools, the dune could completely erode away while the structure remained. He stated that while the homeowners found this to their advantage, the pools could end up becoming a nuisance because they would be in the surf zone.

Ed Sadler of 161 Buffell Head Road was recognized to speak. Mr. Sadler stated that there was a lingering problem with the structured concrete pools as they still exist on the beach. He thought concrete pools were a liability to the Town. Chair Blakaitis asked if concrete pools should be included in the Board's discussion. Director Garman asked if it would include concrete pool decks. Chair Blakaitis wasn't sure.

Vice Chair Fricker thought there were two different issues and Building Inspector Tate had only been asked whether there was a safety issue. He added that Building Inspector Tate began his remarks by saying that he wasn't for or against concrete pools. He felt it was a separate issue and one that the Planning Board could address. He recalled that the issue was addressed at their last meeting but noted that it wasn't included in the draft ordinance. He thought both concrete pools and concrete decking should be addressed.

Building Inspector Tate stated that Mr. Sadler's concern was something that both the Town and oceanfront property owners have had to deal with. He stated that state law prohibited him from being able to require use of one material while prohibiting another material because of the unfair trade practices that it may create. He stated that if a concrete swimming pool could be built that was just as substantial and served the same purpose as a fiberglass pool, from the building code standpoint, he could not prohibit concrete and allow fiberglass. He stated that the public safety issue, as far as concrete debris being left on the beach, was something outside of the building code. Director Garman stated that staff had seen examples of other communities that have restricted the construction of concrete pools in their zoning ordinance. He noted that one community in North Carolina had done so and he thought it was done over concern of concrete debris on the beach. He stated that the Board had discussed the issue last month, but didn't recall them being conclusive about that point. Vice Chair Fricker thought members of the Board felt clear about whether they wanted it in the ordinance or not.

Member Murray noted that as far as debris after a pool breaks up, chunks of fiberglass were just as dangerous as concrete on the beach. He thought the Board should think about enforcement or an ordinance to mandate better clean up on the beach. Chair Blakaitis asked if fiberglass broke up as well as concrete. Director Garman stated that at some level, it was all debris and became a matter of clean up. Council Liaison Burdick thought it was a safety issue on the beach. He

added that the debris not only ended up on the sand, but in the ocean. He thought the issue needed to be addressed as a safety issue. Chair Blakaitis noted that the Board had the facts and would address it in their discussions.

Vice Chair Fricker stated that the role of the Board was to be an aid to Council by identifying the issues; trying to learn data, information, literature on a given subject; to discuss the pros and cons of adopting a certain position and then making a recommendation to Council. He added that Council then had to decide what it wanted to do. He stated that in this instance, Council had stated that they wanted the Board to come up with alternatives and various scenarios and the Board had indicated at Council meetings that they would draft alternative ordinances so that it would be easier for them to pick. He stated that in that context, it seemed that it was important for the Board to have a discussion about concrete pools and to potentially propose alternate scenarios with regard to them. He thought that was what the Board needed to do and did not think the Board should fail to give Council an ordinance that precluded concrete pools.

Chair Blakaitis thought that was what the Board agreed on and would be discussing it. He suggested that concrete pools be set aside for now and discuss setbacks as that was the primary goal to begin with. He added that it could turn out that setbacks would preclude any other discussion about concrete pools on the oceanfront.

Member Murray stated that in Part 3 of the draft ordinance entitled Encroachment of Structures on the Beach, it stated that pools shall not encroach over the ocean beach beyond the first line of stable natural vegetation or the dune escarpment, whichever was most seaward. He suggested changing the word "seaward" to "landward" as it would prohibit the pools from ever being built. He stated that in cases where there was a dune in front of the vegetation line, putting in a numbered setback would create a hardship for the homeowner. He thought that just changing the word would keep the pools that were an issue from being permitted. Chair Blakaitis agreed but noted that the first line of the sentence spoke of the first line of stable natural vegetation. He didn't think the word "landward" should be in front of that line. Member Murray thought that the escarpment made the vegetation line moot. Director Garman explained that the ordinance also allows beach fill as long as the structure was not more than a certain distance beyond the adjacent first line of vegetation. He didn't know if it would do what Member Murray was suggesting. Chair Blakaitis thought both had to be blended together to see which one was most limiting. Director Garman stated that he saw two ways to do it, with one more rigid than the other. He stated that he would have to think about it.

Council Liaison Burdick reminded the Board that the objective of the Council was to try to figure out what kind of ordinance was necessary to protect the dune given that they may decide on a beach nourishment project. He stated that given the difficulties experienced in the last few months, the Board should be asking what they need to do differently to maximize the protection of the dunes. He stated that he understood the homeowner's rights, but thought the issue was to find whatever options necessary that would accomplish the objective. Chair Blakaitis thought the Board understood that. He thought Director Garman was trying to make sure that Part 3 would fit in with anything the Board may do. Vice Chair Fricker thought the Board should start with what should be done. He wondered if one of the scenarios should be that there be no new construction or any reconstruction of any accessory structure in the CAMA setback, except for

four foot wide walkways. He stated that that would be one approach. Council Liaison Burdick thought it was the extreme position.

Vice Chair Fricker stated that if the Board decided as such, they could identify that as Scenario A. He added that Scenario B would be less restrictive with the Board identifying what they wanted. He stated that if the Board was starting discussions on just the walkovers, they were not looking at the bigger picture. He thought they should be looking at the most extreme and then soften it from there. Chair Blakaitis didn't think the Board would start with walkovers; it was just a question that was addressed at the beginning. He agreed with Vice Chair Fricker that the Board needed to start at the core of what Council had asked them to do, which was Option 1. He added that the Board would blend everything else in afterward. Council Liaison Burdick suggested that the Board identify the pluses and minuses of each option.

Chair Blakaitis noted that Option 1 gave accessory structure options within the CAMA setback where the Board discussed 20, 30, 40 or 60 feet from the first line of stable vegetation. He added that the Board needed to decide whether it would advise Council on one of those options or any other options they came up with. Director Garman stated that the map in the Board's packet gave an idea of how many structures would be impacted by each setback scenario.

Member Forlano felt that 60 feet was too draconian. He added that he would lean towards the 30 or 40 foot setback for pools and accessory structures, except for walkovers. Chair Blakaitis asked if any Planning Board member thought that the 60 foot setback should be considered. Vice Chair Fricker thought it should be one option offered to Council, but didn't think it was necessarily the best option. He stated that the Board had to look at these things with respect to how they impact how owners use their properties. He stated that if the overriding concern was the preservation of the dune, he wondered why everyone would not be willing to take extreme steps to legislate against new construction or reconstruction.

Member Murray stated that it seemed unclear to him that the development in the 60 foot setback was what was causing the dune erosion. He added that building a pool on the east side of the dune was not good for it, however; building on the west side of the dune, particularly south of the Corps of Engineer's pier, would be fine. He wondered if there was some circumstantial evidence that was different about the two areas that was causing one area to be a hot spot and the other to be accruing sand. He stated that he was nervous about writing an ordinance that precluded people from doing something Town-wide that would not be causing any harm. He noted that there was harm, but it was in a very small area. He understood the desire for a setback and the number of feet, but felt it was arbitrary. He stated that 25 feet seemed reasonable because there was a 25 foot rear setback on properties throughout Town, but didn't think that logic applied to dunes.

Caryl Brackenridge of 156 Marlin Court was recognized to speak. Ms. Brackenridge stated that while the Board was discussing the hot spot, her understanding was that the hot spot was much further north in the past and other theories indicated that the shoreline was simply correcting itself. She thought the Town should do what it could to protect the dunes everywhere.

Vice Chair Fricker thought what Caryl Brackenridge brought up needed to be focused on. He didn't think any of the Board members were saying that the existence of pools between the first

line of stable natural vegetation and the house was causing the erosion. He added that where there is erosion, the existence of a structure that has disturbed the dune system was an exacerbating factor in the loss of the dune. He stated that if those statements were true, then he would agree with Ms. Brackenridge that the Town was not trying to be arbitrary or do something for no reason, but that this was a preventative measure. Chair Blakaitis thought it was a good point and didn't think the Board should be legislating anything for one particular area. Member Murray clarified that the Board should be legislating for the entire Town based on the most sensitive areas. Chair Blakaitis thought so.

Allan Grossman of 164 Mantoac Court was recognized to speak. Mr. Grossman asked if there has been any data for people who maintained the dunes. He wondered if people who put in sand fencing had any effect on the dunes. He thought that creating a higher dune in the hot spot areas could make a difference. Chair Blakaitis didn't think anyone in the hot spot has had a problem with maintaining the dune.

Ed Sadler thought that 40 foot was a reasonable compromise for the setback. Chair Blakaitis asked if he was 30 feet back from the first line of stable vegetation. Mr. Sadler stated that he was and added that he had moved his house 50 feet approximately five years ago.

Chair Blakaitis stated that in looking at the map, he felt that 60 feet would not be entirely out of line, but thought a less draconian approach would be in order. He felt that 40 feet would definitely be the best thing for most of the Town.

Vice Chair Fricker stated that the existence of accessory structures in the CAMA setback sometimes effectively precluded the homeowner from being able to bring in sand via truck and build up the dune on the landward side. He stated that it was another potential reason to preclude new or reconstruction in the setback. He noted that it was not a perfect solution, but the Board could not go back in time and reverse things. He stated that the Town was learning lessons very late in the game and should do all it could to preserve the dune system. He disagreed that the Board needed to come up with one scenario that the majority of the Board thought was a good compromise, but should come up with two or three scenarios.

Member Forlano clarified that Vice Chair Fricker was saying that if the Board chooses Option 2, where any accessory structure was prohibited within the 60 foot setback, it would be eliminating just about all pools in the 60 foot setback. Vice Chair Fricker stated that there was nothing that would be eliminated. Member Forlano thought it meant that there could be no reconstruction in the 60 foot setback. He agreed with Vice Chair Fricker with regard to coming up with two options to present to Council and let them decide.

Annette Grossman of 164 Mantoac Court was recognized to speak. Ms. Grossman stated that the Board was discussing 30, 40 and 60 feet. She stated that Duck was in the same situation as others in New Jersey and the Eastern Shore of Virginia. She thought there had to be some kind of data from the Army Corps of Engineers. She stated that she had not heard anything as to what setback would be the best. She stated that she would like to see some statistical research to back up the Board's decision. Chair Blakaitis stated that there was a lot of data but none of it was conclusive. Vice Chair Fricker added that it had been discussed numerous times by both the Planning Board and Town Council as well as engineers that were retained by the Town with

respect to beach nourishment. He stated that the conventional wisdom was that sand fencing and planting beach grass could and did help to stabilize the dune, and at the right time of year, there was accretion of sand on the east side of the dune. He stated that every year, oceanfront owners could and should be involved as a group or individually in putting in sand fencing and vegetation, but it either has not been done or has not worked in certain areas. Ms. Grossman stated that she understood and agreed, but felt that the Board was making a decision without any documentation to support it. Chair Blakaitis stated that the Town received data from various sources and knew something needed to be done, which was why the Board was discussing the issue.

Allan Grossman stated that vegetation and sand fencing could make a difference. He added that they brought in 200 tons of sand only to have it recede, while his neighbors never brought any in. He stated that he felt that they were the only ones trying to put sand in. He thought if he knew what the requirements were to maintain the sand, it would be helpful in the long-run. He stated that if the dunes were maintained and there wasn't as much erosion, it may help.

Director Garman explained that the 60 foot setback was one that was already applied to a house. He added that it was based on the erosion rate established by DCM times 30. He stated that if the erosion rate for the entire Town was two feet per year, then the setback would be 60 feet. He noted that the pools and other structures were exempt from the setback and when the rules were created 30+ years ago, it was decided that the pools and structures would be allowed in the setback. He went on to review some objectives that the ordinance would achieve with regard to setbacks to the Board and the audience.

Director Garman explained that at 20 feet, the setback did two things – it prevented the immediate disturbance to the dune from the actual construction activity and would allow the maximum development potential which currently existed. He noted that it was the starting point for the least restrictive side. He added that at 30 feet, it prevented the immediate disturbance of the dune, but also bought some time from erosion. He stated that it also allowed a little bit of room to do some west side fill and allowed a pool and pool deck to be constructed between the house and dune line assuming there was 60 feet.

Director Garman stated that at 40 feet, the envelope was only 20 feet if it was assumed that the house was at the 60 foot setback. He stated that at that point, the house would be pushed further west in order to get the same thing if the setback was at 30 feet. He stated that the 40 foot setback bought more time but pushed things back on the lot.

Director Garman stated that at 60 feet, it would pretty much preclude construction of pools for any existing homes east of the house. Chair Blakaitis added that it would also preclude any accessory structures. Director Garman stated he was correct. Member Murray stated that it would preclude decks as well. Director Garman stated that it bought the most time with regard to erosion, but thought at 60 feet it was precluding the majority of people in Town that did not currently have pools from building pools east of their homes on the oceanfront. Vice Chair Fricker clarified that it would not preclude building pools on the west side. Director Garman stated he was correct. He added that Council was looking at balancing the goals of why the discussion came up with people's existing development rights. He thought in looking at it realistically, the Board may want to consider rules that they felt met all of the objectives.

Vice Chair Fricker stated that when he was at the Council meeting, he did not hear any staff or Council member express balancing the interest with property owner's property rights. He thought there was concern on the part of Council that they wanted to be able to take steps now to restrict new construction or reconstruction so as not to further damage an already fragile dune system. He stated that he did not hear them discuss balancing the possible scenarios against the property owner's rights.

Mayor Pro Tempore Monica Thibodeau was recognized to speak. Mayor Pro Tempore Thibodeau clarified that Council was concerned about private property rights. She stated that the Board could discuss the jettisons of the Council discussions and make different interpretations as to why the discussion was held, but her understanding was that because Council was initially looking at nourishing the hot spot and one Council Member stated that if the Town was going to put public money out on the beach to rebuild the dune, they wanted to control what was being done in the fragile environment. She added that it was the genesis of the discussion and now the Board was expanding on it.

Director Garman thought the Council Member that made the comments came about largely in response to some letters the Town had received regarding some of the pools that were being put back in or near the Buffell Head area. He added that several people had commented that they did not feel it was right for people to be able to rebuild the pools so close to the dune. He thought that was what had kicked the issue into motion. Preventing this type of development from reoccurring was the primary reason this was initiated. He noted that the Board added in the other items to make it more comprehensive.

Chair Blakaitis noted that CAMA allowed a certain square footage of structures in the setback zone. He asked if the Board were to pick something like 20, 30 or 40 feet, what would happen to the rest of the CAMA setback zone that was left. He asked if everything would still be allowed. Director Garman stated that CAMA did not specify how much coverage an owner could have, but added that a pool was allowed with a six foot pool surround; however, there was no limit on the size of the pool. He stated that an owner could have 500 square feet of decking plus 200 square feet of gazebo. Chair Blakaitis stated that if all that was left to the homeowner was 20 feet – if the Board decided on the 40 foot setback – the 20 feet would be allowed to accommodate everything. Director Garman stated that they would still be limited by the Town's lot coverage restrictions, but the 20 feet would be what they would be allowed to work with. Chair Blakaitis clarified that the 20 feet could be filled up. Director Garman stated that it could.

Member Murray suggested 30 feet as the setback. He stated that his suggestion was based upon a typical development project which would require approximately 28 feet for decks and accessory structures such as pools. He noted that homeowners were not putting pools on the east side of the dune because they want to; they were doing it because they were allowed on the east side due to parking and septic not being allowed there.

Council Liaison Burdick reminded the Board that Council was looking at alternatives from nourishing the beach to different stages of adding to the dunes. He noted that a decision had not been made and one probably would not be made for some time. He added that as Council pursues permitting, they would pursue permitting for the maximum until they find out how much

money could be put together. He reminded the Board that it was approximately 2.5 miles of the 6 miles of beach and was not a small zone. He stated that it would be interesting to see how many houses had other options as to where to put the pools beside the front of the house. He thought it would be helpful to know. He explained that if the Board picked 30 or 40 feet as the setback, and the owner could not put a pool on the ocean side of the house, he wondered how many homes that have potential for damage in the next three to five years have another location that they could put the pool in. Director Garman stated that there were a lot of variables that would go into that analysis. He added that a lot of assumptions would need to be made to figure things out. Member Murray thought eliminating the option of engineered septic systems and building to the allowable septic capacity would preclude the owner from putting the parking on the west side. Council Liaison Burdick thought it depended on the depth of the lot.

Member McKeithan asked if all of the houses had to be at the 60 foot setback or if they could be at 70 feet and still have room to build a pool. Director Garman stated that they could be further back than the minimum setback. Member McKeithan asked if everything had to be at the 60 foot line. Director Garman thought there were a few lots in Town where the house could be put closer to the street and still meet all of the requirements. He added that staff was dealing with situations where the majority of lots were built out.

Vice Chair Fricker thought that from a practical standpoint, it would seem that a 30 foot setback would be needed. Director Garman stated that from the surveys presented at a previous meeting, from a practical standpoint, 30 feet seemed to be what would protect the dune. He added that once the setback goes to 40 and 60 feet, it went beyond simply protecting the dune as the Town would start getting into property rights. He stated that the Board could provide all options and note a preferred alternative to Council, including the pros and cons of each option.

Chair Blakaitis stated that he was not sure what should be recommended to Council at this point. He didn't think the Board could suggest one thing to Council, but thought the Board should send to Council that there were strong feelings for 60 feet and 30 feet. He thought that the pros and cons for both numbers should be presented to Council. He further thought that piling and concrete structure pools should be sent to Council at the same time as the setback.

Theresa Cullen of 122 Martin Lane was recognized to speak. Ms. Cullen stated that if the Town did not get tough about the regulations, there would be a lot of pushback about the money going into the beach nourishment project. She stated that the Town needed to be sensible about the development of the oceanfront.

Chair Blakaitis stated that he would send to Council a choice between two numbers. He added that he would choose 30 and 40 feet but would recommend 40 feet. He suggested that the Board discuss not allowing pile driven pools and further suggested that concrete pools not be allowed. He thought there was a bigger safety hazard with the concrete pools. Member Murray didn't think concrete pools were any worse than fiberglass ones. Chair Blakaitis agreed.

Mayor Don Kingston was recognized to speak. Mayor Kingston thought the Board needed to make a recommendation to Council on what option they thought was the best one. He thought everyone needed to deal with reality and that the Town needed to be a little tougher with respect to ordinances. He thought the Board needed to give Council a strong recommendation. Chair

Blakaitis agreed with Mayor Kingston. He added that he had suggested 30 and 40 feet, but noted that it was a hard recommendation.

Member Murray asked if the Board had the sense that the Town should get harder on regulations before starting the dune restoration. He thought that there would be strings attached to the dune restoration. Mayor Kingston explained that the Town was not doing a dune restoration, but was moving on a long-range erosion plan so nothing would likely occur in the next zero to three years.

Chair Blakaitis recalled that the Council wanted the Board to do something now and not wait for dune replenishment. Council Liaison Burdick stated that the issue was that the Town had a minimum of three years to make a decision on whether to continue letting things happen or try to put a halt to minimize the damage to the dunes. He thought Council was straightforward in wanting to take action today and not wait three years.

Member Forlano thought that the Town was trying to buy time. Council Liaison Burdick stated he was correct. Member Forlano thought the Town needed to buy as much time as possible with the ordinance as it could. He stated that he would be leaning toward a minimum of 30 feet and a maximum 40 feet setback for pools.

Town Manager Chris Layton was recognized to speak. Town Manager Layton clarified that this year's budget included a \$3.91 cent tax increase over the revenue neutral rate. He added that \$375,000 would go toward beach activities; \$300,000 would go toward the permit process and \$75,000 would go toward enhanced planting and fertilization of the entire dune system.

Ed Sadler noted that the discussion the Board was having was not about erosion, but about responsible development. He added that even if the Town did not have beach erosion, the ordinance would still be needed. He reiterated that this was about the intelligent development of the Town. Chair Blakaitis agreed.

Vice Chair Fricker suggested voting on the suggestions that Chair Blakaitis proposed and let the vote be the recommendation to Town Council. He wondered if it would be helpful to Council. Council Liaison Burdick thought it would. Mayor Kingston thought the Board should send some sort of recommendation to Council. Chair Blakaitis agreed. Director Garman clarified that Vice Chair Fricker was suggesting that each individual Board Member could vote affirmative on each setback number. Vice Chair Fricker proposed five motions – 30 feet, 40 feet, 60 feet, no concrete pools, and no pile supported pools. Director Garman pointed out that if the 40 foot setback received a 4-1 vote, there would be no reason to vote on the other options as that would be the one everyone agreed on. He clarified that the Board could vote affirmative on 40 feet and 60 feet. Vice Chair Fricker stated he was correct, adding that he didn't think there was one right answer. Chair Blakaitis disagreed on having five separate motions for the setbacks as he felt the Board should agree on one to send to Council.

Vice Chair Fricker moved that the Planning Board recommend to Town Council a variation on what was called Option 1 in the staff memorandum, to include a setback of 30 feet. Chair Blakaitis suggested adding "except for dune walkover structures with no dune decks." Director Garman noted that dune decks would already be precluded.

Vice Chair Fricker amended his motion that the Planning Board recommend to Town Council a variation on what was called Option 1 in the staff memorandum to include a setback of 30 feet, except for dune walkover structures and that there shall be no accessory structure that was exempt from the CAMA setback located within 30 feet of the first line of stable natural vegetation. Member Forlano asked if the Board wanted to stipulate the type of construction of the accessory structure in the motion. Director Garman asked if concrete pools should be added to the motion. Chair Blakaitis thought it should be kept separate for now. Vice Chair Fricker stated that he preferred to keep his motion as it stood. Member McKeithan asked Vice Chair Fricker to restate the motion.

Vice Chair Fricker moved to recommend that the Planning Board recommend to Town Council that, except for dune walkover structures, there shall be no accessory structure that is exempt from the CAMA setback criteria that is located within 30 feet of the first line of stable natural vegetation. Member Forlano seconded.

Vice Chair Fricker wondered why his motion didn't seem like the best one for Member Murray. Member Murray stated that it was being phrased as people who wanted to protect the dune and people who didn't. He added that the 60 foot setback was based on a two foot erosion rate. He felt that the Board was creating a false sense of security that the Town accomplished something to protect the dune. Vice Chair Fricker didn't think there was any moral judgment implied in the motion and thought it was simply trying to be proactive and look at the future. Chair Blakaitis disagreed with Member Murray's comments as he didn't think there were enough people that knew about protecting the dunes to say they didn't want to protect them.

Vice Chair Fricker modified his motion that the reasons stated by staff regarding the pros and cons would be the Planning Board's recommendation to Council.

Motion carried 5-0.

Vice Chair Fricker moved that the Planning Board recommend to Town Council a second scenario, with the exception of dune walkover structures, would include any accessory structure within the 60 foot CAMA setback. Member Murray seconded.

Member Forlano stated that his opinion was to pass it up and let Council know that the Board had two lines of thought – one to allow them and the other not to allow them. Vice Chair Fricker stated that the 60 foot setback may cause staff, Council, Planning Board and contractors to recognize that the Town could not keep doing the same thing and expect different results. He thought it needed to be said that the better way to manage the oceanfront lots was not to build to the maximum size possible. He thought owners could try some new ideas, such as having a smaller house if they wished to install a pool. Allan Grossman pointed out that with a 60 foot setback; it was forcing a smaller house.

Chair Blakaitis stated that he was uncomfortable sending two motions to Council. He thought the Board had agreed on 30 feet and added that Council could choose 60 feet if they wanted. He thought it wasn't right to send two motions to Council. Vice Chair Fricker noted that Councilor Nancy Caviness had directed as such. Council Liaison Burdick stated that Council had asked for

options and it was up to the Board to decide how they wanted to express those options to Council.

Director Garman clarified that the Board wished to send the recommendation that was voted on or they wanted to send a range of setbacks with the recommendation of 30 feet and still have the language in the ordinance for Council to consider. Chair Blakaitis stated that the Board was prepared to vote on the 60 foot setback so that would make Director Garman's question moot. Member Murray noted that the vote on 60 feet would be different than the original vote, which would give Council more information to work with.

Mayor Kingston thought the Board needed to send one recommendation to Council. He thought Council would have the same deliberation regarding the 30 and 60 feet setbacks. He didn't think sending two would be helpful. Vice Chair Fricker withdrew his motion.

Council Liaison Burdick disagreed with Mayor Kingston's comments and thought it would benefit the Council to understand Chair Blakaitis' sentiment. Chair Blakaitis thought the Council would understand and would also understand Option 1 and the way it was written. He thought the Board voted on a consensus, allowing Council to pick any option they wanted, but only receiving one recommendation on one vote on the setback. He thought it was clearer. He reiterated that there should only be one vote.

Vice Chair Fricker didn't know how the motion he just withdrew would pass if voted. He thought that it may not be important, but added that he made his argument for the 60 foot setback. Chair Blakaitis stated that he would allow the motion passed on to Council with the comment that there was strong sentiment for 60 feet. Member Murray wasn't sure if there was strong sentiment regarding the 60 feet. He agreed with Vice Chair Fricker that it was important to have a vote on it so that Council could see. Chair Blakaitis suggested that a vote be taken in order to see if the strong sentiment should apply. It was *consensus* of the Board to vote on the withdrawn motion.

Motion failed 1-4 with Chair Blakaitis, Member Forlano, Member Murray and Member McKeithan dissenting.

Chair Blakaitis suggested that the Board take a vote regarding the prohibition of pools on piling foundations. Director Garman noted that it was already in the draft ordinance. He added that the Board could vote on the entire ordinance. He suggested that if the Board wanted to consider the concrete pools, they should vote on the entire ordinance including the recommendation that was already approved and amend the ordinance to include the concrete pools and then vote on the entire thing.

Member McKeithan moved to accept the ordinance as written without adding concrete pools as an exception. Member Murray seconded.

Motion carried 4-1 with Vice Chair Fricker dissenting.

NEW BUSINESS

None.

APPROVAL OF MINUTES

None.

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 3:10 p.m.

Approved: _____
/s/ Joe Blakaitis, Chairman