

**TOWN OF DUCK  
PLANNING BOARD  
REGULAR MEETING  
December 11, 2013**

The Planning Board for the Town of Duck convened at the Duck Meeting Hall on Wednesday, December 11, 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: None.

Absent: None.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for December 11, 2013 at 6:36 p.m.

**PUBLIC COMMENTS**

None.

**OLD BUSINESS**

**Discussion of Town of Duck Low-Impact Development and Stormwater Ordinance**

Director Garman stated that the last time the Board discussed the issue was back in May when they had a discussion with the Coastal Federation, touching on what LID was and the things in the Town's ordinances that could be modified to make it more LID friendly. He stated that the Board went back and forth as to whether a stormwater ordinance needed to be drafted or if they could incorporate things into various sections of the ordinance to make it more LID friendly without writing a new stormwater ordinance. He stated that he sent out an email in November and attached the Town of Nags Head's stormwater ordinance that they have been working on for 1.5 years. He noted that it was pretty comprehensive and a major overhaul to their ordinances. He stated that he looked at it and thought it was beyond what the Town was looking for. He explained that the Town had a lot of ordinances in place that addressed a lot of the issues that the Town of Nags Head's ordinance addressed. He noted that the Town's land disturbing activities ordinance addressed a lot of the issues now. He stated that he saw it as a reference but not a guide for the Board and felt it would be better to incorporate the ideas into various sections of the ordinance to make it more LID friendly. He felt that a good example was to look at the driveway situations where there was a concrete driveway draining to a roadway, in that it should be ensured that the water doesn't run directly into the street. The Town's existing ordinances did

not address that at all. He stated that one example would be to put in a slot drain at the end of the driveway with a swale so the water would drain to the side instead of into the street. He added that other LID items were mentioned, such as looking at guttering systems. He noted that a lot of the homes on the Outer Banks do not have gutters, but foundation plantings or rock to catch the roof runoff. He stated that in more traditional settings, there is a gutter that drains to a concrete surface and then flows to the street. He stated that in the town's ordinance, the language could say that gutters can be put on the house but must drain to a swale or French drain system so it does not drain to a neighboring property. He stated that these applications could also be applied to a residential ordinance as well.

Director Garman stated that the Board could incorporate several simple things into the Town's ordinances but in addition, the Board may wish to look at establishing some type of stormwater standard for commercially developed projects. He stated that currently, the Town deals with commercial stormwater through a conditional use permit process, but it did not specify what needed to be done. He thought it could say that an individual property/project would have to manage at least to the minimum State standard for any commercial project. He thought most people would agree that the State standard was less than most local ordinances required. He stated that it could be established as a minimum since not every project met the threshold for needing the State permit.

Director Garman stated that it could also be specified in the commercial design guidelines section of the ordinance what the plan would have to entail. He added that the Town could indicate that they would like an applicant to consider a LID based plan as their stormwater plan and reference the State stormwater manual for the guidance on how to prepare a LID based plan. He added that the tool that the Board learned about in the spring of 2013 could also be referenced to prepare the application.

Director Garman suggested drafting some of the ordinance for the Board's next meeting so they would have something to work from. He noted that the State stormwater manual would not be available until March 2014, even in draft format. He stated that he could draft the ordinance to give the Board something to work with.

Chair Blakaitis clarified that the State stormwater manual and draft plan would not be ready until March. Director Garman stated that he was correct. He wasn't sure what type of review process the State Stormwater Permitting Unit had before they finalize the plan. He added that the manual itself was part of the regulatory process so it may have to go through a detailed process to formally adopt the manual. Chair Blakaitis clarified that the Board would not be expected to send anything to Council before their March meeting. Director Garman stated he was correct and thought the Board had a couple months to work on the ordinance. He added that once he receives a copy of the State stormwater manual, he will have a better idea on how to structure the language.

Chair Blakaitis clarified that the Town of Nags Head had not finalized their plan yet. Director Garman didn't believe they adopted their ordinance but had a workshop on November 21, 2013 to receive public comments. Chair Blakaitis thought they would hold off until March as well. Director Garman wasn't sure as their ordinance did not rely on the State manual as they have their own requirement and standards for commercial projects as to how much runoff had to be

retained. He believed it was higher than the State standard. He stated that they also developed their own manual, which was a pretty detailed document. He wasn't sure if Duck would want to do the same. Chair Blakaitis thought that whatever the Board came up with would include both residential and commercial. Director Garman agreed, adding that the residential portion would be fairly simple requirements that would be added onto existing ordinances that staff could review.

Member Murray clarified that the residential portion would be done so as to add on to the existing ordinances. Director Garman stated he was correct, adding that volume calculations would not be required, but the owner would have to show the incorporation of specific design elements or meeting certain criteria. Member Murray asked if commercial would be standalone. Director Garman stated that it would still be simple. He saw it as being in the commercial design guideline section of the ordinance. He stated that the Board may want to put in specific requirements for the plans since the LID design process was pretty flexible with what could be used. He noted that permeable pavement had a dual function and better development function than a traditional stormwater basin. He stated that the size of a stormwater basin could be reduced by implementing multiple LID practices.

Member McKeithan noted that the parking lot requirement would need a certain percentage of permeable pavement. He asked if a required range or percentage would be in the ordinance. Director Garman stated it would. He stated that he had not thought things through to that extent, but if the Board wanted to consider it as a requirement, the owner would have to manage 30% with permeable pavement. He added that if the engineers calculated a basin capturing half an inch of rainfall from the site with swales capturing another half inch, then they needed to have at least a half inch captured through permeable pavement. He stated that it mandates that some of the site uses permeable pavement.

Council Liaison Burdick asked if the Board was traveling down the road where the Town would be adding significantly to engineering costs for a homeowner. He thought the items Director Garman listed, such as swales; preventing driveway runoff and capturing roof runoff were more pertinent to residential uses as opposed to the 1.5 inch standard. Director Garman stated that with residential uses, the Town would not require the homeowner to meet the 1.5 inch. He added that it would be something simple that would not need an engineered design.

Member Forlano asked where a LID ordinance would come into play since Duck is mostly built out. Director Garman stated that it would apply mainly to redevelopment projects. He stated that the Board will need to discuss when it kicked in with regard to nonconformities. He thought that if a property was to be redeveloped in its entirety, the owner would have to follow the new rules.

Member Murray thought if an owner was adding a bedroom or parking, it seemed reasonable. Chair Blakaitis thought it was somewhat like the 50% rule. Member Murray agreed. He added that the owner could use 50% of the value.

Director Garman stated that he would try to come up with a draft of the ordinance for the Board to review.

Chair Blakaitis agreed with Director Garman on bringing something back to the Board. He suggested that the Board look at it briefly now to see if there was anything specific that should be included in the ordinance.

Member Murray thought that permeable pavement for commercial use was a good idea, but wondered if the owner should be given alternative options. He wasn't sure how it would be done.

Chair Blakaitis thought the item for revising parking spaces and drive aisles was more for commercial uses. Director Garman stated that it was, but didn't think it was necessary for all applications. He noted that for most of the Town's Village Commercial Development Option projects, staff reduced it down in most cases except for where a fire truck would need to be able to turn around. He stated that a 24 foot wide driveway could be considered excessive and thought the Board may want to look at drive aisle widths.

Member Murray asked if the Town could have a graduated number of parking spaces at different sizes. Director Garman stated that it could be done.

Member Forlano thought the big feature was the economic savings to the developer with regard to LID technologies. He noted that it may cost them more but they would have a larger savings on the other end.

Director Garman stated that having the State stormwater guide as a reference would help the Board in developing the ordinance. Chair Blakaitis stated that he was surprised that a draft wasn't available when the final copy would be available in March. Vice Chair Fricker stated that the draft would be out in March.

Council Liaison Burdick thought that the application for residential uses will be important for the Town in the long term. He added that the costs for redevelopment versus new development were almost negligible. Chair Blakaitis noted that the residential areas have much less lot coverage than commercial areas. He didn't know if it was the same type of problem. Council Liaison Burdick didn't think it was. He thought with residential uses, the Town should provide more guidelines for minimizing the impact of runoff. He thought the Board should look at more guidelines with regard to residential uses.

Member Murray thought it would be good but the lot coverage for residential was different than for commercial. Chair Blakaitis stated that in most of the residential areas, the rainwater goes right into the soil because there weren't any gutters. Member Forlano thought the ponding problems were the result of water runoff from concrete driveways and not the roof of a house. He added that he didn't think the Town couldn't do anything with a LID ordinance unless the owner completes a 50% refurbishing of the house.

Member Murray thought if you give people the opportunity to put more on their lot, they would voluntarily take on projects. He thought lot coverage incentives were a plus. He pointed out that he had suggested lot coverage incentives in the past, but it was not well received. Vice Chair Fricker thought there would not be a net gain. Member Murray disagreed, adding that there would be a gain if all of the runoff stays on the lot.

Council Liaison Burdick thought Member Murray had a point that the Board should consider. He noted that pools are counted as lot coverage and wanted to know why. He stated that pools capture stormwater and thought there were some areas that the Board could manage a little better to get people to use LID techniques. He thought there needed to be a reason for people to want to do it. Member Murray suggested offering people the opportunity to create good development in exchange for being allowed to do more with their property.

Director Garman stated that the Town already has a standard for lot coverage for turfstone and pavers, which do not count as one square foot of lot coverage, but as .6. He added that the Town adopted another standard that has not gone before Council for permeable concrete. He thought it followed the same standard. Council Liaison Burdick thought if there was an incentive that an owner could put more on a lot and get a reduction in lot coverage, it would be helpful.

Chair Blakaitis stated that the question then becomes how much additional lot coverage would be allowed for a certain number of LID compliance. He thought it was the challenge that the Board would be discussing. Member Murray thought it should be gauged by cost, but added that it would be difficult. He stated that it should be valuable enough to provide an incentive to the owners.

Vice Chair Fricker stated that he was confused and thought the Board was going to wait for the State stormwater manual before discussing anything. He thought that Director Garman was suggesting that the Board look at the issue now. He felt that the Board's time could be better spent discussing Member Murray's suggestions. Director Garman stated that the State stormwater manual was simply a guide for engineers to use. He added that all that the Town's ordinance would have to state for commercial projects was that they would need to meet the State standard. He stated that once the manual is put into place, the Board could add the language to the ordinance and send it to Council. He stated that if the Board came up with something for residential uses, the Board could use similar language.

Council Liaison Burdick stated that requiring LID techniques for residential uses worried him. He stated that it would mean a homeowner would have to pay an engineer for it. Director Garman stated that it would only be if the Board decided to give a homeowner an extra amount of lot coverage for a LID based stormwater system. Member Murray thought the Board needed to be specific with regard to LID based techniques. Director Garman stated that he did not envision an engineer requirement unless the Board puts out the carrot approach for additional coverage.

Vice Chair Fricker stated that he would love to have Director Garman draft an ordinance for the Board's review. Director Garman stated that this was all in anticipation of the manual being put into place so that when it does, the Town will be prepared and can act faster. Vice Chair Fricker suggested that Director Garman and Member Murray work together on the ordinance. Chair Blakaitis agreed. Member Murray asked what the Board was trying to encourage regarding design features. Chair Blakaitis wasn't sure he could answer that. He felt that lot coverage should be dealt with first, especially with regard to pools. Director Garman stated that it could be worded that an owner could not use a pool as a retention area. Chair Blakaitis suggested that Director Garman and Member Murray come up with a lot coverage allowance first.

Director Garman stated that he would work on a draft and then work with Member Murray to discuss specific items listed in the staff memo.

## **NEW BUSINESS**

### **Town of Duck Hazard Mitigation Plan Update**

Director Garman thought there were two new Planning Board members since the last update to the Hazard Mitigation Plan, which was adopted in 2010. He stated that the Town did the original plan in 2004 with Lee Padrick and revised it in 2010 since the Town is required to do five year updates. He noted that in 2010, rather than do a standalone plan for the Town; Dare County and all of the towns did one plan for the County called the Dare County Multi-Jurisdictional Hazard Mitigation Plan. He noted that the State wanted the Town to consider doing that, mainly because they had so many individual plans to review.

Director Garman stated that Town staff attended a meeting at Dare County recently and Sandy Sanderson reviewed the process for completing the next five year update, which is due in 2015. He stated that in order to meet the deadline, the Town would have to start working on it in the coming year, as a draft of the plan will need to be prepared and then the State will need a certain amount of time to review it before it gets adopted. He noted that it would ultimately have to be adopted by the Council.

Director Garman stated that from the last update cycle, the committee that was formed to do the update consisted of the Planning Board and several Town staff members, adding that it would be likely that it will be done that way again.

Chair Blakaitis stated that the last update did not happen in 2010. Director Garman stated that it was worked on prior to 2010, but was finally adopted in 2010. He stated that the work began in early 2009. Chair Blakaitis stated that he did not recall. Director Garman stated that Chair Blakaitis did work on it and that the meetings were part of the Planning Board meetings.

Director Garman stated that the plan was an update and the Board would not be rewriting the entire plan. He noted that the table in the Board's packets represented an updated status of the items that were in the last plan. He stated that after Council approves it at their January meeting, it will be sent to the people that need it so the Town's requirements have been met.

Director Garman stated that the first piece was to have the Board review the table and provide any comments and then let him know what should be revised. He stated that the second piece was an update on what would be happening in the coming year with regard to the five year update.

Council Liaison Burdick stated that there was quite a bit of concern over FEMA and the flood insurance program, which directly impacted the Town's community rating system. He explained that the rating system impacted what discounts a homeowner could receive on their flood insurance depending on the number of points a town could demonstrate in its program. He stated that the flood insurance program would impact approximately 20% of the flood insurance

owners in that their insurance would increase 25% per year until it gets to the commercial level. He noted that it was a significant item as far as having the best community rating that the Town could have.

Vice Chair Fricker asked if Council Liaison Burdick was referring to Item 7C in the table. Council Liaison Burdick stated that he was. Vice Chair Fricker stated that he agreed with Council Liaison Burdick's comments. Director Garman stated that as of the last plan update, the Town had not yet enrolled in the Community Rating System, but added that the Town was now enrolled and was rated at a 7.

Chair Blakaitis clarified that the Town was rated a 7 when the plan was first adopted. Director Garman agreed and added that a 7 was the best possible rating the Town could get at the time and still was. He stated that if the Town wanted a 6 or a 5 rating, it would require some pretty significant changes to the ordinance. He stated that it would have to be something that Council would need to consider. He noted that increasing freeboard was not necessarily going to help with the flood insurance rates.

Director Garman stated that the Community Rating System was not designed to be a regulatory program, but more of an incentive type one. He explained that once an entity completes an application to become part of the National Flood Insurance Program, the community then adopts rules that state how high homeowners have to elevate their homes based on a set of maps. He stated that once that was done, everyone in the community could buy a flood insurance policy from the Federal government or from a company that administers the Federal flood insurance policies. He noted that these were a minimum set of requirements that every entity has to meet, but the Community Rating System states that if a community was willing to adopt voluntary programs that go above and beyond the minimum requirements, then additional rate reductions could be obtained off of the insurance premiums.

Member McKeithan thought it seemed that if a particular house did not meet the standard everyone else has adhered to, the owner could be penalized even more. Director Garman didn't think that would happen. He added that there was the regulatory requirement and what the insurance agent bases an owner's insurance on, which were two different things.

Council Liaison Burdick noted that this issue would be a hot button when it comes to flood insurance and Duck had a direct impact on it by the community rating it receives. He stated that anything the Town can do to improve its rating within reason, should be considered. Member Murray agreed with Council Liaison Burdick but thought the Board should consult with an insurance agent to confirm what the Town would be doing to the insurance rates. Director Garman agreed that it was something that staff could look into. Vice Chair Fricker agreed, but felt that before the Town took any action, the impacts should be confirmed.

Director Garman stated that if the Town started considering additional freeboard, it would give more points on the Community Rating System but it would have big impacts on people and their homes. Council Liaison Burdick stated that it would impact future homes and not existing ones. Director Garman stated that if a home was below it, and an owner wanted to do substantial improvements, the whole house would have to be brought up. Council Liaison Burdick stated that that standard was already in place. He added that he was emphasizing things because there

are certain steps the Town could take to improve its rating. He thought it would be worth it for the Planning Board to understand what the steps were and whether they were worth considering. Director Garman thought that at a future meeting he could have Building Inspector Cory Tate come in for a discussion.

Vice Chair Fricker pointed out that Building Inspector Tate had discussed this subject a few years back in the context of oceanfront properties, and at that time the freeboard was the same as the building code and on his recommendation, the Town increased the freeboard. He wondered what the difference was now. Director Garman stated that it was the free and clear of obstruction issue back then and was a little different. Member Murray explained that if a home was 10 feet above the flood zone, an owner still had to have the freeboard on the oceanfront. Director Garman stated that the discussion back then was for oceanfront homes and was to deal with FEMA's guidelines.

Chair Blakaitis asked if the Board needed to review each item at this meeting. Director Garman stated that the Board did not need to review each one tonight, adding that staff updated the status on the items for the Board's review and they could agree that everything looked fine. He added that staff would present it to Council at their January meeting and then provide documentation to the Community Rating System. He stated that later in the year, a discussion will be needed regarding the five year update, which was a more comprehensive process. He added that he would try to schedule Building Inspector Tate to come in for a further discussion on the Community Rating System so the Board could understand how far the Town would have to go to get to a 6 or a 5 rating.

Member Murray asked if there was money available to do mitigation projects that would decrease the likelihood of flooding. Director Garman stated that there were grants available but the catch was that it needed to be for primary residences. Member Murray stated that he was thinking more along the lines of soundside flooding and mitigation. He added that soundside erosion was not getting the attention that oceanside erosion was, but thought it was more intense for the north Duck area. He thought that wetland and shoreline improvements would be money well spent on a lot of levels. Director Garman stated that when the five year update was worked on, it could be something the Board could add. He stated that the Town was trying to do a living shoreline project at the park and he hoped it would be the beginning of the Town educating others about things they could do to improve shoreline erosion on the sound.

Council Liaison Burdick noted that there was a major problem on the soundside across from the post office. He felt it was a good area to decide what could be done. Director Garman stated that soundside erosion will be a big issue. He added that the Board never discussed sea level rise and was something that the County added as a hazard. He stated that the County would be discussing sea level rise in their next five year update and some of the strategies to mitigate it. He noted that the Board would come up with a whole new list once they start working on the five year update. He stated that Council would look at the list and hopefully approve it and then the Board would begin work on it.

It was *consensus* of the Planning Board to approve the update and have it forwarded to Council.

### **APPROVAL OF MINUTES**

### **Planning Board Meeting – October 9, 2013**

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

Motion carried 5-0.

### **OTHER BUSINESS**

None.

### **STAFF COMMENTS**

Director Garman noted that the January regular Council meeting has been rescheduled to Wednesday, January 15, 2014 at 1:00 p.m. He added that Council set the date for their Retreat for March 4-5, 2014. He stated that the agenda has not been set, so he was not sure when the Planning related items would occur. He thought there would be some discussion regarding the pedestrian plan.

Council Liaison Burdick reiterated that the January Council meeting would be held on January 15, 2014 and the Retreat would be held March 4-5, 2014. Chair Blakaitis reminded Council Liaison Burdick and the Board that, at their last meeting, Council was discussing the importance of a continued Council liaison at the Planning Board meetings. He asked that it be put on the agenda. Director Garman stated that Town Manager Layton would be putting it on the Council agenda. Member Forlano noted that the liaison position comes up every year at the Council meeting.

Director Garman stated that the fourth meeting of the Pedestrian Plan Steering Committee would be held on January 30, 2014 at 11:00 a.m. He noted that there was no public meeting for this date and the final public meeting would be held at the time of adoption by Council. He stated that the draft plan would be presented to Council at their Retreat. He stated that after that, the draft plan would be sent to the State and then Council would theoretically get it back from the State and then a public hearing would be held.

Council Liaison Burdick noted that Council decided not to pursue the ordinance on bicycle lights and decided to piggyback off Dare County's initiative.

Director Garman stated that the Town's holiday party would be held on Friday, January 31, 2014. Member Forlano stated that he would not be attending as he was scheduled to have surgery on January 27, 2014. He added that he also would not be able to attend the Retreat.

### **BOARD COMMENTS**

Member Forlano stated that he had been asked several times by various members of the Board regarding the status of Duck Deli. He stated that he has been having issues with the bank but a builder has been chosen and he hoped to have the contracts signed as early as December 12,

2013. He added that he would obtain a building permit as soon as he received a written commitment from the bank. He explained that work would start by taking the house next to the restaurant down and then site work would start and then in September, the restaurant would be demolished and rebuilding would begin.

**ADJOURNMENT**

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

The time was 8:15 p.m.

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