



Planning Board
June 16, 2016
Town Hall 10:30 am

Regular Monthly Meeting Agenda

Call to Order:

Approval of the Minutes: (April and May)

Public Comment: Please state your name and address for the record.

Approval of the Agenda:

Old Business:

- 1) Parking Discussion

New Business:

- 1) Minor Subdivision Text Amendment

Other Business:

- 1) Board Member Reports
- 2) Staff Reports - Tree Protection Ordinance
- 3) Updates from Council Meeting - (clear cutting & stormwater ordinance, development line, fence text amendment, corner lot text amendment)

Adjournment

MINUTES
PLANNING BOARD
April 21, 2016 – 10:30 a.m.
Oak Island Town Hall

Present: Chairman Ted Manos, Vice-chairman Denise Pacula, members Bob Carpenter, Bob Germaine, Helen Cashwell and Clay Jenkins, Planning & Zoning Coordinator Jacob Vares and Interim co-Manager/Town Clerk Lisa Stites. Member Cathy Bowes was excused from the meeting.

Ms. Cashwell made a motion to approve the agenda. Mr. Jenkins seconded and the motion passed unanimously.

The Planning Board noted amendments for the February 24 and March 23 Minutes. **Ms. Cashwell made a motion to approve the Minutes for February 24th, March 17th and March 23rd, 2016 as amended. Mr. Germaine seconded and the motion passed unanimously.**

Mr. Germaine said that the Town does not have enough employees to enforce the ordinances we have. He said that he sees the same people not complying with the trash rules week after week. He wondered why the Town is going through the process to draft a new Unified Development Ordinance if there are not going to be enough employees to enforce them. He said there should be some guarantee from the Town that the Town is going to hire enough employees to enforce the ordinances properly.

Ms. Cashwell agreed that there were ordinances on the books that were not enforced. Doing something to make people feel good or making new ordinances does not solve the situation. She said that one example was the need for posts and ropes around the dunes and said that she hadn't seen any installed. She said she wanted to hear a clear, concise statement about how this is going to be enforced. She said that it was all well and good to take money from the citizens but she wanted to know what the Town was going to do.

Chairman Manos said that he appreciated their comments but that these comments should be made to the Town Council.

Lee Butzin, 121 SW 21st Street: Mr. Butzin said that stormwater had been kicked back and forth between Council and the Planning Board and that it was coming back again. He also said he'd reviewed the Town's stormwater permit and he thought if the Town did not require any checks up to 40% impervious surface coverage, we would probably be in violation of the state stormwater permit; he encouraged the Town to get a legal opinion on that matter. Mr. Butzin said that the permit also requires that even over 12% of coverage, 1.5% of the stormwater is supposed to be retained on the property. He said a significant violation is that the Town was also supposed to have a stormwater committee and that a few years ago, the Town consolidated committees into an environmental advisory committee and that there was no direction given regarding the stormwater aspect. Answering a question from Chairman Manos, Mr. Butzin reviewed a specific example of how the state's stormwater permit could be violated. He said that properties with more than a certain percentage of coverage are supposed to maintain a certain percentage of stormwater on the property, and how could that be shown without an engineering study. Mr. Carpenter said that he had attended the Council meeting when the impervious surface discussion was had and that he thought the discussion went "off the rails." He said he thought Council could benefit from having a presentation similar to what the Planning Board had.

Regarding Old Business 1, Impervious Surface Map, Vice-chairman Pacula said that it was useless because it does not show driveways or accessory structures; it does not show what is needed to keep the 1.5 inches of stormwater on the lots; there is no statistical data. She said if a tank is required to retain stormwater, it would mean cutting the trees down that everyone wants to keep. She also said that the amount of stormwater that had to be retained on a property is not even mentioned; the discussion is all about impervious surface. Mr. Edwards said that the original purpose of suggesting these changes was to create a maximum built-upon area, but it did not seem that was the direction Council wanted to go. Every house has to have a stormwater plan, but staff typically used 30% impervious surface coverage as the trigger for requiring a design professional (including land surveyors) to design the plan. Vice-chairman Pacula said that this issue had been discussed since November. Her understanding is that this started as a way to remove this responsibility from the Town; Mr. Edwards said that he wanted to remove the design responsibility from Town staff. There are not one-size-fits-all solutions. Vice-chairman Pacula asked if she would need a stormwater plan if she wanted to add an accessory structure to a property. Mr. Edwards said that the Town can't make anyone put in new stormwater facilities for existing structures, but that any new construction would have to meet the guidelines. He also said that something of 300 square feet would have minimal impact and would not require a stormwater plan. Vice-chairman Pacula said the Town needed to take responsibility and keep the ditches cleaned out, etc. The Board had further discussion on the existing stormwater requirements.

Ms. Cashwell said that she didn't know why this was being considered without taking into consideration the tree ordinances; they can't be separated at all.

Mr. Edwards said that the CAMA Land Use Plan said there should be a maximum built-upon area, and that this process had grown into much more than that.

Chairman Manos said he wanted to clarify for the record the status of the proposed ordinance amendments for impervious surface. Town Planner Jacob Vares said the directive from Town Council was that the tree ordinance and impervious surface ordinance amendments were to be considered together. He explained that Council asked for language to require an engineered stormwater plan for anything over 45% impervious surface coverage and to levy a hefty fine for clear-cutting a lot. Responding to a question from Vice-chairman Pacula, Mr. Vares noted that there is not currently a cap on impervious surface coverage.

Councilor Sheila Bell said that Councilor Winecoff had made the motion that the tree ordinance and impervious surface issues should be handled together. She said that the 35 and 10 percent requirements made too many properties nonconforming. There is currently a stormwater plan and ordinances regulating the number of trees to be left on a property, etc. She said what they discussed was that at more than 45%, an engineered stormwater plan would be required. Vice-chairman Pacula said that this began with staff looking to take the responsibility out of their hands and putting it in the hands of design professionals.

Mr. Carpenter said that there are 197 properties that would be nonconforming at a 35% requirement and at 45% there would only been 20-some properties. Mr. Vares said that the map provided should not be used; it does not include a layer for driveways as there is not data for that. Accessory structures are also not included.

The Board discussed what the purpose of these proposed ordinance amendments was supposed to be. Chairman Manos said his understanding was that we were trying to comply with and create a stormwater plan while allowing for development. Mr. Edwards said that this had been in the works for some time; it's been in the CAMA Land Use Plan for a decade and nothing had been done with it. Ms. Cashwell said this

was being done because of the result of the flooding we've had in the last year and a half and that it was the unintended consequences of overbuilding, not paying attention and raising heights; Mr. Edwards disagreed. He said he had worked with former Public Works Director John Michaux on this before Mr. Michaux left his job with the Town a year or so ago.

Vice-chairman Pacula asked Mr. Edwards if he would be comfortable with requiring all impervious surface coverage plans, even up to 90% coverage, to be handled by a professional; he said he would. Vice-chairman Pacula said it was very difficult to put that together with the desire to save trees. Mr. Jenkins said that he worked in forestry and that there are areas with no impervious surface that still flood, and he thinks each site needs to be looked at individually.

The Board also discussed with Mr. Edwards the possibility of using old septic tanks to capture stormwater.

Chairman Manos asked what the Council's concern was. Mr. Vares reminded the Board that Council had directed staff to provide Council with specific language regarding impervious surface and tree protection. Chairman Manos said that it would be a while before the tree ordinance revisions would be ready. Councilor Blalock said his major concern was the protection of the natural resources, such as trees. He said if a house can't be built without cutting the trees down, there shouldn't be a house built.

Mr. Carpenter said that he didn't think the intent of the Planning Board was to restrict development. He said that he is concerned about retaining stormwater on a property. The complaints are that adjoining properties are getting saturated when a new house is built, even though there is a stormwater plan for the new house.

Chairman Manos said that he is okay with the 45% and requiring an engineered stormwater plan. Ms. Cashwell said the Board ought to look at it further. Chairman Manos asked when something would come back to the Board. Mr. Vares said he had a draft ready but would be consulting with the arborist. Ms. Stites said that those proposed amendments were to go directly to Council, since it would be a revision of the impervious surface amendment already addressed by the Planning Board and the tree ordinances are not required to go the Planning Board. The Board discussed the differences between what the Board proposed and what Council directed staff to prepare. Mr. Vares said that the Board recommended a cap of 45% and Council asked for language to allow coverage greater than 45% but that number triggers the requirement for an engineered plan. Chairman Manos said he wanted to see a copy of what was being proposed to Council; if he needed to have the entire Planning Board at the Council to argue against a position the Board doesn't like, he wanted to be in a position to do that. Ms. Cashwell asked why it could not come back to the Planning Board. Chairman Manos said that Council directed it come back to Council. Ms. Cashwell said it did not say that it had to hurry up back to Council. Ms. Stites said there was no time frame, but that Council did direct the proposed amendments be brought to Council. Chairman Manos said all he wanted was a copy. Mr. Carpenter said that he attended the Council meeting and that Council did say that it should be brought to Council but the Council members did not say it couldn't go to the Planning Board first; he asked for a clarification with Council because Council did not say to skip the Planning Board step. Ms. Stites said she specifically asked Council at the meeting if the proposed amendments were to go to Council without going to the Planning Board, and that the answer was yes.

New Business:

1. Proposed Development Line: Vice-chairman Pacula said that her husband owns a lot that is currently now not buildable; she said she could not tell from the map how that would be affected. Chairman Manos said that he also had property that was not buildable. He said there was not a conflict of

interest as this proposal came from staff and was in line with changes the Coastal Resources Commission made which will allow a municipality to create a development line that will regulate where construction can be located. Mr. Edwards said that the new law went into effect April 1. He said that with the development line, construction would still have to be behind 60 feet of vegetation; the difference is that now the Town can use natural vegetation instead of the Static Vegetation Line. Mr. Edwards explained how staff came up with where to draw the proposed development line. The line is 85 feet (15-foot right-of-way, 15-foot setback and 60 feet to the vegetation). There are areas of the beach that the Static Vegetation Line was not applied as the sand project did not cover the entire beach. There will still be non-conforming lots. The goal was to bring as many properties as possible in compliance with the development line and to make nonconforming homes as conforming and bring back their property values. Mr. Edwards explained the process for implementing a development line. There would be a Public Hearing and once Council adopted the ordinance amendment, the CRC would have to approve it. Mr. Edwards explained that in some areas, the Static Vegetation Line would actually be more beneficial than the proposed development line and in those areas, staff recommended retaining the Static Vegetation Line.

Mr. Edwards, Mr. Vares and the Board reviewed specific areas on the proposed maps. The Board also discussed that many homes on the beachfront are not allowed to be rebuilt because of the Static Vegetation Line. Mr. Vares noted that the development line is supposed to have some uniformity. There are some areas with elongated lots and staff worked with staff at the Division of Coastal Management on the Town's line. The Board had further discussion about the ability to rebuild a house on the beachfront and questions about specific properties and whether they would be made buildable. There are places where staff does not recommend establishing a development line, so the Static Vegetation Line would still guide development there. Though the 60-foot setback from the stable line of vegetation would still have to be met, establishing a development line will make many properties buildable. Chairman Manos expressed concern with making it seem like the Town was just interested in making as many properties as buildable as possible rather than simply trying to make the line as uniform as possible. Mr. Germaine asked how many homes would be nonconforming after the development line is adopted; Mr. Edwards said it would be 112. Responding to Chairman Manos' concern, Mr. Vares said he would work on the explanation before presenting it to the CRC.

Mr. Edwards also noted that another criteria for the development line is that the Town needs to be pursuing a beach nourishment program.

Ms. Cashwell said that the development line could only help the Town. **She made a motion to accept the development line. Mr. Jenkins seconded the motion and it passed unanimously.**

The Planning Board took a break at 12:15 to 12:30 p.m.

2. Dune Protection Ordinance: Mr. Vares explained that this issue arose as citizens asked the elected officials for protection of the dunes. Mr. Vares reviewed some amendments he was proposing under 14-130. He reviewed some additional amendments he was proposing under 14-130, Decks, Walkways....to add "and Development" to the title and to add "all development within the ocean-erodible area" in the first sentence following the word "govern." He also read a new subsection (1).

Mr. Germaine asked about the \$500 fine in 14-127; Mr. Edwards said it was based on the state statutes. Chairman Manos said if it referenced a criminal statute, that would be the maximum fine allowable. Ms. Stites reviewed the Town's existing ordinance and the relevant state statute and confirmed that \$500 was the maximum fine allowed. 14-129: Ms. Cashwell asked what assurance the citizens would have that

what is being proposed will be enforced. She said that she never seen a line item in the budget for maintenance. She said it was a “feel good” ordinance that had no teeth or provision for enforcement. Mr. Edwards said that the Town does maintain the beach accesses; Ms. Cashwell said it was barely if at all. He asked if she had any specific examples of where it was not maintained and she said she did not, but that she walks the beach and sees what is going on. Mr. Edwards also said that Town staff has reviewed all the “illegal” crossovers, taken down unofficial signs, etc. to try to divert people to the official accesses. He said that staff has also been pulling up the ropes and posts; some of them have been buried in the sand. Mr. Germaine said that he has seen people digging in the dunes and the police go by and do nothing about it. He said he has seen large holes left and no one tries to find out who dug them. Ms. Cashwell said this was once again considering something that looks good but nothing will be done about it. Vice-chairman Pacula said she thought the intent of this ordinance was to protect the secondary dunes during construction; Mr. Vares confirmed that. Chairman Manos said that regardless whether something is enforced appropriately according to individual views, there should be an ordinance in place that is enforceable. He said the Town would have to decide how much to spend on enforcement, if additional employees were needed, etc. He also said that personally, he didn’t care if people dug in the sand as long as it wasn’t the dune. Mr. Germaine said it mattered because of the sea turtles.

Mr. Edwards reviewed a picture he provided of a location where the secondary dune line was actually created (closer to the road) by the Town pushing sand. Mr. Edwards also discussed how public trust land is determined, where measurement for the stable vegetation line starts, etc. Chairman Manos asked what ability homeowners have to increase the walkways. Mr. Edwards said they could not add new walkovers. Chairman Manos asked what the homeowners could do to keep the walkways/accesses open. Mr. Edwards said they should utilize it, walk on it. The Board and staff also discussed variance requests and how the Board of Adjustment would likely handle requests for variances to put a swimming pool in the secondary dune.

Mr. Germaine was excused from the meeting at 1 p.m.

Mr. Edwards reviewed a specific area for development and explained how the permitting process worked. Staff had the U.S. Army Corps of Engineers and the Division of Coastal Management review the property and determine what would be allowed before permits were issued. Vice-chairman Pacula referenced a property discussed earlier, with the man-made dune, and asked what would prevent someone from digging into the dune after the fact to add parking. Mr. Edwards said that would be caught during the building process. After the final permit is issued, he said sometimes staff does pick up on changes that wouldn’t have been allowed. He also mentioned a property where the owners wanted to dig out the tow of the frontal dune so they could put in a walkway and shower; staff denied it but the Division of Coastal Management overruled and said that activity would not adversely impact the dune. He added that the intention is not to stop development, but rather to try to incorporate the natural amenities and growth and development together. On the property with the man-made secondary dune, Mr. Edwards said one option could be to realign the dune.

Mayor Brochure addressed the Board and explained where the ordinance amendments originated. She said that the elected officials had asked staff to draft language to protect the secondary dunes when the CAMA regulations do not.

Ms. Cashwell asked if the beach hazards section would be removed from this; Chairman Manos said it would not. Vice-chairman Pacula asked about the shared access (14-129), saying that requiring restricted covenants for shared facilities would not “encourage” shared access. Mr. Edwards said that there is not

currently a place where there could be an additional access installed over the nourished dune. He also spoke about one area where a natural dune grew and said that the neighbors could utilize this provision. Chairman Manos said that if the property owners will share an access, they'll need some kind of formal plan for maintaining the easements, etc. Mr. Vares said the intent of the proposal for requiring restrictive covenants was to protect future property owners as properties changed hands. Vice-chairman said it would be better just to require houses to share accesses. Ms. Cashwell said that provision should be removed as there are accesses at the street ends. **Chairman Manos made a motion to approve the text amendments as presented and amended. Mr. Carpenter seconded the motion. The motion passed 4-1 with Chairman Manos, Vice-chairman Pacula and members Carpenter and Jenkins in favor and Ms. Cashwell opposed.**

Staff Reports:

Mr. Vares said work was progressing on the tree ordinance revisions. He will attend a UNC-School of Government training session on May 19 for Planners and Planning Boards. Ms. Cashwell and Vice-chairman Pacula would like to attend as well. The Planning Board meeting will be Friday, May 20 (at 10:30 a.m.) instead of May 19 (Chairman Manos and Mr. Germaine will be unable to attend). Mr. Vares will work with Mr. Holland on the schedule of finishing the UDO review. Chairman Manos asked staff to remind Mr. Holland that the contract was written based on hourly rates for an employee whereas now Mr. Holland, who comes at a higher rate, is handling this process.

Ms. Cashwell made a motion to adjourn at 1:30 p.m. Mr. Carpenter seconded and the motion passed unanimously.

Chairman Ted Manos

Attested: _____
Lisa P. Stites, CMC
Town Clerk

MINUTES
PLANNING BOARD
MAY 20, 2016—10:30 A.M.
OAK ISLAND TOWN HALL

Present: Vice-chairman Denise Pacula, Board members Cathy Bowes, Helen Cashwell, Clay Jenkins and Robert Carpenter, Town Planner Jake Vares, Development Services Director Steve Edwards and Administrative Support Specialist Debbie Lasek. Chairman Ted Manos and member Bob Germaine were not present and had been previously excused from the meeting.

Vice-chairman Pacula called the meeting to order at 10:30 a.m. and led the Pledge of Allegiance.

Minutes: **Ms. Cashwell made a motion to table the approval of the Minutes until Chairman Manos was present at the next meeting, and Mr. Carpenter seconded.** Vice-chairman Pacula mentioned the potential conflict of interest issue with herself and Chairman Manos regarding non-buildable lots and the development line. Mr. Vares said that he had discussed this situation with the Town attorney and reported that the attorney's opinion was that the development line was across the board and that it was appropriate for the involved members to disclose, discuss and vote upon. Ms. Bowes disagreed; she feels uncomfortable with someone voting on the issue when they could make money off it. Mr. Carpenter and Ms. Cashwell agreed with her; Ms. Cashwell added that there has been much ado about fine lines in this town. **Ms. Cashwell again made a motion to table the approval of the Minutes until the next meeting when Chairman Manos will be present. Mr. Carpenter seconded and the motion passed unanimously.**

Approval of the Agenda: Ms. Cashwell asked for clarification of the meeting date for the UDO meeting; Vice-chairman Pacula confirmed it was the 22nd, which is the fourth Wednesday of the month, at 10 a.m. Mr. Vares advised the Board that it be a full two-hour meeting. Ms. Cashwell asked about relief for the consultant's expenditures; Mr. Vares confirmed that his rates have been adjusted.

Ms. Bowes made a motion to approve the agenda. Ms. Cashwell seconded, and the motion passed unanimously.

Old Business: Mr. Vares said board members have received copies, and that the Land Use Plan was on the agenda to have the committee look over the Plan; they should be ready to discuss at next meeting. If the plan is approved at the CPAC meeting, it would be on the following Planning Board agenda. He repeated that June 22nd was for the UDO, and that the UDO packet has not been received yet. The CPAC meets on June 7th.

New Business:

1. Fence Text Amendment. Mr. Vares did a short staff report. This text amendment was submitted by a property owner regarding section 18-82. The alteration is requested as it is unique due to the way the properties face each other. The address specifically is 101 NE 72nd Street. The amendment would allow for a 6-foot fence all the way along his property line. Mr. Vares reminded the Board that any change to text amendments rules would apply across the jurisdiction. Vice-chairman Pacula asked about the fence setbacks and confirmed there would be no fences in the right of way. Ms. Cashwell asked if it would be better to go to the Board of Adjustment for this one isolated issue. Mr. Vares answered that the criteria to receive a variance is very restrictive, and a text amendment would be the best route for this property owner.

Public Comments: Charles and Rosalie Harley, 101 NE 72nd St. Mr. Harley said they have had conversations with Mr. Vares; when putting up their fence, it was realized that the fence ordinance allowed for two ways of interpretation. The staff walked them through the ordinance, and they feel this text amendment would solve more problems than it creates. Mr. Harley said his house is moved back further than the minimum build line. He said that their fence joins the corner property fence and they wanted to put four foot fence along the rest of the side. Mr. Carpenter asked Mr. Vares how many other properties would be affected; he answered that it would be very difficult to determine this figure and would involve looking at each property along Oak Island Drive. Mr. Cashwell asked about visual obstructions; Mr. Vares answered that the Town has ordinances to handle this situation, particularly on corner lots. Vice-chairman Pacula said her understanding is that the house facing Oak Island Drive has an existing 6-foot fence in the backyard. Mr. Harley said it is a wood plat fence, approximately 10-20 years old and that he wants to put another fence against his fence, and then put a 4-foot fence where it stops up to the easement of the road. Mr. Jenkins said he sees no problem with that, and that the Oak Island Drive property owner could put that fence back, as it is his back yard that faces the other neighbor's side. The right-of-way would still exist.

Mr. Jenkins made a motion to approve the text amendment as written. Mr. Carpenter seconded, and the motion passed unanimously.

2. Corner Lot Text amendment: Mr. Vares found an inconsistency in the zoning ordinance as it is written; there is a footnote (f) under the dimensional standards table with an 8-foot setback. The language is contradictory with the table above, which states a 10-foot corner side yard setback. In 2010, Council adopted language to address this, but the wrong language was actually sent to Municode by the clerk at the time. After reviewing the 2010 Council packet, the Minutes, and what the amendment actually says, along with additional Council recommendations, the goal here is to take action to allow more flexibility for corner lots next to water bodies. The current language adopted in 2010 seems to be unnecessarily complicated; Mr. Vares has removed the specific water feature references and said it would apply to island side corner lot properties only. He would also recommended inserting the work "major" with the water bodies for extra clarification.

Vice-chairman Pacula asked whether oceanfront beach accesses were dead end streets; Mr. Edwards confirmed that they were. Ms. Bowers asked for clarification as to whether it was an 8 or a 10-foot setback; Mr. Vares explained that, as corner lots are defined, there would be a 10-foot setback as opposed to an 8-foot one. Mr. Jenkins said he lived on a corner, and that the corner was 10-foot and the other side was 8. He also noted that it seemed the only reason it was done was that other towns have it. In these situations, they are dead end streets with low traffic. Vice-chairman Pacula asked about the setbacks and said that corners have 8-foot setbacks; Mr. Edwards noted that Yacht Drive and Ocean Drive have 8-foot side yard setbacks on street sides, and that they are the only corner lots that are affected. In 2004, they increased from an 8-foot to a 10-foot setback. They were trying to reduce the old 15-foot setbacks required on those lots. In 2010, they amended side yard corner lot setbacks on the oceanfront and waterway lots to an 8-foot setback, instead of 10; all other corners still need the 10-foot setback. The reasoning was to have visibility and to maintain the line of the homes. These setbacks have been adjusted many times over the years. Ms. Cashwell asked if the house burned down, how would the affect rebuilding; Mr. Edwards said they would be required to build to the new setbacks and that it could even be beneficial. Mr. Jenkins and Vice-chairman Pacula agreed that they see no problem and that this clarifies the situation.

Mr. Jenkins made a motion to accept the text amendment as it was stated. Ms. Bowes seconded, and the motion passed unanimously.

Other Business:

Board Member Reports. Ms. Cashwell said that Development Services will have to do a workshop on the development line. Mr. Vares said he is working on visual presentations for all that attend the meeting; the date is Friday, June 3rd at 10 a.m. in Council chambers.

Vice-chairman Pacula bought up Habitable Rooms; Council decreased the count to two parking places with three habitable rooms instead of four, and this is now official.

Mr. Carpenter said they have had many discussions with Mr. Vares on stormwater and pervious/impervious surfaces. He suggested that they should require that, after a developer removes trees, they should require the developer to replace that water that was captured by the trees that were removed. This may require a different way of looking at how to capture stormwater than previously discussed in the past. Ms. Bowes asked about the trees that were named; she asked about how much native trees cost, such as live oaks. Mr. Vares said the arborist is making a list of preferred trees for this area, working with a previous list and with changes recommended by Tree City Board. Mr. Vares can ask her to include ones that the Board may want to see on there for capturing stormwater.

Mr. Jenkins reported on the Citizens Academy presentation on Saturday with the Committee Fair; he answered questions on stormwater, impervious surfaces, trees ordinance, house sizes, etc. He thought it was interesting that people are definitely reading the paper and asking questions. Ms. Cashwell added that the citizens are really concerned about the loss of the trees. Mr. Jenkins said he felt it was enlightening for them to understand the negative effects that their recommendations or decisions can have, and that they were welcome to come to the open meetings. Vice-chairman Pacula said that she still feels that this parking ordinance is really more or the rental houses on the oceanfront and that trees are affected by all these ordinances, yet everyone wants to save the trees. She asked Mr. Vares if there could be districts for this parking, with different rules for oceanfront and wooded areas. Mr. Vares cautioned against Special Use Districts. Short-term vacation rentals were mentioned; there was discussion regarding parking areas that may result in cutting trees. Mr. Vares asked whether she wanted him to rewrite the parking ordinance. Ms. Pacula said no; she said that these room regulations were for the 15-bedroom houses, and that looking at bedrooms to parking has a consequence on those in the wooded sections. With a 55 x 120 lot with a slab or crawl space house, the problem is fitting in four parking spaces. Ms. Bowes said that it seems they are looking at zoning or districts; they talked of taxation districts in the Beach Renourishment meeting. There was discussion regarding Board members' homes and the subsequent parking needs due to the ordinance. Mr. Vares suggested bringing in examples of site plan survey samples to show how they have been laid out; Vice-chairman Pacula added that this will lead to people taking down trees to provide adequate parking, when the focus should be on controlling the beachfront. Ms. Bowes wondered if the concern is basically on the oceanfront, where most are rentals as opposed to permanent residences; she was unsure of the percentages and would be interested in finding that out. Vice-chairman Pacula said this may be something to look at with the UDO; Mr. Jenkins added that when making rules that affect beachfront issues, they should look at the effect on other island areas. He said he feels they are trying to do good things, but they can affect other people negatively. Mr. Vares said he will add this to his UDO revision list. Vice-chairman Pacula wondered if having a separate district is legal; Mr. Vares said there would be no district, but the text amendment would contain the language to address it. Mr. Jenkins said they just discussed a similar situation with the side yard setbacks and Ms. Bowes asked if there were other Towns they could look at for ideas. Mr. Vares said he has never heard of a town handling parking like this, with different rules for different areas, unless environmental issues were involved. Vice-chairman Pacula said that this was primarily to control development on the oceanfront and rental houses, but that it is affecting others as well. She wondered about South Harbour; Mr. Edwards said that in addition to their covenants, they would have to abide by the Town's rules as well and that this could include parking. There is an architectural review committee over there. He explained that development in South Harbour can have a 5-foot side yard setback and separate rules. Ms. Bowes wondered if Council should know that they are exploring this. Mr. Carpenter said he is on a 55 x 120 lot, with 12 trees and a very large, non-

conforming driveway. Mr. Vares questioned again whether the Board was giving him a directive to re-write the parking ordinance; Ms. Cashwell said not necessarily and that he may need to point out some necessary problems. Ms. Bowes added that they are looking at essentially "dividing the island." Vice-chairman Pacula suggested finding out if or how other Towns separate out the oceanfront, or is it just that Oak Island is unique. Mr. Jenkins said that other towns don't have the trees that we do and it is not an issue, and that the impervious surface coverage is more in other places. Ms. Cashwell said this is the one of the last of the wooded islands with trees, and that is in effect why people came here and why people are so upset and want to protect them. Mr. Carpenter added that his idea is to make the developer responsible for handling the stormwater issues that result from removal of trees; they can do it with a different plan, or by planting trees. This is in effect recognizing how much water is being absorbed by the trees. Vice-chairman Pacula added that trees may be removed due to parking requirements. The unintended consequences from the parking regulations for weekly visitors also need to be addressed. Mr. Vares said he has his directive and will report back at the next meeting.

Tree Protection Ordinance: Mr. Vares has created a web page on the Town's site under Development Services; Tree City USA received points for a grant that they are working on because of this. It includes the Power Point and the map of tree inventory from several years ago. The Stormwater analysis and Preferred Trees list is also available there. He has also been giving progress reports to the Environmental Advisory Board and Tree City. The arborist is putting together a draft; it will be available for the Board to comment on soon.

Council meeting updates: Ms. Cashwell brought up dune protection; this does not exist as the Town doesn't replace the equipment to protect it. Mr. Vares said the Dune Protection Ordinance was adopted, the Development Line was tabled until the workshop on June 3rd, and the Lowes final plat was approved.

Ms. Cashwell made a motion to adjourn the meeting. Mr. Jenkins seconded, the motion passed unanimously and the meeting was adjourned at 11:30 a.m.

Chairman Ted Manos

Attested: _____

Lisa P. Stites, CMC
Town Clerk

TOWN OF OAK ISLAND
PLANNING BOARD
AGENDA ITEM MEMO

Agenda Item: New Business No. 1

Date: June 9, 2016

Issue: Minor Subdivision Text Amendment

Department: Planning & Zoning Administrator

Presented by: Jake Vares

Presentation: None

Estimated Time for Discussion: 30 Minutes

Subject Summary:

The language within Oak Island's zoning ordinance regarding minor subdivision requirements is not clear enough. In order to resolve this, a text amendment is proposed in order to clarify the language in the zoning ordinance. The point when a subdivision jumps from a minor to a major is when it reaches five lots. A minor subdivision can have four lots while a major subdivision is five or more. The original tract is included calculation the total number of newly created lots within a subdivision. The general statutes give municipalities authority to define minor vs major subdivision as well as discretion to outline the process. To have a minor subdivision approved the zoning ordinance specifies a set of criteria that has to be met beforehand. A minor subdivision cannot create a new street, more than 4 lots, require an extension of a public water or sewer system, be inconsistent with the zoning ordinance, or negatively impact the surrounding properties. If any of those conditions occur then a minor subdivision is bumped up into a major subdivision (Sec.18-374). Our ordinance says in Sec.18-81 & Sec.18-446 that parcels have to have street access. A driveway is an access way that connects buildings on developed property to a street or highway. A joint driveway serving more than one property is really just a private street or road.

The process to have a minor subdivision approved is to first have the plat submitted to the zoning administrator for compliance review. Once approved the property cannot be subdivided for another three years and the applicant has 6 months to record it at the register of deeds (Sec 18-412). One can submit a major subdivision application within the 3-year period after a minor subdivision is done/recorded. If the lots are not going be served by municipal sewer service, a site/soil evaluation has to be made by the County or an acceptable third party.

Sec. 18-447. – Utilities - states that *"each lot in all subdivisions within the corporate limits of the town shall be provided, at the subdivider's expense with an extension of the municipal water and sanitary sewer systems, On-site waste disposal systems are only permitted in subdivisions where the municipal or sewer district sanitary sewer system is not available according to current policies. Where on-site systems are permitted, the final plat recorded for the subdivision must contain a notice to lot purchasers that septic tanks must be abandoned and the property's wastewater system must be connected to the municipal or sewer district system when it becomes*

available.” General Statute 143-215.1 is attached below and gives towns the authority to require permits for sewer extensions.

Part “a” in Sec.30-34 below highlights the regulation for water or sewer hookup. It states that if you have a house and lot intended for habitation or occupancy that is 300 ft. from a water or sewer line then it must tie in. In the case where there is no water or sewer line 300 ft. from the site then a county/state inspector can approve a septic tank install. This situation is more probably on the mainland side of Oak Island since the island side has utilities throughout. If an extension of public water or sewer is required then that extension mandates the subdivision be a major subdivision (Sec.18-374(b)), rather than a minor. Whenever a parcel goes into the County sewer, rather than the Oak Island system, the Town Council has to approve that mutual agreement between the County, Town, and property owner/applicant.

The primary issue with the minor subdivision ordinance language is the extension of public water or sewer requirement; the term extension is not defined and could potentially be interpreted many ways. Extension in Section.18-374 below refers to hooking into the system, not necessarily the laying of the piping infrastructure. This is important because a sewer extension permit is needed from the state and/or county before one can have a mainland minor subdivision plat approved. Staff has researched the state regulations to define *extension* and has found some assistance in the 15A NCAC 02T regulations. The below highlighted text amendment resolved the extension ambiguous language issue and makes it clear to those wanting a minor subdivision exactly what is required.

The purpose for requiring sewer extension permits is to allow for their use in a manner that is protective of health and the environment and supports the prohibition of sanitary sewer overflows. The N.C. Division of Water Resources (DWR) – Pretreatment, Emergency Response and Collection Systems Unit issues these types of permits. It takes between 30 to 90 calendar days upon receipt of a correct and complete application package to review the application. Once obtained the permit is valid for the life of the sewer extension (GS 133-3; GS 143-215.1; 143-215.3(a); 143-215.6A; and GS 143-215.6B).

The ordinance language Sec. 18-412. - Procedure for review of minor subdivisions – mandates that the town clerk certify the minor subdivision plat. I believe only the zoning and subdivision administrators signature is necessary so the text amendment is proposing that language be removed.

Attachments: Proposed Text Amendment,

Recommendation/Action Needed: Approval

Suggested Motion: Motion to the approval the text amendment as proposed.

Funds Needed: \$0.00

Follow Up Action Needed: Forward recommendation along to Town Council

Attachments

Sec. 18-374. - Definitions; interpretation and construction.

Dedication means a gift, by the owner, or a right to use of land for a specified purpose. Because a transfer of property rights is entailed, dedication must be made by written instrument, and is completed with an acceptance.

Easement means a grant by the property owner of a strip of land for a specified purpose and use by the public, a corporation or persons.

Extension, of public water or sewer, means an addition or increased capacity usage to the public or private sewer system, consisting of sewer lines, force mains, pump stations or any combination thereof that conveys wastewater to a designated wastewater treatment facility or separately-owned sewer system. For purposes of permitting, the collection system is considered to be any existing or newly installed system extension up to the wastewater treatment facility property or point of connection with a separately-owned sewer system.

Half street means a street whose centerline coincides with a subdivision plat boundary, with one-half the street right-of-way width being contained within the subdivision plat. Also, any existing street to which the parcel of land to be subdivided abuts on only one side.

Sec.18-374 *Minor subdivision means any subdivision involving four lots or less abutting on a public street which will not:*

- (1) *Require any new public street or public street improvements or any new street, whether public or private, to give access to interior lots or parcels.*
- (2) *Require the extension of public water or sewer.*
- (3) *Create any new or residual parcels that do not satisfy the requirements of this chapter.*
- (4) *Adversely affect the development of the remainder of the parcel or of adjoining property.*

Sec. 18-412. - Procedure for review of minor subdivisions.

(a) *Applications which meet the criteria for minor subdivisions as defined in section 18-374(a) may be submitted to the subdivision administrator for review and approval. Any person who proposes minor subdivision must consult with the administrator to ensure that he understands the requirements for approval of the plat to be submitted. The final plat shall contain the information required by section 18-474. A plat that has been reviewed and given final approval by the administrator shall be certified by the signature of the subdivision administrator, as such by the signature of the town clerk.*

(b) *If the lots in the proposed subdivision are not to be served by municipal sewer service, a site/soil evaluation shall be made by the county environmental health section or other properly certified party acceptable to the town for each lot depicted on the minor subdivision plat. Copies of these evaluations shall be forwarded to the administrator prior to final approval. The town shall bear no liability or responsibility for the credibility of these evaluations or for lots created which are*

ultimately not determined to be suitable for on-site wastewater disposal by the environmental health section.

- (c) Any minor subdivision so approved must be recorded in the county register of deeds office within six months of the date of approval. Two copies of the recorded plat must be transmitted to the department of development services prior to the issuance of any development permits on the property.
- (d) The minor subdivision process may not be used a second time on the original parcel within three years of the date of recordation by the register of deeds.
- (e) Each proposed minor subdivision application shall demonstrate compliance with the current land use/management plan of the town as the plan may be amended from time to time and any land use or management/protection plan, as such plan may be amended from time to time, that may exist only for the protection of specific areas of the town (i.e., Fragile Area Management Plan for Western End of Oak Island or other such plan as may be adopted or amended by the town). Compliance with these plans is mandatory and the approval of subdivision must include a finding by the administrator of such compliance. Should any party disagree with the administrator regarding a determination of compliance with official plans, the plat shall be forwarded to the planning board and town council for review through the major subdivision process.

Sec. 18-447. - Utilities.

- (a) *Water and sanitary sewer systems.* Each lot in all subdivisions within the corporate limits of the town shall be provided, at the subdivider's expense with an extension of the municipal water and sanitary sewer systems, where such systems are available to the subdivision according to current town policies. Each subdivision in the extraterritorial area of the town may be connected at the subdivider's expense to the municipal water and sanitary sewer systems if approved by the town council. Water and sanitary sewer lines, connections and equipment shall be in accordance with the town standards and specifications, as such may be revised from time to time.
- (b) *On-site waste disposal systems.* On-site waste disposal systems are only permitted in subdivisions where the municipal or sewer district sanitary sewer system is not available according to current policies. Where on-site systems are permitted, the final plat recorded for the subdivision must contain a notice to lot purchasers that septic tanks must be abandoned and the property's wastewater system must be connected to the municipal or sewer district system when it becomes available. Connections must be made according to the town's or district's policies in effect at the time the connection is made. Any lots that are not to be served with municipal sewer service shall have a site/soil evaluation made by the county department of health, environmental health section, or other properly certified entity acceptable to the town, and a determination of lot suitability for on-site wastewater disposal. This determination shall be indicated for each lot shown on the preliminary and the final plat.
- (c) *Package treatment systems.* Where the municipal system is not available according to town policies, package wastewater treatment plants, approved by the state department of environment and natural resources, may be considered for approval under the following conditions:
 - (1) The owner/operator can demonstrate to the satisfaction of the town that the plant is designed and operated in a manner that results in no degradation of surface water quality.
 - (2) The collection system meets the material and installation standards of the town.
 - (3) The owner agrees to abandon the treatment plant and connect the collection system to the municipal system, at his expense, when the municipal system is available according to town policies.
- (d) *Water reuse piping.* Subdividers may be required to install piping for the town's water reuse system. Where required, water reuse piping shall comply with the standards and specifications of the town.

Sec. 30-34. - Service.

(a) Every person owning a house and lot or building used for human habitation or occupancy in the town, which premises abuts or adjoins a street, easement or right-of-way along which is located a public water or sewer line which is accessible within 300 feet of such premises, shall make water connections with his house, building or other place of human habitation or occupancy. This section shall also apply to new construction, provided that in lieu of a public sewer connection where no public sanitary sewer line is accessible as indicated in this section, a septic tank system approved by the state board of health, and designed by the county health department, shall be installed. Inspection and approval by the county health department shall be required. The town council may request the county board of health to make periodic general inspections and report its findings to the council.

(b) Consumers will make a written and signed application for service, in person, at the town hall and at the same time make the deposit guarantee required in this article.

(c) The town may reject any application for service not available under a standard rate, or which involves excessive service cost, or which may affect the supply of service to other customers or for other good and sufficient reasons.

(d) The town may reject any application for service when the applicant is delinquent in payment of bills incurred for service previously supplied at any location, provided that when the owner of the premises has been served water and has not paid for such service, the town, as provided by law, shall not be required to render service to persons at such location where the water was used until the water bill has been paid.

General Statute 143-215.1. Control of sources of water pollution; permits required.

(d) Applications and Permits for Sewer Systems, Sewer System Extensions and Pretreatment Facilities, Land Application of Waste, and for Wastewater Treatment Facilities Not Discharging to the Surface Waters of the State. -

- (1) All applications for new permits and for renewals of existing permits for sewer systems, sewer system extensions and for disposal systems, and for land application of waste, or treatment works which do not discharge to the surface waters of the State, and all permits or renewals and decisions denying any application for permit or renewal shall be in writing. The Commission shall act on a permit application as quickly as possible. The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit plans, specifications, and other information the Commission considers necessary to evaluate the application. If the Commission fails to act on an application for a permit, including a renewal of a permit, within 90 days after the applicant submits all information required by the Commission, the application is considered to be approved. Permits and renewals issued in approving such facilities pursuant to this subsection shall be effective until the date specified therein or until rescinded unless modified or revoked by the Commission. Prior to acting on a permit application for the land application of bulk residuals resulting from the operation of a wastewater treatment facility, the Commission shall provide notice and an opportunity for comment from the governing board of the county in which the site of the land application of bulk residuals is proposed to be located. Local governmental units to whom pretreatment program authority has been delegated shall establish, maintain, and provide to the public, upon written request, a list of pretreatment applications received.