

Donald Martin, Mayor
Larry Hardison, Mayor Pro Tem
Aldermen:
Richard Farley
Richard Peters
Robert Swantek
Daniel Tuman

Town of North Topsail Beach



Breck H. Smith
Interim Town Manager
Carin Z. Faulkner, MPA
Town Clerk

North Topsail Beach
Planning Board
Agenda
November 12, 2009, 6:30 P.M.

- I. Call to Order, Announcements and Petitions
- II. Adoption of Agenda
- III. Approval of Minutes, October 8, 2009
- IV. Public Comment
- V. Old Business
 - A. Conditional Use Districts
 - B. Zoning Map
 - C. Undersized Lots of Record: Nonconforming Lot Analysis by Eastern Carolina Council
- VI. New Business
- VII. Planning Board and Staff Discussion:
 - A. Unified Development Ordinance
- VIII. Public Comment
- IX. Adjournment

Notice to citizens who wish to speak: As a courtesy to others, a citizen speaking on an agenda item or making a petition is normally limited to three minutes. Persons who are organizing a group presentation and who wish to speak beyond the three minute limit are requested to make prior arrangements through the Zoning Administrator's Office by calling 328-1349. If you wish to address the Board this evening, please go to the front right corner of the conference room and sign up with the Recording Secretary. The Board may also change the order in which agenda items are presented.

Attorneys: If you are representing a person with an interest in a quasi-judicial proceeding on this agenda and believe you may wish to cross examine a witness, please identify yourself as such to the Recording Secretary. For the sake of maintaining an accurate public record all speakers must be prepared to speak into an amplified microphone and must provide their name to the Town Clerk.

**TOWN OF NORTH TOPSAIL BEACH
PLANNING BOARD MINUTES
OCTOBER 8, 2009
6:30 P.M.**

PRESENT: SUE TUMAN-CHAIRMAN, PAUL DORAZIO-VICE CHAIRMAN, GARY ROWLAND, GERALD RIGGLEMAN, HANNA McCLOUD, DEBORAH LANCI, TIM SMITH- ASSOCIATE OF TOWN ATTORNEY BRIAN EDES, DEBORAH HILL- PLANNING & ZONING ADMINISTRATOR, RYAN MCALISTER-PLANNER, TERRIE WOODLE-PERMIT TECH/RECORDING SECRETARY

NOT PRESENT: SUZANNE GRAY-ALTERNATE, GUNNAR MATTHEWS

- 1. CALL TO ORDER:** Mrs. Tuman called the meeting to order at 6:30 p.m. in the North Topsail Beach meeting room. Mrs. Tuman introduced Tim Smith sitting in for Attorney Brian Edes.
- 2. ADOPTION OF AGENDA:** Mrs. Tuman suggested adding a presentation by Michael Gallant PE, PA on Pluris LLC (The Corporation that bought North Topsail Utilities) on the Agenda.
- 3. APPROVAL OF MINUTES:** Mrs. Tuman suggested identifying the property on Undersized Lots of Record as the Judy Hooks property CASE # V-09-02.
Mr. Rowland made a motion to approve the minutes as amended. Mr. Dorazio seconded the motion, motion passed unanimously.
- 4. PUBLIC COMMENT:** Gary Hartsock came forward to speak. He stated he is on the Dolphin Shores Board of Directors; he wanted to comment on the recombination by Donald & Helen Quenzer. He stated that Dolphin Shores building envelope is a little more restricted because they try to accommodate ocean views from the second and third row lots so they need to consider that. He stated it is an L shape lot and part of the L is in Dolphin Shores and the other part is not, the Board of Directors wants the whole lot to be considered a Dolphin Shores lot.
Mr. Rowland made a motion to close the Public Comment. Mr. Dorazio seconded the motion, motion passed unanimously.
- 5. OLD BUSINESS:**
 - A. ZONING MAP:**
 - 1. Zoning to a District that does not yet exist in the Zoning Ordinance:**

Ms. Hill's staff report read as follows: Through the years, North Topsail Beach has approved two rezoning applications to a district (Conditional Use R-10) that (still) does not exist by ordinance text. Ms. Hill asked the School of Government is CU-R10 zoning with no indication in the Town's ordinance a valid concern? If so, what is the appropriate method of correction? Is the entire rezoning void? How is staff to treat these properties in the meantime?

Their reply: From a legal standpoint, remember that the Town cannot rezone property to a district that does not exist. It is possible to create a new district in the text and concurrently (or more likely, in a separate second vote) place property into that district. But the text amendment must come first. The Town can choose to first do the text amendment and then accept proposed rezones so as to handle the two items some time apart, or it can handle both concurrently. Either way is legal as long as the text amendment vote comes first.

RECOMMENDATION: That the Planning Board confers with the Town Attorney to determine 1) if CU-R10 zoning with no indication in the Town's ordinance a valid concern; 2) if so, the appropriate method of correction; 3) is the entire rezoning void; 4) how staff to treat these properties.

Ms. Hill introduced Attorney Tim Smith an associate of Brian Edes the Town Attorney. Mr. Smith stated that you can not zone retroactively, this needs to be added as an amendment to the zoning text first. Ms. Hill stated it was R-20 then it was rezoned R-10 and then it went to CUR-10 as part of the subdivision review process. Mr. Smith stated in that case it would be R-10 since R-10 is in the zoning text.

Mr. Rowland made a motion to have Staff make a determination whether the Town should have a CUR-10 classification and if so, do the necessary research and amend the Town's current zoning ordinances to include CUR-10. Mr. Dorazio seconded the motion.

Discussion: Ms. Hill stated she will do the research on determining whether or not there is justification on CUR-10 and have it to the Planning Board by their next meeting. She has a concern that in the Conditional Use District there is the opportunity for both the Planning Board and Board of Aldermen to make determinations that may be interpreted as contract zoning and that is illegal.

Mr. Rowland's concern is if a neighborhood is trying to get their district converted to CUR-10 the Town might be engaging in a "taking" by taking the flexibility of a property owner from putting a duplex on their property requiring him to only put in a single family dwelling.

VOTE: Motion passed unanimously.

- B. PRESENTATION BY MICHAEL GALLANT PE, PA ON PLURIS LLC:** Mr. Gallant came forward to speak. He stated that he came to the last Board of Aldermen meeting to inform them on what stages they are at in the expansion of the sewer plant. They have had interviews and some one has been selected to be onsite at the office in Sneads Ferry and will reopen as a customer service office.

He stated they are doing studies on the collection system that exist now and have had meetings with several regulators in Raleigh and locally as to the actual way the collection system improvements will be permitted in the future. He stated they are going to break the system down into three separate parts at the plant; this will relieve the pressure on those three parts and will be independent of each other.

They have had Geotechnical Engineers at the site to determine the ground bearing numbers for the tanks they are going to build for the new plant to make sure the ground can support the tanks. He should get that report back next week. They also have a Hydro geologist that is looking at the infiltration rates and places to put infiltrations basins on the property for the future plant. The plant they intend to build has a million gallon a day foot print with a half million gallon a day initial flow, that combined with the spray fields they have now will bring the capacity plant somewhere over a million gallons in the first phase and probably up to 1.5 million in the second phase. There have been concerns about capacity in the past, after the fist phase of completion a lot of these capacity problems will be second nature.

Upon completion of the geotechnical and hydrological studies he will continue the design of the plant. They hope to get the permit sometime in December and start construction early next year.

Mr. Dorazio asked how many new homes will this supply. Mr. Gallant stated it would be approximately 3000 three bedroom homes but not everyone builds a three bedroom home. Mr. Rowland asked what the status of the current waiting list is. Mr. Gallant stated it is his understanding that people have been called that are on the list and given the opportunity to buy a tap if they build within 60 days. Mr. Rowland asked if there is a list of people waiting for taps. Mr. Gallant stated to the best of his knowledge the people that are requesting taps are getting them or will get them.

C. ZONING MAP ISSUES (CONT.): Ms. Hill gave the Planning Board an update on the Zoning Map Issues:

Tax Parcels 763-1.4 & 763-1.8 Owned by TP Inc. Staff recommends that Onslow County GIS correct zoning from Con-D to R-20 for Tax Parcels 763-1.4 & 763-1.8 as indicated on the Official Zoning Map adopted by the Board of Alderman on March 1, 2007.

Tax Parcels 813-7.15 & 813-7 Owned by TP Inc. Staff recommends that GIS correct zoning from CUR-10 to R-10.

Tax Parcels 815A-21, 815-11, 815-12, 815-13, 815-13.2, 815-14, 815-15 and 815-16:

Ms. Hill stated that she spoke to Landin Holland from Holland and Associates and he is going to look into these and get back to her. She will update the Planning Board when she gets the information.

Tax Parcel 768-8.1 Owned by Ocean Ridge HOA & Others: Ms. Hill stated again that Landin Holland will look into this and get back to her.

Tax Parcel 778-4.4 & 778-4.5 Owned by Jesse C & Gayle S. Fisher and 778-4.6 & 778-4.7 Owned by Dennis Johnson: GIS- No action required. Staff recommends that the updated zoning map and GIS indicate R-10 zoning.

Dolphin Shores Subdivision: To be addressed in Agenda Item 5.A.1

Tax Parcel 768-9.2 owned by Otha Herring Estate: No action is required as the Board of Aldermen approved the change on 06-07-2007 as Case# R-07-02.

Tax Parcel 774-16.1 Owned by Edward Walters III & Johnson J.: No action is required as the Board of Aldermen approved the change on 09-06-2007 as appealed by Mr. Walters.

6. NEW BUSINESS:

A. Proposed development of travel trailer park (adjacent to Rogers Bay Campground) by D & J Properties, Inc.: Mr. Durwood Bradshaw, of D& J Properties Inc. which owns Tax Parcel 769-4.2 came forward to speak. He stated that he would like to develop his property surrounded by Rogers Bay Campground, as an expansion of the travel trailer park to help pay the taxes. Based on what is already there this is the most logical route to go. There are some discrepancies in the laws where **G601.1 Placement prohibited:** The placement of recreational vehicles shall not be authorized in

flood hazard area subject to high velocity wave action and in floodways and the other one **G601.2 Temporary Placement**: Recreational vehicles in flood hazard areas shall be fully licensed and ready for highway use, and shall be placed on a site for less than 180 consecutive days. He stated this would be for rental and they would only be there a short time.

Ms. Hill stated that she has confirmed with Onslow County Building Codes Administrator, Flood Plain Administrator and Bob Durrin/ FEMA that a new travel trailer park or an expansion of Rogers Bay Campground is prohibited by the NC Building Code Section G601.1 and Town Code Chapter 8 FLOOD DAMAGE PREVENTION.

The 2009 NC Building Code states that “the placement of recreational vehicles shall NOT be authorized in flood hazard areas subject to high velocity wave action and in floodways.” The definition of high velocity wave action refers to VE and C1-V30 FEMA flood zones. Although Rogers Bay is mapped within a coastal AE zone, the higher flood ordinance standard adopted by the Town of North Topsail Beach in 2000 requires all subsequent development meet VE standards throughout the Town’s jurisdiction. Although Town Code Chapter 8 FLOOD DAMAGE PREVENTION allows placement of RV’s in velocity zones with certain restrictions, it is **prohibited under the NC Building Code section G601.1 due to the higher flood standard adopted by the Town.**

In 2000, the Town of North Topsail Beach adopted VE construction standards for all development, to include property located in an AE flood zone. Construction standards can no longer just meet AE, but must now meet all VE requirements.

The Town’s action of adopting the higher standard in 2000 was intended to reduce and limit property damage after a hurricane event. With this higher standard of development, it allows the Town of NTB to take a more proactive approach for its community. **Reducing the standard opens the door for more property damage to this RV Park and adjacent island properties that are permanent in nature, resulting in extensive debris removal, increased insurance losses, and finally increased insurance rates that are already being experienced.**

Coastal “A” zones are also susceptible to wave action which is one of the reasons for enforcing “V” zone standards within these areas. **Making exemptions for RV’s and increasing their numbers in beach communities is exacerbating the problem and is in direct conflict with the proactive approach to sound flood management practices.**

The Town has allowed rv’s/travel trailers in and out in VE zones, the V zone construction standards were not applicable until the Town’s flood ordinance was revised in 2000. The replacement of RV’s is addressed in the same manner as mobile homes. Rogers Bay is assumed to be pre-FIRM and existing units are allowed to be replaced in the same manner as MH’s in mobile home parks in VE zones. In coastal high hazards areas, the flood ordinance states “no manufactured homes shall be permitted except in an existing manufactured home park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring and elevation standards are in compliance with this section of the ordinance.”

Ms. Hill stated per the State Code the Town can not allow either a new travel trailer park or an expansion of Rogers Bay without being in direct conflict of the State Building Code. She also stated that he wouldn’t be eligible for a Variance as they pertain to State mandated performance

standards. If the Town's Ordinance exceeds the performance criteria established by State and regulates the other type aspects such as location, setbacks, etc., and then it would be identical to the general variance criteria. She asked where the hardship is. He would have to convince the Board of Adjustment that he meets all six criteria in the Variance and he doesn't.

He can develop the property as commercial property and bring it up as commercial development reviewed by the Planning Board and approved by the Board of Aldermen but the Town can not approve it if it is going to be an expansion of the RV Park.

Mrs. Tuman stated that the Planning Board would like to work with Mr. Bradshaw but we are not going to be able to work on the basis of RV's.

B. ESRI and Trimble 2009 Mobile Government Grant: Ms. Hill's staff report reads as follows: Ms. Hill has been working on mapping beach vitex locations to document anticipated success of treatment. They have had to borrow equipment from Onslow County. University of Georgia had already begun mapping and creating a database that she had luckily discovered on the web. She contacted UGA and they were very excited that the Town had a real-life application for their research.

Patricia Pike/Onslow County GIS has been just as enthusiastic and notified her of a very timely grant sponsored by ESRI. ESRI, a maker of Geographic Information System software, and Trimble, a provider of Global Positioning System solutions, have launched the 2009 Mobile Government Grant Program. Through the program, packages of hardware, software, and training valued at \$89,980 each will be awarded to twenty state and local government agencies in the United States.

The program is designed to foster innovative approaches to solving government problems through the combined use of GIS, GPS, mobile, and server technology. Applicant projects must demonstrate increased efficiencies in collecting data for decision support or increased productivity in delivering government services.

This program is not designed to initiate a GIS program or replace the services already provided by Onslow County GIS, but rather enhance County and Town efforts through cutting edge hardware, software, and training. The Town's Public Works department has a handheld of simple capabilities, as it stores only the coordinates and not associated data entered in the field.

In addition to mapping beach vitex, other applications may be:

- Documentation for repetitive loss properties (very important for CRS).
- Beach erosion, especially during major storm events.
- Inspections, code enforcement.

RECOMMENDATION: That the Planning Board recommends that (1) the Board of Aldermen approve the application for the ESRI and Trimble 2009 Mobile Government Grant and (2) that the Mayor sign a letter of Support.

Mr. Dorazio made a motion that the Planning Board recommends the Board of Aldermen approve the application for the ESRI and Trimble 2009 Mobile Government Grant and have the

Mayor sign a letter of support. Mr. Riggleman seconded the motion, motion passed unanimously.

7. PLANNING BOARD & STAFF DISCUSSION:

A. Home Occupation: Ms. Hill stated that an Attorney requested a Home Occupation Permit. There is a conflict with Home Occupations in the Town Code Chapter 7. The Table of Permitted and Conditional Uses indicates that a conditional use permit is required. But the text of accessory uses states that the Zoning Enforcement Officer is the permit issuing authority. This was apparently the result of the text change in 2004 with the Table not updated to reflect the changes in the text.

Mr. Smith stated when ever there is a discrepancy like this the court is always going to enforce the most recent Ordinance. It appears that the newest Ordinance addressing this issue is Section 7-132 Home Occupation as an accessory use.

It was the consensus of the Planning Board to place the Home Occupation permit under Section 7-132.

RECOMMENDATION: None. For informational purposes only.

B. Undersized Lots of Record: Planning Board had directed Staff at last month's meeting to provide background on the number of non-conforming undersized lots that are yet to be developed. Ms. Hill has spoken with Rob Wills of ECC and he will do a map for the Town and take out the non-buildable plus the lots that would fall within the 80% that Staff would be able to sign off on. This will be on the Agenda for next month.

RECOMMENDATION: None.

C. Proposed Recombination by Donald & Helen Quenzer:

Ms. Hill met with Paul Fornwald/Broker/Realtor of Prudential representing Mr. & Mrs. Donald Quenzer regarding the proposed lot recombination for Lot 40 Dolphin Shores Tax Parcel 779-22. After conducting an onsite visit, it appears that both *proposed* lots may be buildable; the surveyor would need to indicate a 1st line.

Ms. Hill stated that she advised Mr. Fornwald that the owner should first seek approval from Dolphin Shores HOA, and then seek PB review and BOA approval based on **Sec. 7-259.1. Re-subdivision procedures.** *For any re-platting or re-subdivision of land, the same procedures, rules and regulations shall apply as prescribed herein for a new subdivision.*

The Town Manager concurred that given Sec. 7-259.1 and that Lot 40 was approved by the BOA as part of Dolphin Shores, the recombination would need to be presented to PB and BOA for approval, not on the staff level as an exemption.

NOTE: Tax Parcel ID 779-22 was not part of the Dolphin Shores subdivision, yet the Zoning Map indicates the zoning as CU-R10.

RECOMMENDATION: Planning Board review the zoning of Tax Parcel 779-22 (related to Agenda Item 5.a.1)

D. North Topsail Beach Town Code Chapter 7-Unified Development Ordinance: Ms. Hill discussed the UDO with the Planning Board Members. She asked the Planning Board Members to go through the UDO section mark it up and get it back to her by October 15, 2009.

E. Publications: Staff distributed the following to the Planning Board for information only.

1. Conditional Zoning in North Carolina prepared for the N.C. Waterfront Access Study Committee by Erin Wynia N.C. Coastal Resources Law, Planning and Policy Center

2. State Law in North Carolina Affecting Local Codes and Ordinances

3. Smart Growth for Waterfront and Coastal Communities

4. Legal Tides- Summer 2009 from the North Carolina Coastal Resources Law, Planning and Policy Center

8. PUBLIC COMMENT: No one from the Public came forward.

9. ADJOURNMENT: Mr. Rowland made a motion to adjourn. Mr. Dorazio seconded the motion passed unanimously.

The Planning Board meeting adjourned at 8:02 p.m. October 8, 2009. Minutes prepared by Terrie Woodle- Permit Tech/Recording Secretary.

Sue Tuman-Chairman

Date: _____

Terrie Woodle- Permit Tech/Recording Secretary

Date: _____

TOWN OF NORTH TOPSAIL BEACH
PLANNING BOARD

AGENDA ITEM

MEETING DATE: November 12, 2009

ITEM NUMBER: V. A.

ISSUE: Conditional Use Districts (cont.)

BACKGROUND: On October 8, 2009, the Planning Board directed staff to determine whether the Town should have a CUR-10 classification and if so, draft the Town's current zoning ordinances to include CUR-10.

Staff recommends consideration of an ordinance to amend Chapter 7 Planning & Zoning Ordinance by adopting conditional zoning (and repealing conditional use district zoning) as a land use approval process.

Conditional or Special Use District (CUD) zoning has been authorized in North Carolina since the mid 1960's. Despite the benefits of flexibility that CUD zoning provides, its legal and theoretical underpinnings – bifurcating the legislative rezoning from the quasi-judicial conditional use permit – have always been difficult to apply in practice.

In 2001 and 2002, the North Carolina Court of Appeals in two cases (review denied by the Supreme Court) approved the use of "conditional zoning." Conditional zoning is essentially the same practically and conceptually as CUD zoning in that it is a rezoning based on a site specific development plan, and the applicant is bound by the conditions in the ordinance. Legally, however, it collapses what was an awkward two-step process into a single process.

One important difference for the Planning Board is that the conditional zoning process requires no specific findings. Decisions should still be based on sound land use guidance principles, however, and this is set forth in the proposed ordinances. Conditional zoning is like adopting a set of development regulations (building height, setback, etc.) and applying them to a single property or group of properties, creating a single use classification. Procedurally, the process is much less complicated than CUD zoning. The process for appealing a conditional zoning ordinance into the courts would be different as well.

The application process would be mostly unchanged from the current process for CUD zoning – requiring that the owner be the applicant, that a site specific plan be submitted, and that the uses be specified.

The current CUD zoning process would be eliminated for future use. Any CUD zoning designations established by this process, however, would continue to be governed by the CUD ordinance.

Considerations:

- streamlined process at Planning Board/Board of Aldermen level, and in courts
- increased flexibility in zoning
- less administrative time required to process applications, administer ordinance
- less vulnerability to judicial challenge
- susceptible to over use

RECOMMENDATION

that Staff continue to research 1) whether or not CUR-10 was adopted by the Board of Alderman but possibly not included in the text of the Ordinance; and 2) the merits of conditional zoning, specifically how other localities have implemented and benefited from conditional zoning compared to Conditional Use Districts.

ATTACHMENTS

none

TOWN OF NORTH TOPSAIL BEACH
PLANNING BOARD

AGENDA ITEM

MEETING DATE: November 12, 2009

ITEM NUMBER: V. B.

ISSUE: Zoning Map (cont.)

BACKGROUND: Staff spoke with Landin Holland of Holland Consulting Planners, Inc. regarding the zoning boundary differences between the Zoning Map and Onslow County GIS for the following two areas. The differences may have resulted from using maps with hand drawn boundaries, compared to the digitized GIS maps.

- a. Tax Parcels 815A-21, 815-11, 815-12, 815-13, 815-13.2, 815-14, 815-15 and 815-16; and
- b. Tax Parcel 768-8.1 Owned by Ocean Ridge HOA & Others:

Upon confirmation from the Planning Board, Staff will submit a request to Patricia Pike, Director of Onslow County GIS to make the following corrections:

- a. Tax Parcels 763-1.4 & 763-1.8 Owned by TP Inc. Staff recommends that Onslow County GIS correct zoning from Con-D to R-20 for Tax Parcels 763-1.4 & 763-1.8 as indicated on the Official Zoning Map adopted by the Board of Alderman on March 1, 2007.
- b. Tax Parcels 813-7.15 & 813-7 Owned by TP Inc. Staff recommends that GIS correct zoning from CUR-10 to R-10.

RECOMMENDATION 1) that Planning Board and Staff determine the correct boundaries for the following by again reviewing the zoning boundaries from 1982, 1992 and the associated worksheets and if change from Zoning Map, that a public hearing be scheduled for the next regular meeting of the Planning Board:

- a. Tax Parcels 815A-21, 815-11, 815-12, 815-13, 815-13.2, 815-14, 815-15 and 815-16; and
- b. Tax Parcel 768-8.1 Owned by Ocean Ridge HOA & Others.

2) In the matter of Dolphin Shores and other CUR-10 property, that Staff research whether or not CUR-10 was adopted by the Board of Alderman but possibly not included in the text of the Ordinance;

ATTACHMENTS none.

TOWN OF NORTH TOPSAIL BEACH
PLANNING BOARD

AGENDA ITEM

MEETING DATE: November 12, 2009

ITEM NUMBER: V. C.

ISSUE: Undersized Lots of Record (cont.)
Nonconforming Lot Analysis by Eastern Carolina Council

BACKGROUND: Mr. Rowland suggested taking one section at a time and addressing the one that resulted in going to the Board of Adjustment recently. Planning Board directed Staff to provide background on the number of non conforming undersized lots that are yet to be developed.

Staff is scheduled to meet with Rob Will of Eastern Carolina Council and will present Nonconforming Lot Analysis report to Planning Board.

RECOMMENDATION None.

ATTACHMENTS None.