

**MINUTES OF SPECIAL WORKSHOP MEETING
OF THE EMERALD ISLE BOARD OF COMMISSIONERS
THE STORM WATER MANAGEMENT ORDINANCE**

WEDNESDAY, FEBRUARY 27, 2002 – 7:00 P.M. – TOWN HALL Mayor Schools called the meeting to order at 7:00 P.M. Present were Mayor Schools, Commissioners McElraft, Eckhardt, Farmer, Marks and Messer and Town Attorney Derek Taylor. Staff members present were Town Manager Frank Rush, Town Clerk Carolyn Custy and Inspections Department Head Carol Angus.

The purpose of the workshop was to discuss the draft of the Storm Water Ordinance and any other items of interest.

Mr. Rush stated the primary concern of this ordinance is single family and duplex residential development - standards and requirements for multi family and commercial projects are not significantly different.

Without an overall storm water plan for the subdivision when it was platted, and without a requirement for storm water controls for single family and duplex development, you essentially wind up with no storm water controls except for the roads.

The new Ordinance reorganizes the current ordinance - Clear statement that ordinance applies to single family and duplex up front; spells out performance and design standards first; and spells out storm water plan requirement after performance and design standards. All development must submit a plan; no waivers from plan requirement; Limited plan requirements for projects with less than 5,000 sq. ft. of impervious surface – do not need licensed professional to prepare plans; More detailed plan requirements for projects with greater than 5,000 sq. ft. of impervious surface – need licensed professional to prepare plans; Changes order of other sections of ordinance – variances, off-site facilities, etc. It provides a requirement for erosion and sedimentation control activities if more than 5,000 sq. ft. of earth disturbed or 500 cubic yards of earth disturbed. Will need approval from NC Department of Environment and Natural Resources for the town to take over erosion and sedimentation control activities.

The draft ordinance provides a limitation on the amount of fill per lot. Areas with more than 2 feet of fill will require a licensed professional to prepare the storm water management plan, regardless of the amount of impervious surface.

There are increased infiltration requirements from 1.5” in the current ordinance to 2” in the draft ordinance and runoff from any impervious surface draining into the infiltration area must be accounted for.

No part of a pond, wetland or low area exceeding 1,000 sq. ft. that serve as temporary collection basins for storm water can be filled, unless a new retention pond is built as a replacement. Must seek a variance from the Board of Adjustment if this requirement precludes reasonable development of the lot.

Must maintain a 2 feet separation between bottom of storm water collection facility and water table. The draft ordinance prohibits artificial recharge of natural ponds with groundwater supplies.

Focus is single family or duplex development. The need for a storm water management

plan anytime the impervious being developed exceeds 1,000 sq. ft. The current ordinance does not require a plan for single family or duplex.

Additional information required for storm water plans for projects with less than 5,000 sq. ft. is 2 foot contours must be shown on plan, indication of locations of significant trees in the disturbed area and must show changes in topography.

Additional information required for storm water plans for projects with more than 5,000 sq. ft are, (1) it must be designed by a licensed professional, (2) 2 foot contours must be shown on plan, (3) indication of locations of significant trees in the disturbed area and (4) must show changes in topography – 25 x 25 grid.

A storm water management plan for a new subdivisions must consider the projected storm water runoff volumes associated with full build-out of the subdivision.

The new draft ordinance strengthens requirements for storm water facilities to be maintained. Violations to ordinance are subject to civil penalties only.

A copy of the draft ordinance is attached at the end of these minutes.

Commissioner Eckhardt asked, in reference to the artificial recharging of a natural pond with ground water supplies, if that is retroactive and when the term groundwater supply is used does that infer aquifer? Mr. Rush answered yes it does include aquifer and it would be retroactive.

Attorney Taylor commented that is the approach being taking by this ordinance. It is up to the board as to how they wish to proceed with it. He does believe that with the Police powers of this town, it would afford the opportunity to have that kind of control.

Commissioner Farmer indicated she was the one who proposed this and was not her intent to make it retroactive.

Commissioner McElraft said she would like to have the option of putting in a fountain in a pond because all the ponds around her have a green slime on them. Commissioner Farmer said this would not prevent anyone from putting in aeration devices. That is not the issue. The issue is pulling aquifer water and adding it to surface water, which is adding to the flooding problem. There have been no ordinances in the past that prohibit people from doing that and it is not fair to go back and say to those “get it out” but on the other hand she does not feel people should be encouraged to do that either because it is just adding more water to problems that already exist.

Commissioner Farmer made a motion to open discussion up to the public. The board voted unanimously with a vote of 5-0.

Mr. Ted Williamson, 205 Sandfiddler East, Lands End, stated listening to the comments from the bench, he and a couple of other residents of Lands End, were a little puzzled about the use of the word “retroactive”. He said they had read the proposed ordinance and they are not unduly troubled by it. Many on the board know residents of Lands End have sharply moderated the practice in Lands End of pumping significant amounts of new water from the aquifer into the ponds recognizing that keeping the ponds low is an important move to protect against storm water flooding in that area. He knows this is the intent of the new ordinance. He personally had assumed that the import of this ordinance, if passed as now drafted, would ask them not to do that anymore. He does not know now whether that is what it meant or whether is says whoever you new guys are who have been thinking about doing this, don’t do it.

Commissioner Farmer said it was not her intent to say to Lands End “don’t do it anymore”. She continued “if Lands Ends decided not to do it anymore, she thinks the board

would be happy”.

Mr. Williamson made it clear he was not speaking for the Lands End Association. He most certainly was not speaking for the board of the Lands End Association. He was speaking as a single, private resident of the Lands End Subdivision. He would like to see the town board make this apply to Lands End if it is applied to others. It is a prudent move. He would like to see the board let them freshen their ponds with extreme moderation from the aquifer but if we are going to address storm water flooding in a serious way, everybody should be invited, guided and directed not to exacerbate the problem. Mr. Williamson indicated a member of Lands End Board was present and he may or may not agree with what Mr. Williamson has said. Mr. Williamson continued that while nice full ponds are pretty, and nice fresh water and the flow thereof is encouraging to everybody and has been for centuries and centuries, it is foolishness to fill your ponds and then have to worry about how to get rid of all of that storm water. The need to be sensible exists and Mr. Williamson believes that is what the town board is trying to do.

Mr. Pete Ellis, 9810 Outrigger Court, asked if he had missed a revegetation plan as part of the draft ordinance? He said Mr. Rush did a good job providing an overview but he didn't see any re-vegetation plan. He didn't see any replanting which needs to be put in. Trees drink a lot of water. Mr. Ellis said trees are taken away, scrub is taken away and some strong vegetation is taken and no trees are replanted.

Commissioner McElraft informed Mr. Ellis that the town has a Reforestation, Re-vegetation Committee and that approximately 20,000 trees have been planted since the hurricanes. She invited Mr. Ellis to join the committee.

Mr. Ellis suggested that re-vegetation be monitored by someone who rides around looking for areas that are not re-vegetated and remind them that replanting helps with the storm water problem.

Commissioner Marks noted that people need to be educated on re-vegetation.

Commissioner McElraft said that in using dry wells, it was realized that 30 to 40 year old trees were being removed and now re-vegetation is part of the storm water plan required.

Mr. Clint Routsen, 9721 Green Glen Road, said there are some specific issues and some general issues he would like discussed. He noticed that with respect to the outstanding resource water section within the Ordinance, there is a provision that appears to exempt properties in the 575.

Mr. Rush replied it does not exempt the properties in the 575 but it makes a comment that it adheres to restrictions through CAMA. Those properties would have to contain their water on site using swales or a storm water collection. He also indicated he is trying to get an answer from CAMA and Division of Clean Water Quality if dry wells can be done in the 575. Initially he was advised that it could not and now it appears maybe some would be allowed. He is waiting for an answer.

Mr. Routsen said he did not see how that could be done. Mr. Rush answered it would be done with swales.

Mr. Rush said CAMA has impervious surface at 25%. In the case being discussed the downspouts coming off the house would be funneled into the swale or perhaps the dry well system.

Commissioner Farmer said she dealt with this problem at her home where her house is up high but the yard slopes down and swales up again and that is where the storm water funnels.

Mr. Routsen said you are talking about limiting fill, you are talking being able to create areas where you can have swales.

Commissioner Farmer said if the Dunes and Vegetation Ordinance is looked at, you should not have any flat lots in Emerald Isle because the topography is supposed to be maintained and it is not being maintained.

Commissioner Eckhardt asked Mr. Routsen if he foresees this as a problem on some of the lots? Mr. Routsen replied his concern is how it will be dealt with if CAMA says you cannot have storm water retention, the town says you have to retain, he was unclear as to what the homeowner is supposed to do?

Commissioner Eckhardt asked if Mr. Routsen did not think the swales that Mr. Rush related to would take care of that? Mr. Routsen replied the swales may but when talking about the storm water retention required under the ordinance is probably greater than what you are carrying right now on your lot because you are now putting the pencil to the paper and talking about what the storm water retainage is. If you look at that in relation to a decent size lot, you have a fairly good size retention that is being required. The issue of simply addressing it with one paragraph saying this one governs is clearly a simple way of doing it but he is not certain how the property owner will address it. It would seem difficult to apply.

Mr. Routsen said the other question would be in the discussions that have occurred with the engineers in the past that were looking at the flooding problem, and what they have been discussing is the flooding problem is a ground saturation problem and not really a water on top of the surface problem. The groundwater floods and that result in the ground water staying around. The issue is, if we turn around and start dumping all of the storm water into the groundwater quicker than it would otherwise get there, it that going to result in the flooding problem being worse and also occurring quicker because now the water that was not there is going to be there. Mr. Routsen asked if the board had talked to the engineers? His feelings are since they are looking at the issue they should be able to address it.

Mr. Routsen continued the engineers have indicated, in prior studies, that they did not see the full build out of Emerald Isle in the Coast Guard Road area as being a problem with additional flooding. What you are now imposing are these requirements upon the property owners and all of Emerald Isle that may not have any significant effects upon the problem, which you are proposing or attempting to alleviate. He questioned if the cost is justified for all of the property owners for what the end result will be? He asked again that the board consult with the engineers before an ordinance is enacted that may not have any justifiable benefit other than for them to say they enacted that ordinance to address that problem.

Commissioner Farmer commented that Coast Guard Road is not the only place where flooding occurs. This was not tailored to Coast Guard Road. Archer's Creek has flooding problems, and there are ocean front areas on Ocean Drive with flooding problems.

Mr. Routsen replied he was not saying it was tailored to that. What he is saying is that the town has an engineer looking the issue data. The topography is similar throughout the town so he suspects their information is going to be fairly compatible to turn around and say, although not identical, it would also be pretty applicable to the rest of the town.

Commissioner Marks remarked the topography may have been comparable at one time but it is no longer. She related to a lot, where there was no flooding on Conch Court, until it was cleared of most of the trees and now every time it rains there is heavy standing water all the way

around the corner. Since that time, the town has installed some drainage systems that have helped.

Mr. Routsen agreed with imposing of trees, which is not an undue burden upon property owners because it is beneficial to them as part of their vegetation and their landscaping packing, which they would otherwise have to do anyway.

Mr. Routsen says we are talking about a system that may or may not have any benefit and it is not going to, unlike a tree continue to suck up water whether or not it is raining today or not raining. All the dry well is going to do is take the rain water at that given moment and dump it into the ground water system. It is not going to suck it up or does anything with it other than just dump it back into the system. According to the engineers it is the ground saturation that is a problem with the continued flooding in the Coast Guard Road area.

This is not the proposal the engineers are talking about to help alleviate this problem. They are not talking about dumping it into the ground water, they are talking about running it above ground into the wet lines and then if there is excess dumping it into the sound.

Commissioner McElraft commented that when it was realized that 30 to 40 year old trees were being cut, the town went to the natural vegetation item. There were cases where dry wells had to be put in. There are many many places where natural vegetation can take care of it. She thinks this can be used as a storm water option.

Commissioner Farmer noted if they can show that the vegetation existing will handle the 2" inches, it can be used.

Mr. Routsen next questioned the paragraph dealing with new subdivisions, Page 15, (d). What is being said is that regardless of the use, the developer of the subdivision has to calculate and design storm water retention for the full build out of the subdivision. What a developer has to do is provide a storm water plan for the whole development at that point in time. What is also being said is that the lot owners individually have to do it also.

Commissioner Farmer said she caught this too and her feeling is that in a subdivision, where the developer has done this, she would have no problem waiving the plan.

Mr. Rush commented that if in a subdivision, certain areas are designated within that subdivision as retention facilities, and all the storm water is routed into these areas, the town does not require the homeowners to come up with an infiltration system.

Commissioner McElraft asked if the storm water would go down the street to a retention area and she asked for clarification? Mr. Rush replied what is being said is that the storm water system is designed up front and whether it be a system of curb and gutter on the street or whether it be a retention in ditches behind homes within the subdivision, that would be the design of the storm water system up front before the development occurs based on average driveway, average foot print sizes, and possibly reserve the low areas in the subdivision for retention facilities. If that were the case, the homeowner would not have to put in a dry well or whatever application he needed.

Commissioner Farmer noted that is the way it should be done. If this Ordinance were in place 15 years ago, the big ticket for the storm water problems that exist now would not have occurred. The developer should be taking care of the storm water that would be created by his development in the beginning.

Mr. Rush made note that back 15 years ago, some of the wetlands were probably

designated as storm water retention.

Dr. Almedia, Planning Board Chairman, commented that when a subdivision design is done, a provision is made for storm water and the impervious area is taken into account. At the time the lot is sold, it is pretty level so you know pretty much which way the water is going. You do not have much option for change.

Commissioner Eckhardt gave a hypothetical situation where a plan had been done and the buyers came along, not knowing what they were doing and this is the case, he bought the problem. He is rectifying it now but can only rectify about 80 per-cent of the problem. Why should he not be subject to the same types of things that his neighbors would be subject to? He can see doing it on a subdivision level but then to come along and let him flood his neighbor because he has a huge drive that is running down onto and across the street does not make any sense. He feels it has to be on both ends, as a subdivision level and then at the lot level.

Mr. Routsen commented on the 2-feet on the fill. It is his understanding that if you want to do more than 2-feet fill you have to have an engineers design retention plan for your lot and asked if this is the understanding.

Commissioner McElraft said you could bring in more than 2-feet of fill if you are trying to even out your lot but you cannot raise the elevation of the whole lot more than 2-feet without having a storm water plan.

Mr. Routsen said it is written that the maximum amount of fill at any location shall be limited to 2-feet. He understands this to mean at any location, he has 2-feet, he has to have a plan.

Dr. Almedia suggested a little cleaning up of this statement.

Mr. Routsen said in reference to surface water, when it is said “interferes with the natural and normal flow of surface water”, if you are talking about rain water, if you put 1-foot of fill on the lot it will affect the flow. Are you then dumping it on your neighbor? He feels this language should be revised. You can contain the 2” on your lot. This is being required through the ordinance. If you retain the 2” you would have done what the ordinance is setting out to do, even if the slopes would otherwise result in water running a different way than it otherwise would.

Commissioner Marks spoke of instances she has seen where the water runs off one property onto the neighbor’s property, damaging it.

Mr. Routsen thanked the board for taking his comments.

Art Daniel, 5128 Bogue Sound Drive, engineer and Planning Board member, helped draft this ordinance. One of the focuses is to maintain a status quo in Emerald Isle as far as storm water problems are concerned. It is not a flood control ordinance. It is a storm water management proposed ordinance. He related to number (1) on page 7 under (b) Design standards. “Instead, runoff shall be routed through swales and other systems designed to increase time of concentration, decrease velocity, increase infiltration, allow suspended solids to settle and remove pollutants” is a very descriptive and has a lot of meaning. Mr. Daniel said when you are looking at pre-planning a storm water management plan for a subdivision, it is difficult where you are attempting to maintain vegetation and not clear-cut a lot, to go in and do anything in one swoop for a subdivision development. In past years, a piece of land was taken, the best circulation pattern for the street system and get as many lots as you could was figured out, and then came easements along all lot lines. These easements took care of your utilities and your

storm water. You cannot go out and do wholesale land clearing in order to have a ready made storm water management plan for the person who builds a house for himself or buys one already constructed. Mr. Daniel thinks the roof runoff and driveway runoff should be applied. Each lot is a different site; each has its own characteristics. Therefore you are going to have to take the best of what is there for development of your house, and then you will have to do a few other things. Some have to do more on their lots than others.

In response to some of the previous comments, a status quo is trying to be maintained, things are not going to be made worse than they are.

Mr. Daniel said one way of looking at what 2" of water is – for Wilmington 2" for the first hour, for a 24-hour storm event was a 5-year reoccurring storm. This is 2" in a 24-hour period but it happens in the first one hour. People are going to be taking care of the nuisance storm water at the 2" level rather than 1 ½".

Commissioner Farmer asked Mr. Daniel to expand on dry wells and the difference between 1 ½" and 2". Mr. Daniel said for a motel site being developed, for 2" of water, one more 50-foot pipe would have to be added in addition to the several hundred feet of pipe already required. For a roof type runoff, it would add another 4 feet. Mr. Daniel discussed several different dry wells and explained how they work.

Dr. Phil Almedia, 103 Barracuda Court, said retention of water is required under the current ordinance. All that is being done is increasing it from 1 ½" to 2". The problem is it was not enforced until last year.

He went on to say saturated ground does not necessarily correlate to a high water table. The water table can be very low. It takes quite a while for the water table to rise. The moment you change the configuration of the ground you are going to be dumping on the neighbor.

Commissioner McElraft asked if you are going down closer to the water table, is that not taking it further down? Dr. Almedia said it takes a long time for rain water to reach the water table. A Dry Well is much lower. It is lower down and you have a separation of 2-feet between the bottom of the dry well and the top of the water table. It allows the water to percolate down. For the water on the surface to reach the water table, it would take much longer than water from the dry well. What you are doing is preventing flooding of surface water by holding the water from the impervious areas.

Mr. Daniel explained that on a dry well, you have a filter fabric so when you dig the trench, you put the filter fabric in and when you get through it is covered, you have a perforated drain pipe inside of that, you have observation wells (PVC with screw caps) that come up every so often so you can check and see if any maintenance is needed. The filter fabric is going to slow down the filtering of water. There is rock in the dry well also. The water is going to sit in a 40 percent flood stage.

Mr. Rush asked for clarification on the changes.

A change was made in design standards (3), where the maximum amount of fill at any average build-able area shall be limited to two (2) feet, in disturbed area, unless - - - - -

Mr. Rush said the control on this, he thinks, is in the Dunes and Vegetation Ordinance.

Mr. Routsen suggested looking at it on a case-by-case basis.

Commissioner Marks remarked the intent of this is to try to keep the lots as natural as

they are and if this had been done all along, the present board would not be dealing with it now. There is a need to try to keep the topography of a lot as natural as it is and to keep the vegetation as natural as it is. Past practices are what have caused this problem. Ordinances have not been adhered to that are on the books. This has to be forgotten, start fresh and look at the Island and try to see what it would take to save what is remaining.

Mr. Routsen said he wants to understand what the rule is and he does not understand it as it is.

Commissioner McElraft said she thinks he is right. She gave an instance of an ocean front lot. You have a dune that is high. This person wants to have you behind that dune. As long as they are not going to dump storm water on you, an engineered plan is required, they should be able to fill up to that dune if they want to.

Commissioner Marks remarked that enclosing the underside of the houses is not allowed, so why are they on pilings?

Ed Dowling said the Planning Board initially said on all sites, plots and lots, other than commercial zone areas, the committee initially increased the minimum of natural area from 45 percent of the dune or dunes systems that must be left in place to 50 percent. Rational is disturbed land which is void of trees and vegetation and original topographical features is not esthetically pleasing and encouraging protection of the natural system so as to better utilize them in a way that does not impair their beneficial system and functions. It is difficult to lay out a foot print for a built upon area or lot and at the same time accommodate the septic system without disturbing the natural area. A means must be found to restore or re-vegetate the disturbed area other than by encouraging restoration. The committee is working diligently to increase it from 45 percent to 47 or 48 percent natural area.

Debate continues over the adjustment of the remaining 55 percent of the total area or square foot of the lot except for the built upon area which is covered by building, pavement, roads, parking areas, etc. which is required to have vegetative cover. A new adjustment percent would be between 52 and 53 percent of total square foot. Adverse environment impact in this area must be minimized.

Commissioner McElraft related to one of her houses, oceanfront, has beautiful vegetation and she has added some. There has never ever been a storm water problem there. She thinks anyone who has the money to bring in a lot of fill has the money to do a storm water engineer plan. She does not object to it. The second situation she has had with fill, she had a septic system and wanted to prevent taking out trees in the back so she wanted to put her septic system in the front. She left her lot 57 percent vegetated. She would have had to put a pump system in, no view and she is not trying to put storm water on anyone else. She has no problem doing an engineering storm water plan, but she does think the board needs to make sure that fill for good reasons be allowed.

Commissioner Farmer said she thinks the whole issue is whether buildable or the whole lot is being talked about. Personally she thinks it is buildable.

Mrs. Carol Angus, Building Inspections Department Head, noted if the house is built, they would have to put gutters on it and use a dry well system in order not to dump on neighbors.

Mr. Rush interjected that if there is a house that has a low area behind the house, 20 x 10 and 6 feet deep and they want to fill it in just to level off the yard, the house was built 15 years ago, then this is the kind of thing you want to prohibit someone from filling in that hole that is 5

feet deep and is going to require 3 loads of fill.

Mr. Frank Ellis said there are some situations you have to look at on a case-by-case basis. He related to a neighbor who had a sloping area adjacent to wetlands. That sloping area, in time, is causing the backside of the lot to sink. Her lot is shifting and adjusting. She would like to be able to do filling or bulk heading or whatever it takes to be ecologically correct. By the same token, all these things are constantly going on. The Board, unfortunately, has the task of trying to make some boundaries so everyone can live on this island without everything sinking. He suggested starting out tough, evaluating it on a case-by-case basis and then look to see if too much is being done. No one is trying to make this a bad place to live. Efforts are being made to try to balance nature so the island is not washed out by a hurricane and 7" of rain falls in two hours. The water is going someplace.

Mr. Ellis continued if you start worrying about 2-feet of fill and start to try to make everybody happy with the rules without actually looking at what is being done. You have to look at the natural flow, where the water is going.

Mr. Rush clarified, for the board, to allow 2-feet of fill across the disturbed area. Anything greater than 2-feet would require an engineered storm water management plan. All of the board agreed this was correct.

Mr. Rush also commented that (20) on page 9, there is not much to be changed in the ordinance now until clarification is received from Division of Coastal Management and Division of Water Quality on whether or not dry wells are allowed in the AEC. If they were allowed, that would be an acceptable storm water practice

In reference to the fresh water charging of ponds, Commissioner Farmer indicated she would be interested in hearing what Lands End thinks about this. They are the only ones that do fresh water charging.

Commissioner McElraft asked if Lands End could make their systems aeration systems. The answer she received was "yes". She then feels that is absolutely should be made retroactive.

Commissioner Farmer disagreed saying she would like to hear what their board says.

Mr. Rush said he would send a letter to the Lands End Homeowners Association asking for some feedback on this matter.

Commissioner McElraft clarified the board was saying that they can put in more than 2-feet of fill as long as they can retain the storm water.

Mr. Bill Reist, citizen, asked if in the case the lady where the lot was sinking, could she come in for a hearing? Commissioner Eckhardt thinks the answer is "yes".

Commissioner McElraft said the town has Jimmy Taylor who knows pretty much what is going to happen with storm water and he could use his judgment on that. Mr. Rush said if someone is bringing in more than 5 loads of fill, they should get a permit.

Mr. Routsen said there is no provision for applying for a variance in the ordinance.

Mr. Rush suggested he be allowed to come up with some language to address those minor issues. All of the board was in agreement.

Mr. Rousten also said the property owner would have to prove a hardship and asked what would the hardship be if you just don't want to do the plan.

Attorney Derek Taylor agreed that the standards are high. You could apply for a variance, but whether you could get one would be an entirely different story.

The cost of an engineered plan was discussed and Mr. Daniel said it would cost around \$600 to get one done or maybe more depending on what would have to be done.

Mr. Eckhardt went back to the retroactive thing and he leans toward retroactive based on the feedback received from Lands End. Mr. Rush clarified what he was hearing from the board, was if Lands End was comfortable with that, make it retroactive.

Proposed change to Design standards (21) were changed to not allow future fresh water charging for aeration of ponds.

Mr. Rush turned to Page 11, Requirements for Storm water Management Plans for Residential Projects With Less Than 5,000 Square Feet of Impervious Surface (3) (1), to change that in a more general language, general characterization for storm water runoff on the existing site.

The change for this section is Requirements for Storm Water Management Plans for residential projects with Less than 5,000 square feet of impervious surface (3) (1) was changed to read; the direction, flow rate, and runoff of storm water under existing conditions; general characteristics of lot.

Page 15 (d) New Subdivisions – previous discussion took place about also requiring new homes built in that subdivision, that has a storm water plan for the entire subdivision, it would require dry well systems as well when the home is actually built.

Commissioner Messer interjected you have to require some sort of system. You can design the whole subdivision without looking at each lot individually. They will take care of themselves.

Commissioner Farmer thinks what will be received from a new subdivision is a general idea of the amount of storm water that will be generated but she does not think the idea will be specific enough that you can get away with not allowing a plan to the individual lots.

Mr. Routsen said this was double planning on any subdivision. The developer has to retain it, and then the homeowner has to retain it. They are paying twice.

Commissioner Messer said that if what the subdivision has done as a subdivision will accomplish the purpose then it would not require anything else.

Commissioner Marks commented the burden should be passed along to the subdivision and that homeowner. It does not belong on all of the taxpayers in Emerald Isle.

Commissioner Messer said he does not see how you can design a storm water plan for a subdivision or how ever many houses you would build on it. If the board is going to say that new subdivisions have to have a storm water plan that is fine but he does not think one can be designed that will take care of every situation. What he was saying is each individual lot, whether it be vegetation that would take care of it, whether it would be a dry well that would take care of it. He does not see how a subdivision storm water plan can take care of the whole area.

Mr. Routsen argued the subdivision plan is not going to address retention on each individual lot. It may say a retention area is going to be in a specific place. Everybody would drain to that area.

Commissioner Messer argued if you have a pond, you have houses built around that pond; theoretically the storm water could be drained to that pond through swales or whatever. If there is a house across the street that cannot drain to that pond. Something would have to be done.

Mr. Rush, trying to clarify, said what Commissioner Messer is saying, if you have a storm water plan for the entire subdivision that designates the area designated for storm water retention, when the individual comes in and wants to build their house on a lot, if the plan they present is relying on that previously designed storm water system, the requirement of putting in a dry well system would not be required. If at the time, additional concerns are present with that lot, a dry well or some other augmentation of storm water on site may be required.

The board was unanimously in agreement with what Mr. Rush presented and a general discussion between board members ensued on this issue on different ways storm water could be handled.

Mr. Daniel said if this ordinance is adopted, it will send a wake-up call to the design professionals and tell them that they are going to have to start doing some land planning, some landscaping and some architecture as well as surveying for storm water management which would come through the engineer.

Another general discussion ensued on systems, how they looked when they are being installed, when would you inspect them, and who.

Mr. Routsen returned to the 2-foot issue. He said the town is telling him he cannot do something with his property. He cannot fill an area of his property. Attorney Taylor interjected "If the State tells you you cannot fill a wetland, then you don't fill it". Mr. Routsen replied "but this is not the State."

Commissioner McElraft indicated she has a problem with that because the United States Supreme Court has twice ruled against the Corps of Engineers when they tried to prevent private people from filling isolated wetlands. They ruled in favor of the property owner. Commissioner McElraft thinks this needs to be allowed.

Commissioner Eckhardt said the Corps was jurisdictional. Its whether or not the federal government can.

Attorney Taylor said they can't with isolated wetlands because they get into issues of what they have jurisdiction over. That is what those cases were about. The State, obviously, because they have certain rules about disturbance of certain areas. They are always being challenged and so far have survived it. The body in this area, as are all areas, is variable. It will depend somewhat on the findings and what decisions are asked to be made. Attorney Taylor continued that the main thing that cannot be done is to remove all economic viability of a piece of property. If what is being done with this ordinance makes it worthless, there is something in

here that says you can go for a variance. If it is a hardship on the property that is such a great nature it would take all of the use of the property, then he believes you hit the hardship criteria to go for a variance. You cannot fight too much on this until a variance is denied and then you have to take the responsibility. The ordinance, he thinks is ok.

Mr. Ellis said, if, adjacent to your property your neighbor has an established wetland that has been there and they fill it in and it captures your lot. He asked what then? Is the water going to go on your property? What is being said is it is my property and I do with it what I want and it doesn't matter what is on the books.

Commissioner McElraft said in the ordinance it says they have to maintain the water on their property. If they fill and the water starts flowing on their neighbor's property it will be caught in the 2". Mr. Ellis disagreed saying that is not known.

Commissioner Eckhardt would like to keep it as it is written at this time.

Commissioner Marks said the most important thing is to convey to the owners that they have to take care of the storm water problems right up front. As long as this is conveyed to the inspections office the building inspectors will have a clear picture and the problems had in the past should not be present.

Commissioner Farmer commented, that what is being said in (18) is, if you have to fill these things, we will let you, but don't. Try not to. Avoid them. It doesn't mean the board is saying ultimately you can't. We are making it harder for you to fill them.

Mr. Rush is to come up with the proper language for the changes that were mentioned.

Mayor Schools called for adjournment at 12:10 P.M.

Respectfully submitted,

Carolyn K. Custy
Certified Municipal Clerk

A copy of the Storm Water Ordinance is attached to these minutes.