

MINUTES OF THE SPECIAL JOINT MEETING OF THE EMERALD ISLE BOARD OF COMMISSIONERS AND THE PLANNING BOARD

Tuesday - July 16, 2002 – 9:00 A.M. – Town Hall Present

were: Commissioner Dick Eckhardt, Mayor Art Schools, Commissioners Emily Farmer, Floyd Messer, Doje Marks, Pat McElraft, Planning Board Members Phil Almedia, Richard Brauns, Pat Patteson, Anne Erickson, Ed Dowling, Frank Erwin, and Art Daniel. Others present were Town Manager Frank Rush, Town Clerk Carolyn Custy, Building Inspector Jimmy Taylor and Inspections Department Head Carol Angus.

Phil Almedia - We have been revising quite a few ordinances and I think there is not point in revising ordinances if you can't follow through on it in terms of implementation or interpretation. I will restrict myself to dunes and vegetation ordinance. Ed brought four cases, he thought there was a problem, and we looked over them this morning. Now what happens is, under the current ordinance we have a maximum natural vegetation of 48% or something like that, 45%, that is a maximum and everyone goes to the maximum, there is no attempt to see, can we reduce the amount of disturbance that we do and keep as much as we can in the natural state. The other thing is, some of the plans that are submitted, indeed in all four cases, the plans do not clearly show to the guy who is clearing the site or leveling the site how much he can clear out. That needs to be written down on that portion. Now I think a group of fourteen people is too big to show all four cases, it would take too much time. What I would suggest is have a small group of maybe one or two from the Planning Board, two Commissioners, someone from the Inspections staff, look at these cases and then see what can we do to improve in terms of keeping as many trees as you can, keeping more natural area while at the same time allowing the building activity to go on. As a follow up to that, what I would suggest is, from what I hear Pine Knoll Shores has done a good job in trying to site the buildings in order to preserve to the maximum the existing vegetation and trees. I would suggest that maybe, a members from the Board of Commissioners, a member from the Planning Board and someone from Inspections staff visit Pine Knoll Shores and see how they go about trying to maintain vegetation, trying to site the buildings. Can we learn anything from them? That's the bottom line. Can we do anything to improve? That is what my suggestion would be. So there are two issues that I would like to bring up in terms of conduct. There is no point in improving ordinances if you are not going to follow through. I know the intention is there but I think the baggage of the past, you are used to doing things a certain way, it's not the fault of the staff; I think they need some training also. Can we do something to improve? The two issues I would suggest is, number one, lets look at these four cases, and can we improve upon them? Number two can a core group go down to Pine Knoll Shores and have a look, how they implement their ordinances and can we learn something from them?

Commissioner Marks – I would like to make another suggestion, rather than sending a core group down to Pine Knoll Shores at this time. Some years ago I talked to Roy Brownlow who had been their Building Inspector forever and asked him, "How do you do this?" How could they save so much vegetation and we couldn't and he said because they adhere to their ordinances and I would suggest that we ask Roy Brownlow to come and meet with us and lay it out from the Building Inspector's point of view and then, if we want to send a core group, I think

we really need to get the word from the horses mouth first and he knows what they've done. I know one of the factors is what the people down there call a Pretty Committee that helps to enforce their ordinances.

Frank Rush – The only thing I would add is Carol and Jimmy and I went out yesterday and visited the four lots that Ed had sent me an e-mail about and I think there are some key issues, good examples, in those lots. Things like clearing the septic tank area, things like counting the water within the undisturbed area if it's a sound front lot, or counting the marsh area. We took a look at those four lots yesterday and there are some things that really are kind of key elements to why we are all here. They have the appearance that, in my view, all four of those lots were almost in compliance with the ordinance. There is one where it looked like they had cleared a little bit more than they probably should have but, in a lot of those cases, it had the appearance of being cleared but once you considered the fact of the septic area can basically be cleared and counted in that 45% and when you consider that there are already cleared areas on the lots, you certainly can't penalize the new owner at this point in time. They are actually all in compliance with the exception of one that I think they may have gone a little bit beyond the line that they should have cleared. Those are things that are in the ordinance that hopefully this group will address and can make some changes in.

Commissioner McElraft - I'd just like to say that I think the staff has done an excellent job. I know when we did our house and we left 68% vegetation by the way, they came out, everything had to be staked and calculated. We could not go beyond where those stakes were. Jimmy came out continuously to make sure that nothing was cleared from behind those stakes so I don't think the problem at all is with them. Like you said, it may look like some of these lots are out of compliance but when you look at what the rules have been I think they have been very stringent with them lately, since the past couple of boards I think they definitely have. I really, I would like to commend them for the job that they do because I know that they, immediately that vegetation had to be staked off, there was no arguing about that at all and even had to get a variance, which I was really glad that that went through too so that we could save that vegetation because a lot of the stuff that we took away was just scrub vegetation so, you know it looks like you are clear cutting a lot of these lots and you really are not if you look at the total calculations, they are in compliance. A lot of the lots that are left now, I think we have to be very careful because if we start making it where people can't even build on them then that's going to be a problem.

Commissioner Farmer - I don't think anybody wants to do that. There is a question though how much we are going to require re-vegetating for the difficult lots that have big dips in them or whatever that are going to need a lot of bulldozing. The frustration that homeowners are having is that they go in as we did and very carefully put ribbons around trees showing a line where we wanted things not disturbed beyond and came back the next day and all those trees were knocked over. I think that goes back to your point, it's hard for the guy in the bulldozer to understand from the plans exactly what can be cut and what can't.

Phil Almedia - Currently you don't have a plan that shows the bulldozer guys what are the limits that he can cut. After this meeting I would be glad to sit down with Frank and show him the four lots and tell him what we can do to improve.

Frank Rush – I don't take it that way at all, I just think in those four examples, we went out and looked at them, there was one of them that the person clearing the lot actually did go a little bit beyond where they should have been but when you consider, one of the big things is obviously the septic system. You can clear that area, it's counted as a natural area but it looks like it's

cleared. The other thing is that you can clear out the thin underbrush, less than four inches in diameter. On a couple of those examples, that is exactly what happened and that was completely permissible under our ordinance and yet it has the appearance of being clear cut so I think there is some policy and language changes that needs to happen in order to effect the kind of change that I hear you all talking about. I don't know that it's so much the implementation up to this point, certainly we can improve like everybody can, but for the most part I think it would really, I don't want to use the term "loop-hole" but I think for lack of a better phase, its the septic system exemption, it's the clearing of four inch diameter or less, it's the counting of the water and the marsh area. What do you do when the lot has already been cleared at some point in the past and then Frank Rush comes along and buys the lot but you don't want to jamb your house into one little corner of the lot that's already cleared. I'm sure all that stuff will come out. Commissioner Eckhardt - Before, you mentioned Pine Knoll Shores and Mr. Brownlow. You mentioned taking some small groups out to what, to see what, what the problem areas are, to look at things like these four lots?

Phil Almedia – Not to take out to the sites. We can look at the documentation. I would suggest a small group; fourteen is too big a number.

Frank Rush – It really does help to get out there and look at it.

Someone from the audience interjected, I think I have a vested interest here, as one of these lots is mine. These four lots, will anything be done about them because I know it's too soon to change the ordinances so would they be considered?

Frank Rush – At this point in time, until there is a change in the ordinance, they will proceed according to the plans that were submitted that were acceptable. When something goes into effect we will go forward from that point.

Art Daniel - I have been doing Don Henry's work for a number of years and he owns the lot next door. I don't mind making an example of how to go about doing work on a lot. I will be glad to pass this drawing around if it cannot be seen at a distance. It shows the front of a house . .

Commissioner Messer – Is that a second row lot in Sea Dunes?

Art Daniel - That's a second row lot in Deer Horn Dunes. We have got a house, a deck and a pool and a pretty high dune in the rear so far as the land disturbance is concerned. The surveyor has been there to determine the contours at two foot intervals, plus or minus one foot, and I need to be within one tenth of a foot of existing grade in order to do the foundation system for this house. We are talking about retaining walls, so what I'm going to do is plot everything to the rear so that the house would be up sitting close to grade in the rear. It's going to take a retaining wall in the front. It will take a retaining wall in front of the pool site. So we need to get in and partially clear the driveway entrance to get in and cut the footprint of the house, the deck and the pool. I have no problem with them hand-cutting that, go in and cut the brush, put it on a truck and haul it off the site, don't disturb anything else in there until we determine what the grades are going to be for that house. We are probably going to have to put a piling and pier cap to support the foundation in front of the house. The rear is going to be able to sit on an old footed foundation system. I've got to be able to get to the site, clear the footprint and get the accurate grade and then design the development to fit that site.

Art Daniel - We jump from eight foot to ten, twelve, fourteen, sixteen as we go back. What I did, I've never seen anybody do this before, along the property line, I plotted a profile of what the grades are on that property line. I plotted the grades on the centerline of the proposed development, so we are looking at 6.9% and 7.7% grades going up that slope at the footprint. Over on the other property line we are looking at 1.4%, 3.2%, 5.4%, it jumps up and down as it goes the hill so you can use your imagination, use a little three-d viewing of this to see what actually happens in there.

Commissioner Farmer - Where is the septic on this?

Front left.

Commissioner Farmer - So basically the vegetation is gone?

Art Daniel - It would have that appearance, clear-cut.

Commissioner Farmer – And where's, is the repair field also?

Art Daniel - showed on the plot where the repair field was located..

They require, I think, a 43 x 53 square area for the septic.

Commissioner McElraft - That's part of the problem, you've got your Health Department rules that you've got to comply with and that's the biggie, I mean, you have to have that.

The Health Department says that you have to maintain a sixty-foot set back for the pool. You've got to maintain an eighty-foot setback for the deck. We've probably got sixty-two feet critical. The street is on a skew so the front line is on a skew, the back of the lot is squared off, so we are confined as to where the structure is going to go by the Health Department's setbacks.

Commissioner Farmer - Does that figure that you quoted for the septic include the repair field?

Jimmy Taylor - I didn't indicate a repair on the septic permit it just indicated a 43 x 53 area and it's also required to be filled for the septic permit. We've got a copy of that permit right down there; it's one of the ones we looked at.

Commissioner Marks – This is a question for you Jimmy, is it necessary to clear the repair area?

Jimmy Taylor - No, it's not.

Commissioner Marks – Could that be a requirement then, that that area be left naturally vegetated? They never need to clear that repair area why are we clearing it.

Jimmy Taylor – In a lot of cases we are not. There is some language in this new ordinance that says you shall not do it.

Commissioner Farmer - My repair field was cleared.

One of the problems here is that the house next door has a briar patch out here. I don't mind making this a specimen location.

Commissioner Marks – The idea that we have to clear all of the underbrush, according to a booklet from the North Carolina Maritime Forest, the worst thing we can do is to clear all of the underbrush. Now, I agree on taking briars out, because you can't walk through there or do anything in there, but if we clear every small seedling tree then we open up all that area to salt-spray intrusion which will eventually kill off all of the vegetation so it may look nice now but five years down the road you are going to kill off the whole lot. There won't even be a matter of re-landscaping; nothing will grow in that salt spray, especially second row. They are talking about way back into the Maritime Forest because I'm a quarter mile back from the ocean and by leaving the underbrush there we saved all our trees. This has been a pet peeve of mine since we moved here.

Phil Almedia – I wanted to add to that, I have seen recently, inland and other, the trees, probably twenty-four inches around or may be more, they have cut around the tree and they have left a mound maybe eight feet in diameter, the roots exposed. What's going to happen that case of a big storm? (?) will take it up, number two, the roots are exposed chances are the tree is going to die. If you want to save the tree then we need to look at the handling process, the leveling process, the grading process. This you can't mandate through ordinances.

Commissioner Farmer - A lot of this is education.

Well, that was the reason I brought this up. I think this, I have a feeling Mr. Henry's going to kill me or fire me but we do the best job we can.

Phil Almedia – Mr. Mayor can you start over with this.

Ed Dowling - I would like to first of all thank Frank, Pat, Carol and Jimmy for sitting down and helping us out. As you are all seeing there are definite opinions and this is a difficult subject, it really is and the philosophy that I believe the Committee adopted, in fact I know it, was to work in the best interest of the Town and the citizens. I will just throw out for your edification that I am open to going over at any time, during break today, to look at the one site. The one site that I watched from beginning to end. When the heavy machinery arrived on site to the end because a neighbor was alert and came down and got me was on Royal Oaks at 9702 Berkley Drive. Contrary to the opinion rendered here I would say it's got 100% clear-cutting, but I leave that up to you and ask you to look at the CAMA Regulations and see if that lot is in compliance with it.

Commissioner McElraft - Is that a sound front lot?

Ed Dowling - Sound front lot.

Commissioner McElraft - Then they have used the marsh.

Ed Dowling - And I would ask you to look at the sedimentation control on that lot when you go there, again I'm open to it, so consider it. Frank Erwin, very early in the committee meetings, asked for objectives and just start off so you will know what our philosophy was, I'm sure very seldom do objectives come before the Board of Commissioners and ours were; one, address the health, safety, public welfare standards and you all know what standards implies when you drew ordinances, to Emerald Isle Family Beach Philosophy; two, discuss strategies to prevent overcrowding or the development of land at expense or loss of the dunes, vegetation, trees, bushes, shrubs and original topographical features in the natural area, and you have already (?)

so you know what a natural area is. Stretching from the ocean front through the interior lots, it's never been addressed before in a directive for the interior lots, to the purvey of CAMA on the sound; three, consider the best management practices for new development, re-development or other construction activities on Emerald Isle's remaining lots and reverse loss of trees on remaining lots; four, update regulations for re-development of existing structures, new development and construction activities as they impact on the dunes, vegetation area on interior lots. CAMA regulations govern lots on the sound so we didn't hit those too heavily to be truthful with you and then protect existing trees, tree canopies and new plant trees and trees where appropriate. I am open to go through this line for line if you want to do that so we are not distracted. How do you want me to do this Mr. Mayor?

Mayor Schools – That would be my suggestion

Ed Dowling - 19-322 Purpose: We addressed (?) in front of dunes, primary dunes, dunes system, vegetation and original plot topographical features that, the only thing that we added, as you can see, are “dunes and” in the third sentence. Do you have any questions? The committee is open to it. We took the definitions and reworked the definitions. We looked at what was exempt, moving down to 19-334 Exemptions, we moved that just for your information, it was under 19-335. We readjusted it so it would be more appropriate. If you have anything under Exemptions I'm prepared to talk at length.

Frank Rush – Just a clarification in number two, the very last sentence says, “nothing herein shall be construed to allow the willful cutting or removal of any live vegetation such as dune grass, bushes, shrubs and trees having a diameter of 3 inches or greater, or part thereof for any purpose”. I'm confused, forgive me, I'm in the wrong spot. That's in conflict with another statement in 19-376 so I'll just wait until we get to 19-376; I think I just maybe need some clarification.

My comment would be similar to Franks, there is no provision in there to address leaving trees or hollow trees, which are problems and need to be addressed. Also, the provision in there that talks about “nothing more than hand held equipment may be used”. I know you are talking about

Ed Dowling – You are moving way ahead of us

I am in paragraph two

Ed Dowling – Paragraph two, O.K.

In there you've got “nothing more than hand held equipment may be used”, I know you are trying to address clearing but you also talk about the normal maintenance of lawns.

Ed Dowling – That's correct.

That is done by riding mowers.

Ed Dowling – That's correct.

Commissioner Farmer – Only if you're wealthy.

Ed Dowling – You are correct on that and that needs to be moved somewhere in this directive because we have excluded and it's too restrictive in that area there. You are absolutely correct so I'll pull that out for re-work, "nothing more than hand held equipment may be used" only in the area that is to be opened up to new development, so we do need to pluck that out, massage that and put it in another location.

Can't you just put "in the natural area"?

Ed Dowling – Sure, when we come to the natural areas Pat maybe you'll point that out, where that goes?

No, I mean leaving it there.

Ed Dowling – Well, this pertains to commercial property that's already in existence or about to become in existence, "normal maintenance of lawns, commercial, office and institutional tracts". I think his criticism is excellent, absolutely right. The question does arise, "Do we exclude bulldozers?" and that was not the intent of the committee, but we did tighten down, we did say three inch diameter was 5.5 inches in circumference and I believe that is different than the flood plane regulation, I'd point that out as a committee member. O.K., shall we move on to definitions, I'm sure there is going to be a lot of discussions on this. One, is there anything pertaining to the dunes and vegetation protection officer? I think that's pretty solid. The next area that we had was dunes and our legal council recommended that we define "interior" dunes. I think we can do that by dropping down to the last three lines in definition of dunes and we can say, void and nullify the word "those" and just say "interior property having sand ridges are not considered primary dunes; however, interior dunes are also to be retained", so I would change "these areas" to "interior dunes are also to be retained, if at all practical to", I would take out the word "retain" since it's redundant and replace it with "ensure" to read "ensure continuity with adjoining properties". That's just up for debate.

Frank Rush - So that will be a separate definition?

Ed Dowling - Yes, you could branch away, that's a good point and you could do three definitions there if you wanted to go "A", "B" and "C", Mr. Mayor, you could put "A" third line from the top just define "primary dunes are considered to be the largest or most stable" and then you could void and nullify if you want to, our source was the Coastal Area Management Agency Defines, you could take that out Mr. Mayor and so it would read, "primary dunes are" take out the quote "the first mound of sand" etc, etc. and then you could do a "C" as you suggested sir on interior mounds.

From a legal standpoint, is it better to write it that way?

Just as long as it's clear, we'll rework that.

Commissioner Farmer - It is a Coastal Area Management Act, Agencies Division of Coastal Management, so "Agency" should be "Act".

O.K.

Do you refer to CAMA in here? I mean, if CAMA changes their rules what does that do to you?

We understand that.

Ed Dowling – Yeah, that's why it's suggest for the size of it, you read this, and as I say, it's a continuous education, it really is.

It's very hard to do.

Ed Dowling – It is, very hard.

And the more you read, the more you go over it, the more you should do

Ed Dowling – That's right. If you have any questions on the primary dunes function or the six foot plus measurement, the mean flood is still water level or storm having a one inch chance of being exceeded in any given year and we are talking about hundred year storm for that area plus six and that's taken, we had CAMA come in, and that's taken from his discussion with us, that's not in your directive, so there is another interpretation of primary dune. O.K., we move on to the Maritime forest and our legal council recommended that be reworked. I am prepared to read what I rewrote if you want me to or we can just say that it will be reworked at a later time.
Frank Rush – I think probably the main thing was just the last statement about leaving the canopy of trees 50-75 foot with clusters is better included in a standard section as opposed to the definition.

Ed Dowling – O.K.

On the riptide (?) I didn't (?) definition

Ed Dowling – Under Maritime forest. I thought it's your "original vegetation and trees that existed prior to lot disturbance" on the sound it addresses and extends into the interior lots and up to the end of the island on the sound side. Doje was just talking about how salt invades and kills the trees.

Commissioner Marks – The tree canopy and the salt sheer zone is exactly what we were talking about on the lot next him, that's all sheered live oak.

Ed Dowling – There is no definition of maritime forest, we did put it in the purpose of the original directives stated maritime forest but there was never any definition so we did extract that from state documents, that's where that came from.

Doje, does that (?) that you referred to have a definition of what a maritime forest is?

Commissioner Marks – I think it probably does.

Ed Dowling – That's where this came from.

Do we have maritime forest now?

Ed Dowling – That remaining little patch that you are talking about here is maritime forest.

Spell's development was, most recent development that he cut into, is a maritime forest.

I was think we did. I didn't know if it made more sense to say maritime forest or natural area as opposed to

Commissioner Marks – There really is next to no remaining maritime forest on this island. The maritime forest would be all undisturbed and as Ed just said, that lot next to him is undisturbed; there are very few lots around.

Ed Dowling – The next one is natural areas and that's really the heart of what we are here for today, that definition right there, "designated or required to retain the original vegetation and existing topographical features". Ground cover, those are defined "A" and "B" in Appendix and may I be critical at this point and point out Spell's development that is most recent really does not have the true ground cover that you would want. He put in ocean oaks, oaks rather, and that has to be on an ever moving primary dune, when the sand shifts and moves or it will die, you really need the vegetation that's stated in Appendix A or B on site development to stabilize the lot. This is the only place that you will see the word "stabilization" that I know of in your whole ordinance, which is a key word.

Commissioner McElraft - I have a question on this natural area. We already had a discussion of how natural areas are going to have to be filled as a requirement for septic tanks so, we are saying here that in this definition, that it is original vegetation and existing topography.

Commissioner Farmer – I think we should take septic areas out of the natural area even if it means readjusting the percentage of natural area. It's not a natural area.

Well, I think you just have to, if you are going to cut it down, I mean that's a hunk of percentage and

Commissioner Farmer – It's a lot more honest though. I mean, we really don't have 40% natural on lots in Emerald Isle.

Would this have anything to do with company stock?

Commissioner Marks – We have got to stop calling lawns and grassy areas natural areas because they are not. We are going to have to define natural as being "original natural vegetation" under what we want to retain then we've got to exclude grassy lawns as natural areas. That's been a problem.

If you are looking at doing that, another issue too then was brought up earlier, of the marsh area and sound front lots. That is a natural area.

Commissioner Farmer – It is but it's not developable portion of the

Then you need to be able to change some how or another the percentages when you are doing, when you go to do that. Change the percentages on that lot, specific to that, because it's not to restrict somebody today, after everybody else has done it the other way, with just a couple left.

Commissioner Farmer – I am open to that. I agree, so that's what I'm saying basically to take septic out of the natural area, take the undevelopable portion of the lot out of the total natural area, then you readjust the figures.

Ed Dowling – Maybe we could hold on to this until we get through the definition of natural areas and start talking about your forty-five, -fifty formula that we came up with, if we could address it there.

Frank Rush - I think probably on average, my guess is on a 12,500 square foot lot probably about maybe 10% of the lot is dedicated to the septic system. Is that probably a pretty close estimate? It depends on how many bedrooms they wanted as to how big the bed's going to be. For a duplex, it's really going to take a lot.

Frank Rush – It's just something that would have to be

Ed Dowling - Original vegetation I propose, could we massage that. The plant waste that existed on the site prior to any site, we can use “disturbance” or “improvement” or “preparation for improvement”. So, it would read “the plant life that existed on the site prior to any site improvement or preparation for improvement” or you could use the word “disturbed area” there. I think that would clarify that a little bit more. Natural vegetation, I don't think there is anything there. Areas of environmental concern, this is important for you to remember. Ask yourselves, are we being more restrictive than necessary in this directive or are we not being restrictive enough?

Ed Dowling – We go to protection, 19-351 change to 19-353. We talked about enforcement and Jimmy or Carol you might want to talk about this. We had the police department helping us in this before and we changed it or maybe the Town Mayor wants to address this.

Frank Rush – In reality, the police department is not the appropriate department to enforce this, it's our Building Inspections Department, this change would be consistent with the contract.

Carol Angus - And we don't have the authority to arrest anybody, we would issue a citation.

Ed Dowling – The Board of Adjustments, that's your legal release. For anybody that wants to void or nullify or massage certain things. On to 19-354, and at this time let me point out, since we are involved in education, and we can all look at this in a mature manner, right now you have only in writing one CAMA officer, you don't have any letter of instruction for the Dunes and Vegetation Officer, who of course if Jim, you might, Mr. Mayor and Commissioners see fit to reinforce certain provisions of this ordinance and give them a letter of instruction. Also, I point out that as part of our learning process, we learned that the island is really divided in two with one inspector doing a portion of the island and the other inspector inspecting the other portion of the island. So, we try to help one another, that's the purpose of this ordinance, and we try to look after the citizens, you might say is it being equally enforced by both of these parties, I leave that up to your judgment and decision making process. I feel it is necessary to point that out from the committee's stand point. 19-354 talks about the standards, talks about inspections and this is what we were talking about initially, before we started our conference here. The Planning Board very seldom ever gets into domestic plots, that's totally out of, not totally out of our purvey, but we don't address it very often. In my limited experience, I have yet to see us address a domestic house being constructed so that might be part of what you are looking at. I don't think it is because I have confidence in what our inspectors do and how they approach that duty. Do I have any questions on this? Number E is how he denies a permit that is very, very important. Then F, the lot owner is liable for all work performed on his or her property and may be held liable. That question came up earlier, who is responsible for the lots.

What you were talking about, the permit officer and splitting things up, I think, and correct me if I'm wrong on this Jim, one of the main reason for doing that is the fact that when you go by to

inspect a house and you go through you make some mental notes to yourself that you are going to look at something when I go back and redo it, so it's a continuity of that house. If Jim were to go there and inspect a house and then turn around the next day and Mike went in there, Jim had looked at some things and wanted to make sure that they were taken care of, I think that's kind of part of the reason to be able to do that.

Ed Dowling – I can understand that.

Jimmy Taylor – That's correct. Yeah, most times if one of us is going to be inspecting a house, we stick with that house. Like you said, mental notes, things that we see that need correcting, when I go back I know exactly what I'm looking for whereas Mike may not pick up on some of the things that I've

Ed Dowling – I'm not criticizing the process I just thought it was our job to point out for everybody's edification what we found.

Frank Rush – I do agree with you that our Inspections Department needs to be consistent, I mean, the inspectors need to be consistent with one another.

Commissioner Marks – I really need to go back to 353 for a second, where we changed the P.D., "the inspections department is designated as the enforcement agency", I absolutely agree with that, the problem in the past, there has been a problem with lot clearing, you call on Friday afternoon, and I've had this happen, "Well, I'm sorry the Inspections Department has left and there is nothing we can do about it", then they call the Mayor and the Commissioners. Once they are done there is nothing you can do and there has got to be a way we can stop weekend stuff that tries to get around the ordinance.

Ed Dowling – Am I correct that on Sundays there is no building activities at all?

There is not supposed to be.

Commissioner Marks – But there are people who are down here on weekends working around the property and needs to work past 5:00 P.M. or the chain saw that's still going up until 7:00 P.M., I'm not sure how we address this.

Jimmy Taylor – Our ordinance says that you can work Monday through Friday, including Saturday; I think it's from 7:00 A.M. to 6:00 P.M. and nothing on Sunday. I think that's in our nuisance noise part of the ordinance.

Commissioner Marks – That was changed a few years ago and it was really two or three boards ago in response to complaints from citizens who said they were bothered by chain saws on weekends and they wanted it to be quiet but I think the people who own property here and come down for the weekend have a legitimate need to do work then but I'm not sure, maybe Pat can address this, do we have a legitimate need for bulldozers to come in on Saturday or work after 5:00 P.M. on Friday?

Well, on Sunday we play golf. No, I mean, I don't see an issue with that at all. You do get into some issues sometimes on a Saturday where, because of rain delays or things like that it becomes necessary. A lot of the communities restrict that also, they don't want the equipment in there, even on Saturday. I think Sunday is absolutely. Doje brought up the issue of owners that come down on the weekend. He's down there and he needs to cut up a dead tree and so he gets out his chain saw and starts doing it, I don't know how, you can't stop people like that.

Commissioner Farmer – My next-door neighbor is out there 7:30 A.M. on Sunday morning with a leaf blower, the one who's down on weekends.

In the case of Saturday, inevitably you are going to have people that are going to work on Saturday. I particularly don't, most of the guys who work for me don't work on weekends.

Commissioner Marks – Our major concern is of course the heavy equipment. Ed, I had a question about a lot on Doe Drive and I discussed it with Jimmy and Frank at the time and they did adhere to the ordinance but basically they've cut down, after they had designated these trees that were four inches in diameter I believe, then they came in on a weekend and hand cut everything else that was remaining in the set backs and it was legal to do that. These are all things that we have to address if we want to save what is left of the vegetation on this island. Why was it legal to do that?

Commissioner Marks – Because we only say you cannot cut anything four inches or greater without permission. It doesn't say you can't cut everything else that's in that set back right down to the ground, if it's less than four inches.

We are trying to address that in our thing now where, in our new ordinance, that you can't go in there, even if it's in a natural area, and it's all less than three inches, we are addressing that but you still can't just go in there and clear cut. Going in there and thinning it out is workable but then you have to go the DOBBBO.

Commissioner McElraft - I think Doje's point too, getting back to who's actually enforcing this is that on the weekend, if it's an ordinance violation, the police should absolutely be involved. If your office is closed and somebody calls up and says, "Look, Ordinance number XYZ is being violated".

Frank Rush – That is going to require some cross training on the part of our police department and also in the summer time it is going to be difficult when they have a lot of calls to run. If they require some additional staffing it probably wouldn't be as much of a problem in off-season.

Commissioner McElraft – But they really should be enforcing the ordinances of the Town.

Dealing with Reserve Officers, too.

Frank Rush – I'm not aware of many communities that have police departments enforcing zoning type violations and those kinds of violations. We can take a look at it; it's going to require some training.

Commissioner McElraft – Again, I'm not, I'm saying that if a complaint is called in they should be going out to look. I am not saying that they should be out there inspecting every property.

How can they make a judgment though?

Mayor Schools - If it's not the Police Department, who should it be? I mean, the problem is we just want to get it enforced; we could care less who it is.

Would you have your Inspections Department on-call?

We did have.

You know, that can get out of hand too because if you've got people that are making complaints you send an Inspector on a wild-goose chase saying somebody is out of compliance when they

are totally not, so we've got to have some balance here guys. If we put up those stakes and they are going beyond those stakes then, let's fine them heavily. We know who did it, we found out who the bulldozer was, we know who owns the property, let's just fine them if they go beyond those stakes. Let's not have to train our Police Department to go out and do that.

Frank Rush – The one thing that I will say is that I'd say from last September until, I'd say, March, we did have an individual out on the weekends patrolling and quite honestly he didn't find a whole lot. I think some days we had two violations in a whole day that he was able to spot and it got to the point where it didn't seem to be worth the money at that point in time.

Sometimes there was nothing.

Frank Rush – Sometimes there was nothing.

Ed Dowling – O.K. B; the body hearing the appeal, I've changed that to the Board of Adjustments. (?) and that goes into what the Board of Adjustment does and the last pages also in this ordinance define the appeal process, so we don't need to discuss that here. C; there is no change there, 19-356 is your standards, what does the DVPO look for, material weakening of the dunes, reduction of the natural system, on the beach, interior lots through the sound, project complies with the ordinance, the spirit of the ordinance that is, then 19-372

Phil Admedia – 19-371, I think is a comment from the Town Attorneys. Thank you.

Assume this means that the ordinance about dunes and (?) are considered for amending .

Town Attorney - I think it was intended that it be applicable to interior lots and I think that was the only change in 371, it's just a clarification that the application applied to all properties including properties on the interior portion of the Town. It seems like that is inclusive of interior lots, we'll look at that but the purpose of that 371 was to make it applicable to all lots, including interior lots which was pointed out earlier had not been the case with earlier dunes and vegetation ordinances.

Ed Dowling – 372; without reading that the permit is issued when the dunes, dune line, dune system, the original vegetation, trees, shrubs complies with this ordinance. Dunes are not to be materially weakened, vegetation, topographical features not disturbed. Those are my notes from when we talked about 19-372 as to what the committee's intentions were, that's what we briefed the Planning Board on. That's a very, very important statement of fact.

I have a question about including all lots. So you are saying that, you are considering dunes on interior lots, if a project weakens the dunes, are you talking about, so you are saying that you can't even the lot out then, 'cause that's going to weaken the dune?

The ordinance applies to all lots, including interior dunes and they would have to go through this application process, that's all that the ordinance is saying.

Ed Dowling - I might point out that what we considered a development was just one of those sub-divisions that went in without (?) involved in it. We recommend that the road go up through the side of that area. When you look at that particular sub-division it had the highest dune in the County. That developer really, in my humble opinion, this is just Ed Dowling's opinion, lost three hundred thousand dollars when he cut out the heart of that dune because if he had left that topographical crest there with all that dune instead of taking the sand out he could have developed three lots, he's got two lots contiguous to the road right now that are going to be very hard to develop and the Inspection Department is going to have a dickens of a time working. In addition, all the trees were taken off that property. I would estimate that each of those three lots

would be between \$90,000.00 to \$100,000.00 today on the market. We talked to him, he really was upset when we talked to him and pleaded with him to consider bringing that road out through the draw and opening that area up. In addition, it would have pushed the road down so now the lots that are down in the lower portion of it, those are going to be a dickens of a, probably, how many truck loads of sand have go to be brought into those, twenty, thirty, forty, just to get down into the lots, so he has lost all of that land too for development but we could not convince him of that fact, to bring the road down, make bigger estate lots up on the hill, don't touch the high dune, please don't touch the high dune, but we had no control. So that's why I point out as an example, I can go into three other examples if you want.

I just have a question though. I always go back to my own property, because that is what I have the experience with. We had a lot that had a huge berm in the front, which I would consider a high dune, with this ordinance. Then we had just a whole low-lying area back in this back area. Had we not been able to push that down, we didn't have to bring any fill in because we used that to bring that up so we could get our septic area in and our, and then we left the whole back part of it natural vegetation. That was in my first house, my personal house. If I hadn't been able to touch that dune or use that dune to push down to even that lot out, I would have build in a big hole back here.

In past, maybe that's the case but if you will look at 19-373, which talks about project design, what it says is that for a permit to be issued there has to be a determination that the proposed design utilizes the best advantages of the topographical contours of this property. In your case, if you had a problem like that, there is a procedure 402 for a variance under 402 that says if there are extraordinary or exceptional conditions then, because of the size, shape or (?) of the lot then there is an avenue. The thing is that the dunes and vegetation ordinance never applied to that interior (?) before and the Town had no control over just total elimination of that interior dune so we are trying to give some control over how the topographic features of an interior lot are handled. That's all we are doing, (?) design process.

Do you have a Board of Adjustment meeting daily?

No, they only meet once a month.

What I'm saying is, I bet every lot has a dune on it of some kind.

Probably, that may well be, but that's the only way that some of these can be saved.

I think, the language says, "Does not weaken the dune". The weakening of the dune you are really concerned about, the primary dune, otherwise, every time you take a scoop of sand away from a dune you weaken it to some extent.

There is no prohibition against weakening the dune.

Yes there is.

It's not a prohibition.

It says you will not issue the permit until it is determined that it will not weaken dune and really what you are concerned about is not weakening the dune on the interior lots but whether or not it weakens the protective function on the other lots.

That prohibition is under primary dunes.

You are saying that all lots are included and that

Is it the intent of this group to prevent someone from pushing down a dune on a 12,500 square foot interior lot to level it out to make a building patch, is that the intent of this.

The intent is for them not to do it without a permit.

Frank Rush - Which they don't now, I mean they have to get a permit.

But you can't stop them from doing it under the current permitting process. What you can do under the revised or proposed ordinance is, you can require the determination that the best topographic conditions be maintained/

Frank Rush - I imagine we try to do that to the extent practical now, I think it probably becomes very difficult when you're dealing with such a small lot, I mean 12,500 foot is small. I am just trying to understand what the intent, maybe we are just arguing, not arguing, discussing something that's not the real issue.

I think the issue of it was, what we are trying to say is that we concentrated mostly on ocean front, second row in the dune structure and what we are looking at now is we are trying to look at the inner lots, sound front lots, all the other lots that have a dune structure and we are trying to say, if you have, someone brought up a big hole in a lot like that, it's my feeling on it, the way it is, that when that occurs, and that lot is really un-buildable unless it gets changed like that then that's where they go, to the DVPO and sit down and say, "O.K., here is our issue, we are not trying to bulldoze this dune down because we need the sand, we have to bulldoze this down because there is no other way to build on this lot"

Frank Rush – Could that not happen now?

That does happen now.

Town Attorney - What we are trying to do is put it in here so it is physically in there. Before, it was never really in there to say how you would handle the situation. Now you really have to go and say, "We have to do this", and then he has some meat in the way he can look at this and say, "Well, maybe you do and maybe you don't, maybe there's another way of looking at this that we can try to save some of the topography of the lot".

Frank Rush – There is nothing to prevent someone from doing that, to try to work a little better language to make (?) the DVPO (?)

Pretty much everything we are dealing with now, unless it is a new sub-division, you wind up with somebody has gone in on either side of you and has already disturbed the dune, it's gone, and so now what you are left with is this mound and everybody else has done everything they need to do and you've got a hole here and you've got a mound there and nothing over here so

you are taking that mound, you're putting it in that hole, it's not in any way a primary dune, it's not any kind of thing that is protecting anything anymore because everything is already gone but at least we have the teeth to look at it to say, if it were a long stretch of three lots and now you want to go in there and cut this hole in there, let's think about it.

Ed Dowling - We are looking after the neighbors on the left and right also, as Pat said, that saved the dune system and just cut a road through it because they like the aesthetics and view of that and they like the protection gained from wind, salt and the invasion during a hurricane of turbulent waters and that's the purpose of that little dune and there they go to Jenny or to Carol and say, "Hey, what can you do to help me this is a beautiful piece of land, I don't want that whole thing moved", and so one road would be cut through, one pervious surface, and he'd have to bring in some sand.

Frank Rush – I think what I'm trying to get at

Commissioner Marks - Because hers is one of the problems that we had. I was sitting on the Board of Adjustment at the time when she brought up her experience. One of the things that complicated the whole issue was she had a pie shaped lot and Frank, the seventy-five foot building (?) required, even though she could stay within the set backs that she move her house way back which put it into the tree area and Pat was saying, "I want to save the vegetation back there", she had beautiful trees, though the hurricane took care of that, but the intent of your ordinance should be to save as much vegetation as possible, which is what Pat wanted to do, but the (?) requires the building to set on a line where it is seventy-five feet wide. The remaining lots on this island, for the most part, are pie shaped and we just make the problem worse in terms of saving vegetation, as I said to Frank last week, unless someone can tell me why we need the seventy-five foot building line requirement, I think we need to address that somewhere along the way and get rid of it.

Frank Rush – I guess what I was trying to get at is it sounds like the intent was not quite as harsh as maybe Pat had perceived and maybe the language just needs to be tweaked a little bit. That's what I'm hearing from you all but I am asking you if I am correct?

You go with that scenario that I was talking about, you go apply for a permit, you go to the Inspections Department, Jimmy comes out and looks at it with you and determines that that's O.K., I see exactly what you are trying to accomplish, and I see (?), O.K. you got your permit, bang, done. Lets just suppose that Jimmy then decides, as time, he looks at it and says, "you know, there's another way of doing this", and you could use this and save a little more of this and so forth and so on. Yes it's going to cost you some more money but it's going to keep the natural topography in the neighborhood and helping your adjoining neighbors keep theirs as natural as possible. So he says, no. Then you go to the Board for a variance, or Board of Adjustments then you go to Board of Adjustments, you don't go to the Board of Adjustments first, you go DVPO first.

And then if you want to continue with your original plan, you go to the Board of Adjustment and he is going to be there saying why I don't want you to do that and he's got the alternative plan for you so your chance before the Board of Adjustment is a little less but up till now we have never had the teeth in any ordinance to say we don't like your plan because he said I can take 45% because it says you can so he needs the teeth in there, I need the teeth in there that says we have the authority to give you an alternative, talk it over.

One thing you have to consider, there are limited alternatives, once the health department says this is where the system is going to go. So if you got a ridge on there and the Health Department says over here is your septic permit, the only place to put a house that meets our setbacks and meets some of our natural areas is going to have to disturb this effective dune, at that point in time you are going to weaken the dune if you cut it down, anyway you look at it.

In which case you would say yes to the permit because they have no choice.

O.K., so we cut the dune and it weakens it, I think something needs to be in here as to once you cut it, what slopes are you left with, is that going to reinforce the dune that you weakened or at that point in time we've got to put a retaining wall in to maintain the integrity of the dune that's left, so I need something in here that would give me a minimum slope that we could achieve to maintain the dune's integrity.

We have that someplace else.

We are trying to deal with just about everything with every lot that is left on the island. The reason it's left is that no one wanted it because it's difficult to deal with, I mean, that's a fact. Now we are having to deal with these things and that's what we are trying to do with this is to try to work with the individual to try to get the Inspection Department the teeth they need and make it all work together.

Any time you go in there and you alter that dune with land disturbing activity it's going to weaken.

If there is no dune on another lot, if it's only that little mound right there, what purpose does it serve? Taking it out isn't going to hurt anything. If there is a dune system that would be the issue, but if there is nothing but a mound on a lot you should be able to use that sand to fill a low spot or something like that.

If you have a, and it happens a lot on the sound fronts, where you've got a dune system that goes across the lot right onto Sound Drive. There is no way to get inside that lot without cutting through it. You can do what some people have done and try to have an up and down driveway, which a lot of people don't want, they want you to cut right on through and bulkhead around, but I mean you can do that. This is what gives you the teeth to be able to say to them that instead of whacking through that thing lets, yes we have to decrease it a little bit, but let's do an up and a down and try to work with that and this is what this is trying to give.

Ed Dowling – 373, Project Design; May I say this (?) etc., etc., because they are already defined in (?)

Is it necessary that, to even have that in at all?

Ed Dowling - We, on the Committee, did think that we did have to clarify it from a legal standpoint and to put it in so we were all inclusive when we put it in there for your recommendations. That can be discussed if you want.

You don't have institution in there.

Frank Rush – The intent, the change, you want to make it apply to a lot and a sub-division not just a sub-division. It used to say just sub-division, if I'm correct, you want it to apply to lots also.

Frank Rush – Regardless of the zoning

Right.

The intention is to make it applicable to any

Yes.

Because people thought they were exempt because it kind of made it sound like it was only commercial property or sub-divisions.

Pat, last sentence on page 6, 373, fourth word (?) talk about (?).

Ed Dowling – Here is where the discussion will really, pedestrian and vehicular access to the beach, I think that's probably, I don't think there is any discussion there except in 19-376, Natural areas, which is the total square foot of a lot, tract or parcel which is not to be disturbed or (?), just let me say before we tackle this that we considered the forty-five plus fifty-five formula, we discussed the forty-six plus fifty-four formula, the forty-seven and fifty-three and we arrived at fifty-five for your consideration.

Ed, before we get into Natural Areas could we go back to Pedestrian Access. I really would like to have something in the ordinance that will talk about people walking on primary ocean front dunes. We've got to have some teeth in there where we put up those signs that it's against the law, we need a law to say it really is against the law for people to walk on those primary dunes.

I thought we had something like that in the beach section.

We have been talking with Barbara about this and we have got to get something.

It's a good place to put it.

Yeah, I'm thinking.

Enforcement on that could actually be like the leash law kind of thing, could that be a police enforcement thing or not?

Frank Rush - It's going to be difficult to enforce, the beach patrol

Ordinance such and such, you are in violation, prohibited from walking on the beach because of section such and such, we have it in our ordinances, that will have more teeth, and subject to a fine of, I mean you know

I have been trying to find an ordinance like that in our ordinances and I can't find it so we need one, but whether or not this is the appropriate place, I don't know

It should be in Beach and Shore.

You can have an ordinance that says that, you can fine them and everything else but the majority of the time this is occurring, it's not by residents, this is occurring by renters and there is another issue like with fireworks, people who live here aren't doing the fireworks, it's the people who are renting, they come down, fourth of July it's every week, so if you, one of the things I would like to see done, and I think it would make a major impact on this, if everyone of the rental companies were brought in and we talked to them and we say, "this is our ordinance, it says no fireworks, they are illegal", and "it says no walking on the dunes, it's illegal". Then if they put that same thing in their contract just the way they do with dogs, it says in their contract if you bring a dog in here you are out of here, you forfeit your deposit and we will throw you out of here right now. If you do that with the walking on the dunes and you could do that with the fireworks and stuff like that, then you are going to, there's the teeth, people are not coming, if that happens once or twice and some of these people are thrown out of their houses because of that, all of a sudden the rental companies are going to put a big flag up and say, "hey".

The problem is that we don't have the law yet.

No, I'm saying once we get it in, there is a good way to make it happen and I think that is a sure way to make it happen.

Commissioner Marks – I have to disagree with you on fireworks. In my own sub-division the two of the worst people with fireworks were permanent residents.

Pat, that could go in beach regulations and that, I think, would be something we could do pretty quickly.

The other thing too is we could get some signs, I know we are on a limited budget right now, but maybe we can get some people to donate some money, we need to get some signs, maybe even owners could buy to put in front of their property, because if there is an ordinance and we can say that on these signs and then allow the owners to buy them at a reasonable cost I think the people would be eager to put them on their dunes, they would pay. Instead of everybody have different little ugly signs I don't think is good, I think if we have one from the Town that states the ordinance.

I think that does make an impact, as you walk down the beach, you look at the "Dog Dropping" signs with the ordinance there, I think it does make an impact.

Ed Dowling – The Natural Area definition hasn't changed too much. We did leave off Appendix A so "A" needs to be added to the 8th sentence. I will leave that open for discussion.

Frank Rush - The point I brought up earlier, that last sentence, "Total site clearance, or clear cutting of vegetation of less than three inches is strictly prohibited in the natural area", I think I've got a better understanding after we've talked about what you all are looking here, I'm sure the language might need to be reworded in some way, I guess, in other parts of the ordinance we are saying you can't cut anything greater than three inches in diameter and I think this ordinance says you can't cut anything less than three inches in diameter. The first time I looked at it I really got confused but what you all are trying to do is prevent people from clearing out everything, I don't know what the best language would be. You want to let them cut out the briars and junk but you don't want them to cut out sea (?).

No, it's designed so that the situation you all talked about, about somebody marking those four-inch trees and totally clearing everything else, that is the situation we are trying to alleviate, so we need to reword that.

Commissioner Marks – Are we requiring them to leave the vegetation in the setback areas, the original natural vegetation with the exception of the briars and poison ivy and that kind of stuff? Right now we have permitted almost everything in the setbacks, side line and rear setback, that would give each property thirty feet between houses of vegetation, give some privacy and would keep a lot of the vegetation alive.

The only thing that might be a problem are the people who want to put driveways in then you would have to have an exception for that. Actually we asked that question in that Town survey and there was quite a bit of support for that in that 2000 survey for maintaining the town setbacks as vegetated.

Frank Rush – In practice that's what most people do. That's what they designate as their natural area.

Commissioner Farmer - The other thing, kind of along that, I would like to see something in here that requires a thirty-foot buffer, CAMA buffer, remain naturally vegetated. There are people who go in and clear-cut that and plant grass and that decreases significantly the protection that that vegetation is giving against erosion.

There is actually, as I understand it, there actually allowed to go in there and mow it down. You can actually cut the marsh grass.

But our regulation here could be more restrictive and prohibit that.

I think it should be.

Ed Dowling - That's a good suggestion, we didn't consider that. That's a very good suggestion. That is the first time that has been pointed out.

It sounds like what you really are saying is you don't want anything cut in the natural area, except for noxious weeds and briars and that kind of stuff.

That's right, that's why it's called a natural area.

Why can't you just say it like that, "nothing in the natural area shall be cut except for noxious weeds and stuff like that"?

I think you are probably going to get a major uproar.

Jimmy Taylor – Probably what's going to happen is after the house has been C.O.'ed and everything is in compliance they will come in and thin that stuff out on the weekends to get a sound view. I know that's what is going to happen.

People are going to go in there and they are going to do a natural area then they are going to want to go in and thin some things out to try to make it look attractive to them, that goes against what Doje says, but if you have two pine trees, seedlings, that are like this growing up like this, that far apart from each other, they are not going to turn into a good canopy tree in the future so, my thought was, and I thought this was our thinking in looking at this was, where you have a natural you can't go in there and cut it all down but you could go in there and selectively prune some things so that some of these trees could come up to a more mature and a nicer looking, healthier tree and that, I think, was our intent of it which is why the DVPO could go over there and look at it and say, yes you can trim these down and do that.

Frank Rush – The intent, I think we would just need to play with the language

Ed Dowling – That’s education, yeah, that’s part of the education, absolutely.

Jimmy Taylor – I’m going to be really hard pressed for you to cut a tree down, I’m going to tell you “no”, you’ll have to go before the Board of Adjustments.

If you look at the scenario that I just said you’ve got two saplings of pine and they are growing this far apart, they are not going to turn out to be nice looking trees, of a nice mature canopy in fifty years from now. Well, but if you cut one of them, if you trim one of them down and as long as it’s under that three inches then you are thinning one out and you’re leaving one and you’ve got something that looks appealing and yet is saving the system and that’s what we are trying to get you to do.

Ed Dowling – Any your argument, Jimmy, also be, “hey, when you get ready to sell you house that tree is going to be more valuable and add money to your pocket.

I don’t know whether to make a comment or ask a question or what but I’m always concerned about unfair taking and I’m also concerned about how one designs a development on a site, and this particular site that I brought up earlier, has a nice maritime canopy from the street all the way up to the top of the dune and when you look at that, there are cedars in there, there is some other stuff, once you disturb and remove the trees the cedar looks great the way it is, once you take everything away from it, it’s out of sight. I mean, we’ve got a lot that looks best like it is but it is already bought and paid for and ready to be developed and to develop that without disturbing everything in there and leaving anything similar to what is presently there is exceedingly difficult. I think one of the things you were talking about earlier with the design and going through the DVPO is to take the design away from the heavy-equipment operator and put it in the hands of somebody who is going to put it on a plan, I think that’s what we are getting to there. So the bulldozer operator, this looks like the thing to do. How to apply all the things that you are talking about and wanting some of which are a wish list of things, how are you going apply that to a site-specific area, it’s going to be exceedingly difficult. I understand there is a flag up there, sometimes it’s going to be white and sometimes it’s going to be red.

Commissioner McElraft - And it’s going to look like different strokes for different folks, that’s what it’s going to look like.

They are going to go in and they are going to hand cut what they cut out of here so they won’t be disturbing. I don’t want to put a bulldozer in there because once you put a bulldozer in there you disturb stuff that you can’t recover. We want to go about this thing in a planned way. It may look something God-awful when we get through.

Frank Rush - I think that Jimmy and Carol and I have a better idea of the intent maybe working with Jimmy and maybe Frank Erwin and Derrick Taylor we can offer some alternate language for you all to consider at some future date now that I’m pretty clear on what the intent is.

I know you want something ironclad and it’s really difficult.

Commissioner Farmer - Not really, we have put in a Board of Adjustment for that because ironclad is not going to work.

Frank Rush - I am more concerned about just being able to explain it to a citizen who comes in or calls up and says, “what can I do and what can’t I do?” Most people will do what you want them to do as long as you can explain it to them.

Ed Dowling – O.K., requirements for the natural area, we discussed and came up with a balanced, flexible formula. #1- “At all sites other than commercially zoned areas, a”, take out

the word total there, just read “a minimum of fifty percent” and I’ll let you, you’ve read this before, I’m not going into it. Just bring up the salient points that you want us to discuss. We gave you two methods of accomplishing the fifty percent.

Commissioner Farmer - Here’s the problem that I have with this, I’m going back to Phil’s comment at the beginning of the meeting, I’m not sure this is going to get us anywhere. I would like to come back to this after we have talked to Pine Knoll Shores and or had Roy Brownlow come and talk to us. I think there is also the issue of what we are doing with the septic field, whether we are including it or not, what we are doing with marsh on sound front property, whether we are including that or not.

Roy works for us, by the way.

Ed Dowling - Give us your parameters and guidelines and the committee can sit down again after we have Roy talk to us.

Commissioner McElraft - I think we have to be real careful trying to take the septic area out of the natural area because it is so lot specific that you are going to have a hard time deciding how much vegetation, natural area, you are going to have to have and that is all dictated by the State of North Carolina Health Department. So, I think, if you take the septic area out it’s going to be very hard to calculate what kind of natural vegetation you are going to leave. It’s, like I say, going to be very lot specific and then you are going to have to have

When, as Pat said, when you are dealing with a lot, a lot of times, the septic system can literally be under the only dune on the property and when that occurs what we are suggesting is that you leave a portion of the repair area, leave it natural now, don’t whack it all down. The Health Department has worked with us on that, where they are saying that you can do that. In the past it’s been “whack it all down” so that’s an issue trying to keep that all up there but when you do that if you sit there and you look at a 45 x 25 septic system than, if you cut that in half now, so now it’s 12 1/2 x 45 and it sits on a dune, when you disturb that, you can’t just disturb it straight up in the air, so now you are going to go over like that and when you do that that percentage is going to change so there are all kinds of reasons why that percentage is not going to be exactly the same as were we working with an absolute flat lot. The, I think, along with that, it’s what we have right now again, I know I’m being redundant, we’ve got difficult lots every time we walk onto them. So when we sit down and we start talking about changing the percentages and cutting out septic systems and cutting out natural areas and all these kind of things, we are dealing with lots that are extremely difficult to deal with no matter what we do, so if we start changing these percentages even higher than what we are doing right now you probably going to wind up with some people coming back with their little attorneys and saying, “excuse me, I bought this lot at the same time these other people bought their lot and I am now not allowed to build on my lot because you’ve made it so difficult that

Commissioner Farmer - Again, that’s not the intent. The thing that concerns me about saying 45% or 50% is that we have been saying that for a long time. We’re hearing that a lot of the lots that we look at and think have been clear cut are in fact complying so what is this getting us, it’s not solving the problem.

35% I think is a fair number and that doesn’t include your septic tank.

Commissioner Farmer - I’m still not convinced. I mean, I’m back with Doje thinking that maybe the Town setback should be vegetated. If you require the natural vegetation to be Town setbacks

with the exception of driveways, should they be on setbacks, require them to put that fifteen-foot strip some place else.

Can I throw out a legal question here?

Commissioner Farmer - Let me just finish and on the sound front parcels you require that that thirty-foot buffer be maintained naturally vegetated. I just, I'm just not convinced that by throwing out a percentage we are going to get anywhere.

I'm not an attorney.

I know you're not. In your humble opinion, if you are sitting there with a lot in the center of two lots that have already been developed, they have done their thing, now we are saying that we want you, you can't, don't do anything with the public right-of-way stuff, don't do anything with all this, like she is saying. That person now can't develop their lot.

Commissioner Farmer – Why would that stop you from developing it, all it's giving you is a beard of fifteen feet around the edges and basically, I don't know that I would be willing to go this far but, at this point what I'm saying is, I don't care what you do on the inside, keep the vegetation that is around your lot. I'm not sure I'm willing to go that far, but.

Commissioner McElraft – But some of the vegetation that is around it is so pitiful looking and such awful, it's better to let them replant nice indigenous

Commissioner Farmer – Or replant with any vegetation where appropriate.

Well, that's what the intent of what we were doing, we were trying to get more vegetation going up to 50% and when you can do that it's a (?), it's cool I think because to go in there and re-vegetate the way we have designated is expensive.

Commissioner Farmer - I guess my concern is if we are at 45% now and people are seeing 45% as clear cut what's another 5%.

They are not going to be able to go and do that as much now as they used to before. Before they could go down there and go back to some of the other language to where Jimmy had to go in there and look at it, they could take a, leave a natural area and then anything underneath the four inches they could go ahead and cut it out. Now they can't do that, that's what we are trying to do, so you are not going to have the ability for somebody to be able to whip the teeth that's here, you're not going to have the ability for somebody to go zip unless everything there is, according to the tree-o-meter, three inches or under and that is going to make a major impact on people coming back and saying that this has been clear cut again, we don't want to see that, that's why we put that in there.

Ed Dowling – For the first time you have monetary fines.

Commissioner Farmer - Yes I saw that.

Ed Dowling - Which is a hefty fine, I think that should encourage people. Then we go down and we say in #3, "Violators who fail to comply with the provisions of this article shall be required to plant new healthy replacement trees. Trees destroyed under these standards on site shall be replaced in like quantity, density, height, variety and measurement", so you, we did put strong standards in which should encourage the lot to be developed in accordance with the DVPO.

But isn't it really what you are trying to get at, at the end of the day, really more tree protection? I mean the scrub brush that is down there, we talk about it being protection against salt spray but at the end of the day, what we are mainly concerned with is trees and the natural area, if I go in and designate a natural area, which is a barren piece of land on my property because all of my trees have died from the hurricane, that's still my natural area but that doesn't really get to the point of what we are trying to do is keep vegetation to suck up water, give protection. Maybe the thing to do is to go to some sort of tree ordinance that requires you to have a general planting of trees as most municipalities do. Then you are not talking about am I keeping fifteen feet of basically barren land, but it's natural, no body's ever touched it, it's dead, or replanting something that is going to be beneficial to your neighbors or the rest of the community, I mean that gets away from the issue as to whether it's a natural area or not, it's do I have "X" number of trees on my lot?

That's not exactly a natural area. I mean, there are areas that are dune oriented and are not natural, so I mean, if you want to take an area and turn it into something that's not natural.

Commissioner Farmer - You would have trouble planting a lot of those trees on the oceanfront. I know you don't intend it that way but I think you probably need both, dunes and vegetation ordinance and then you going to have a tree and landscape ordinance and I'm sure that's not what you want.

The question is going to be when you look at the numbers you can't say you are going to keep all of these numbers, the numbers we are really talking about are what are you really seeing on the lot, that is at the end of the day, true natural areas, and those areas are going to be less than what people think they are. You can say they are 45% but if you really went out and enforced to say you had to have true (?) buffer area at 50% you would make all of these lots unbuildable. You couldn't maintain those areas, I don't see how you could, that's half of my lot you've told me I can't do anything on and think that's good enough.

We are not saying that. We are saying that, if indeed, you happen to have a (?) lot and you can save 50% of that vegetation, that's what we would like for you to do. If you don't have one of those that you can do that with, we are saying O.K. fine, here's an alternative, save 45% and we have been able to work with that 45%, I mean, it's been difficult sometimes but we have been able to work with it and at that point revegetate to a standard of that extra 5% so that we are, and what it does is, to re-vegetate with the size trees and so forth and so on that we are suggesting is costly.

But you are saying 5% is what your septic area is and your septic area is going to be larger than 5% and you may not be able to do it.

No, I'm not saying the septic area at all, I'm saying in other areas, if you had to go in there and take out more of any area because it had a big hole in it, and to fill in the hole you are going to kill the trees that are in the extra 5% that we are looking for, then so be it, kill the trees and then re-vegetate some nice new trees in there, but the idea is, at the 50%, is to try to get people to stay at the 50% if they can and it's going to be more costly to go the 45% and 5%. Hopefully we will get people to stay within the 50% when they can.

I think your numbers are too high to begin with. You are a custom builder and you pass on all you landscaping to your client and a lot of these other folks can't do that. To me 50% is setting too high a standard.

Unfortunately, we have had to low a standard and that's why

Art Daniel - You may feel that the numbers are wrong to fit the site; I think the site development has been wrong (?) so they haven't matched together. If you look at the situation a little different, I can't develop this lot on a 50-50 basis without planting some additional trees and I don't believe that's the proper approach, that's a hardship. If you were building it, not problem, because your client is going to fund it regardless. The standard is just set too high.

Art, could you develop that with, leaving the site setbacks?

Art Daniel - There is a nine-foot wide driveway going down one of those. The other side would be affected at the foot of the house because of the grading required to maintain the (?) slope for the (?) material. The other part, the house to the street, yes that could be kept as a natural area. Whatever influences the septic field has, but a segment of it could be maintained. The rear setback is going to be maintained, put the house up far enough to leave that dune alone at the rear of it. So that's the rear setback and part of the setback from the house to the street will be maintained (?) I don't know what vegetation can be left, the problem is, and I talked to my client a while ago, the problem is if you put the bulldozer in there (?) so it's going to have to be cut by hand and drag it to the street and put on the truck and hauled away from the site. To me that's the only way that you are going to go through this process.

Pat does this to develop sites, I know he does.

The thing that you are saying, that you won't be able to do that, that's not exactly true. The issue is that we've got, this is teeth for the normal scenario that we go through. If you can't meet the standards that we are proposing then that's what the Board of Adjustment is for.

Art Daniel - Go look at this lot. It's a nice pristine maritime swept lot. The house that the neighbor has is clear-cut, the one on the other side was essentially clear-cut and now it's got (?) brush growing up around it, not maintained

How do you propose, I mean, you say the percentages are set to high, then if you lower the standard then you are sitting there with an issue of anybody can do anything they want then and God knows people will cut it if you allow them to.

Art Daniel - Well, I may be able to wipe most of this out because it's under sized but I don't want to do that. I want to maintain the pristine part of that lot.

Ed Dowling - The 5% that we are giving you with a 100 square foot area for trees, I would estimate that would cost the average homeowner between \$200.00 to \$500.00 at the most for the new trees as trade-off. He's got a beautiful swimming pool there that you want to anchor, trees will do that.

Commissioner McElraft - Let me ask you a question, in the, right now we require 45%, if that is all that a lot could handle and could you not take the extra 5% of trees that you are going to require and let them plant them in the 45% natural area rather than take another 5% of the lot, in other words re-vegetate the natural area, because a lot of the natural area is not that vegetated, so couldn't you have them go in with lots of seedlings, that's what we are trying to encourage people to do in the re-forestation, re-vegetation committee, is to re-vegetate the natural area that you already have with some of our indigenous trees.

Frank Rush - Just as an example, let's just say that the typical septic system takes up 15% of a 12,500 square foot lot, you said if you backed out the exemption for the waste water system and set the requirement at 30% natural area, on a 75 x 175 lot you wind up with the entire rear

setback, 20 feet, natural, you wind up with ½ of both side setbacks, 7 ½ feet on either side of the lot the entire length of the lot, natural, that's basically about 30%.

Ed Dowling – May I draw it down to Jimmy's experience because he enforced the 45% natural area all along. How many times have you had anybody come in to talk to you about lessening that? I think he has lived with 45% all these years and it's been really no problem. I think this is a moot discussion. This has been in force as far back as 1977.

Commissioner Marks – The ordinance has been in force, that is, it's been on the books but up until Jimmy came in it has just never been enforced.

Commissioner Messner – I don't think the number presents the problem I think the enforcement presents the problem.

Carol Angus – (?) where people are saying that it looks like it's been clear-cut.

Commissioner McElraft – "Looks like" is a different scenario than "is". That's what we have to be realistic about here, sure it "looks like", it looks like somebody, in an area that they are not supposed to be in and Jimmy runs down there and it's not so we've wasted his time.

Commissioner Farmer – But it's showing that there is a problem because what we are left with is very little vegetation and that's what we are trying to fix.

Commissioner McElraft – (?) over 45% because they were all compliant.

You are still getting where they can't cut, before they were allowed to go in there and cut off all the vegetation that was under four inches and consequently it came out looking like it was clear-cut and now what we are trying to do is to put in there that you can't. If you want to do a little bit of thinning to try to make it look a little more appealing to an individual you go to Jimmy and say, "here's what we are trying to accomplish and we are not trying to cut everything out, we just want to

Why don't you change that number from four to three?

We did. It's three inches instead of four inches.

I think that's going to help a lot. If people think that something is not in compliance, if all that stuff is not cut out, which they are not allowed to do, then I think it will look more, I mean, we won't have people saying that it's out of compliance.

Ed Dowling - Three inches in diameter; 5.5 inches in circumference, that's reasonable. We debated five, six, seven, debated them all believe me.

Frank Rush - Carol, Jimmy and I have talked about this and it's just in terms of making it easier to administer this ordinance and in terms of truth in lending or whatever you want to call it, if the waste water deal was pulled out of the exemption, it would be easier to explain to people; however, it is unrealistic, I think to think you can keep it at 45% if you are going to remove that exemption.

Commissioner Farmer - That wasn't my intent.

Frank Rush - Yeah, I know that. So maybe if you backed down to 35% or 30% or something in that range whatever your determine is reasonable that may be the way to go.

Tape 2 Side B

Commissioner Marks - I've been in areas where the lawn is the standard. The prettier your lawn, the bigger your lawn the better your house. We need to educate people on the fact that lawns are truly not appropriate on a barrier island, that what protects this barrier island is the maritime forest, the trees, the scrub growth, and if we could just educate people to the fact and the other factor that comes into play now is what's finally gotten in the paper, that's our drinking water situation. Right now if you put in a lawn in Emerald Isle to keep a green lawn you much water and that's our drinking water supply. We really need to make people aware of this, that, do you want to have that pretty lawn or do you want to be able to take your showers and have drinking water at not an outrageous price because that's what's it's going to come down to. I know from personal experience, I lost twenty-two trees in two plus hurricanes, now instead of being forest it's St. Augustine grass and a few nice trees, a couple of holly, got several live oaks and some whatever your want to call it, I don't know what they are but anyhow, it's changed the complexity of it. So I'll go out now and I have to manicure it and I don't like to do that, I'd rather have the maritime, but I can't change from a injury of an urban area setting, I've changed to that, it flies in the face of what you say about having natural growth.

Commissioner Marks - If that area, where you have lost so many trees, is not mowed or weed-whacked, it will come back.

Well, where I'm at on the street side I do have all this stuff growing up hopefully so that you can't see my house too well but I've got a perimeter around my yard with the beard.

Commissioner Marks - If we can get away from this idea that you can go from lot line to lot line and put in all the grass you want. It may be appropriate in Raleigh area but it's not appropriate here. We need to educate people to that fact and if we lose the trees, if you just leave that area, I think the Sound of the Sea is a good example, it was all beautiful pine stand in there. They lost a tremendous amount of it, well now they are weed-whacking it so it will never come back.

I planted Oleanders instead and tried to get a Dog Wood and something like that. I'm not going to plant pine trees, they are too much trouble.

Carol Angus - This lot that is next-door to Ann's property, we keep throwing the number around, 12,500, I wish this lot, second row, 10,206 with a pool. If you don't have ½ acre you shouldn't have a pool. You are taking up a lot of natural area there and I'm going to get shot for that.

That's even below our minimum standard today for a lot in a sub-division and to put a pool in.

Jimmy Taylor - Some of our lots are 75 x 130, which is going to be less square footage than that, a lot of them are.

Commissioner Farmer - Where is the pool water going when they empty the pool. Where is the pool water going from all these pools they have just put into Spinnakers? Where are they emptying their pools?

I'm dumping mine on my other lot.

Commissioner Farmer - I'm sorry, I wasn't pointing fingers at you.

There is no emptying of the pools. They keep both of them full and when you backwash them the minimal amount of water, no more than what's coming off your drains after an inch of rain.

I've been in an area where you had to truck it out.

These pools are not emptied.

Ed Dowling – O.K. what do you want us to do?

Well, we have decided that we will talk with Brownlow and re-visit these issues.

Ed Dowling – Will you schedule that for us?

Frank Rush - Sure.

One good thing they did over there was they raised the height of the structures, so (?) maritime forest on an oceanfront lot. There are certain section of Pine Knoll Shores that have a greater height limitation than the rest of it, and they have some pretty sorry stuff in Pine Knoll Shores too, if you really want to go in and look at some of it.

Yes, they do have higher limits on some of those houses.

I worked over there and they have some blighted areas.

They are much more developed than we are but they don't look it, because it's hidden by vegetation.

I would just like to (?) saying you have to re-vegetate in like quantity, density, height and variety is a good concept but if you cut down a thirty-foot tree you are not going to put a thirty foot tree back. Obviously saying it is nice but it ain't going to happen, you know it ain't going to happen, you might as well say you are going to penalize them or increase the penalty or something.

Where is that?

It's under paragraph three in 376.

But you could put in a minimum height?

I think the issue that, it obviously needs to be re-visited a little bit, but I think the intent of that was the proverbial person that comes from some other area comes down here and says, "I'm not going to pay any attention to what they are saying, I'm just going to go ahead and cut this down, I read what it says right there, they are going to make me do this, they are going to fine me, so big deal, so they fine me \$5,000.00". That was out intent to take that person who has more money than the rest of us and thinks they can do whatever they want to do and get around it and I don't disagree with you, I think that cutting down a two foot in diameter or circumference, whatever you say, tree and then put it back up is not practical but we need to come up with something that has enough teeth in it that it makes it difficult for someone to just come in there.

Commissioner Farmer - Maybe it could be that you specify a height. Make them put in eight-foot tall trees.

An eight-foot tall tree is (?). What you are talking about is, you know, you can have an eight-foot tall tree that is two inches in diameter; it's nothing, a spindly little thing.

Right. Now where are we, we are on page 8? "At planting trees much be a minimum of nine feet tall and three inches or greater in diameter". So that anybody who violates the ordinance, why are you making them put in small trees if that what they mowed down.

They can put in bigger ones.

Well, that's what we said, they had to put in like

What I'm saying, if they chop down a bunch of seedlings, so what, make them put in a nine-foot tall tree.

So you want the big ones to come down and the small ones to come up?

No, that's not what she said.

No seriously, were you talking about, if you cut down a tree that was thirty-five foot tall and that big around there is not way that practically they are going to come back that they are going to come back and put a tree that big in that area. We need to come up with something, in a sense of, when you cut the big ones down you've got to put something a little larger up and same thing, if you cut a smaller one down, you've got to put in something larger than the one that you cut down.

We've got that.

Different penalties for different size trees. You are not limited to just saying, your fine is if you cut down a tree \$500.00 whether it's a

I think that's too complicated.

The reality is if we can get, if people go in and clear-cut and they cut down a bunch of sapling type but bigger than whatever the minimum was, alright, make them put in a bigger tree.

We are talking natural area only, correct?

Correct.

I guess the issue is that on the, we are talking two different areas here. When we are talking about the penalty area, if somebody goes in there and in a 100 square foot area cuts down ten saplings that were 3 ½ inches in diameter, cut them down, then you are saying to them that they need to go back in there and put ten trees back in there, not go back in there and do it the way we were saying, with 5% trying to re-vegetate.

Right.

Carol Angus - He goes down and he sees that there has been a violation. They have pulled them out with a truck, deep bulldozer; you have no idea what the diameter was of that tree. You've got no idea how many there were.

That's where we get into the issue of going back to individuals working with individual sections on lots. Jimmy visited that lot at 10:00 A.M. with the builder and the excavating company and Jimmy looked at that lot

And he is going to remember every tree?

Well, you know, we don't do that many of them in a week that you can't look at it and say you know, we are going to cut this down and we are leaving this section of it, there was a pretty decent stand of trees here and there was a pretty decent stand of trees there, they cut them down. It's just kind of up to him. I don't know how else you are going to go in there in lieu of flagging everything, which some communities do.

Carol Angus - I'm just meaning like the house is C.O.'ed three months later they pull the trees up, when he's done he's done.

Do you ever require a picture of the lot to be submitted?

Yes.

How easy is that?

Jimmy Taylor - Well, we have the applicants submit the picture. I don't see where it's up to me to go there and photograph a lot.

But, at least during the permitting process. What I'm saying is three months down the road he is (?), then three months down the road we need some photographs of what was there, so a part of the permit application could be to require a photograph.

When he gets it, when he's doing it, it's not a real issue because you've (?) it out and you know what they doing, I think what they are talking about is afterward, after they have moved in then the owner says, "O.K., well the general contractor is not involved in it anymore and I'm going to cut those trees. So, bam he goes and does it, Sunday. So it's gone now and the issue is that if, the only record we would have is that when you do the C.O. that you have maybe a few shots around that are in the file with the C.O. that this is what the property looked like at the time of C.O.

Commissioner Marks - I would like to back up what Frank is saying and lets get Jimmy a good digital camera.

Jimmy Taylor - I've got one, the Towns.

Commissioner Marks - On your first site visit you take views of the two sides of the rear set back. On the next visit

Jimmy Taylor - So basically we're filming natural areas.

Commissioner Marks - Then each time you make that visit that you take that same record from approximately the same place whether it's the front center point on the lot or what and that be part of the record and that would give us some documentation that says they are not adhering to this. I truly believe that if we could educate people and make people see what a difference it makes, that it's not just in appearance it's also in the integrity of the lot during storms, we've had no damage in any of the hurricanes to our house because it is so heavily vegetated and that is what is saving us. If more people, particularly on interior lots were doing that, they wouldn't have the damage, you don't get the roof damage if the trees are protecting you. Anyway, let's document that so that we can go back and fine them or make them replace them if we have the documentation.

Commissioner McElraft - Let me ask you a question, since we have been flagging that 45%, now there are flags all along. The guys that are on bulldozers, once they know there are fines coming I have a feeling they are not going to go in there and go beyond those, have you seen any instances where they, now that you are flagging them, that they are going in behind there?

Jimmy Taylor - They may fudge a little bit just based on the width of the equipment and the area they have to work with. Certainly, if you are going to hold them to say a 30 x 32 area for the footprint of the house, they are going to fudge a little bit on the outside of that just for grading purposes. It's almost impossible to go in there and disturb just the area where the foundation is. You have got to allow a little bit of room there for the equipment to turn and work into but along those lines, that's about all they are fudging with right now. Currently, it says in our ordinance that you are required to stake out where the house is going and where the septic is, we have taken that a little further in requiring well if you are not going to stake out the house then you stake out the natural area that you are going to leave. Using one of those two scenarios we do pinpoint the disturbed area on the lot and I don't know if it's a problem, like I say I did Bill (?) and Bill and I discussed the scenario for the grading limits and then of course you know he's got Albert, who is one of his employees, who actually comes in and does the grading. At what point does that communication actually get to him as to what is allowed to be graded. I don't know if that may be a problem but

I would prefer that you stake out around the vegetation because that has boundaries for them to say no I cannot go beyond that. To stake out the house is different because then you haven't really staked out the boundaries for the 45% but if you put those stakes right around, where you cannot go beyond those flags, like they did over (?), they made sure, I mean I watched them, they did not go anywhere near.

You just made the comment that Bill comes over and looks at it with you and that Albert does so forth and so on. How many times do you see that when the actual grading going on the general contractor, who is ultimately responsible for all of this, is on the job when they are doing the grading and is overseeing what's being done?

Jimmy Taylor - It's probably not every case. I don't see the general contractor standing on site while the guy is doing the equipment grading. I would say maybe 80% of the time the general contractor is not there during the grading process.

Commissioner McElraft - That's why I think those flags around that 45%, talking about the beard, where that 45% is, or 68% of whatever you leave there. Make sure that that is flagged. To give them an option of flagging the house and/or the vegetation, just make them flag the vegetation.

Jimmy Taylor - Our ordinance currently says the house and septic area it doesn't say mark the natural area.

Commissioner McElraft - Then I think we need to say, mark the natural area. I think that would help.

Ed Dowling – I do too.

Commissioner McElraft – When they see those flags there, they know that, I mean there is no question as to where the natural area is. There might be a question, the grader is out there and he is saying I'm not real sure where, I'm looking at this plan but I'm not real sure where that goes but if it's measured and flagged off then he knows he can't go beyond those flags. I think that's a better approach than staking the house and septic area.

Jimmy Taylor – But currently in our ordinance that is what it requires.

Commissioner McElraft – Then is there a way we can change it to talk about flagging vegetation?

Mayor Schools - While Jimmy is looking that up I would like to take a minute or two to introduce Michael (?) to the people who don't happen to know who Mike is. That's Mike.

Frank Rush - We are fortunate to have Mike's firm, Benchmark, coming on to help us out at the Planning Board level and Town Board level. They will be helping us to review the major development permits, new sub-divisions, new commercial projects. They will also be helping us as time permits and as funds permit with ordinance amendments as we go through. Mike will be at your next Planning Board meeting next Monday although we have not implemented any of the new processes or changes that we have talked about for this meeting but hopefully we will have some things in place by the August Planning Board meeting. Mike do you want to say anything?

Mike – Call if you need me. As Frank has already pointed out we also were very lucky about eight months ago to hire Mr. Brownlow away from County, who used to work for Pine Knoll Shores, we are very excited about doing that. He is also at your disposal if needed. I will be the principal contact person but certainly Mr. Brownlow can be utilized if you have specific questions that you feel he may have a little more in depth experience with especially when you are discussing some issues with Pine Knoll Shores. I look forward to it. If you ever need to call me, you always can.

I got one you can look at today.

O.K.

You earn your money here.

So we are going to need to revisit this after we talk with Brownlow.

Commissioner Farmer – I have a P.S. I can remember on previous Planning Boards what Carrie Harrison actually called the “begging part” where a commercial development was up for preliminary plot approval and there was really nothing in the ordinances to get the kind of vegetation that people wanted to see and I see here 15% and 25% hasn't been changed at all, page 9, item 5. This also came up with Reed Drive Extension, you might remember that, where, since we were concerned about traffic and storm water impact more vegetation would have been

helpful but it's zoned B-3 so there was only 15% required. I don't know whether you guys looked at those numbers or not.

Ed Dowling – We did but we glossed over them because we thought it was adequate. I can't remember any in depth

Commissioner Farmer – I don't think that, I think one of the reasons the Highway 58 Committee was formed was because we don't have adequate vegetation in the commercial district.

Commissioner Marks – Number 4 when we are talking about commercial areas abutting Emerald Drive, all of that area along Crew Drive, the entrance to all those commercial areas will be off Crew Drive and we addressed this in the Board of Adjustment years ago, or we talked about it I don't know that we addressed it. So we have to be concerned with the impact that is going to have on Emerald Drive. Do we make those storefronts face Emerald Drive or are we going to see the backs of stores and dumpsters and that kind of thing. So we have to be really (?) about that particular area and also part of Reed Drive I think and what kind of vegetation (?).

Ed Dowling – Should we rely on the Highway 58 Committee to give us guidelines on this?

Commissioner Farmer - We just started and I don't really know, we do have a legislative study sub-committee but I don't really know, we are just starting.

Ed Dowling - So, this ordinance, if it was presented next month, which I now don't envision that it will be, it might be ninety days before you get around to that and then that would necessitate a change here. Would that committee have to approve this in essence?

Commissioner Farmer - No, no, it wouldn't and it might be that whatever comes out of the committee might end up impacting the ordinance but that's all right.

So we are saying leave this as is?

Commissioner Farmer - No. No, I don't think so.

I mean leave it as is until the Highway Committee takes a look at it?

Commissioner Farmer – No. That's a nine-month process.

Frank Rush – Perhaps, six months maybe a year.

Commissioner Farmer – I would like for the Planning Board to look at this and if the Highway 58 Committee comes up with something later that would require a change then fine, we can make a change or maybe they won't maybe you guys will know more.

Commissioner Marks – Could we get Roy Brownlow in here in the very near future to address some of the issues that we have today? That will give you folks more of a handle on those issues and maybe give..

Ed Dowling – We need this (?) of the remaining lots (?). It's desperate, we need (?). If you look at these three lots that we have singled out you'll see why. You really need to go and inspect those three lots.

Frank Rush – I will try to set something up with Roy and probably also invite Chris Jones, the current inspector in Pine Knoll Shores as well, in case anything has changed since Roy left.

Commissioner Farmer - I don't know what role their "Pretty Committee" does play but it might be helpful to have that person

Frank Rush – I will talk with Betty Carr and find out who the most appropriate person is from the town.

When we talked about this, the B-1 and B-2 Zones, we felt like the (?) was fairly small, we didn't know we could do anything much to it. I suppose that we will have to look at that again and to know some more about the size of the lots. Carol, is that (??)?

Carol Angus – It shouldn't be too difficult. You are talking about just the ones that are not developed right now.

Right, and I think sometime within the last six months I have seen some information that you have already compiled about that. I can't remember what it was, maybe I'm wrong.

Carol Angus – We do have some undeveloped but that was the island overall.

O.K. so we probably, in order for us to do something that we need a little information on (??).

Carol Angus – Well, I would say it might be as easy as just requiring, again that the Highway 58 setback be required but the problem with that is it's only five feet so a five-foot vegetated buffer is nothing.

Ed Dowling – It's really thirty-five when you look at it because you've got thirty foot that he said we could use.

Commissioner Farmer – But you are not going to ask the private businesses to vegetate that Being on the Sign Committee, you remember what we went through with people talking about being able to read their signs and we talked about vegetation not being able to see their storefronts and everything else and of course the issue is if you put more of a buffer out front and why do you want that buffer, because you want to plant stuff in it. Now you've got the issue of safety because you are planting things and you can't see around them and you also have the issue of the, which we heard a lot of on the Sign Committee, that the store, the people who run these stores are complaining because now you have vegetated all this stuff you can't see the store.

Commissioner Farmer - I don't think they were complaining about the vegetation and I don't think safety is necessarily an issue, it might be on a corner, but they sit so far off of Highway 58 that you are not trying to drive and look around anything.

The new fish store and the Reel Outdoors and

Commissioner Farmer – Oh yea, right there, sorry, I was on a different part of 58. I think that's something that we need; I think this is going to come up in the Highway 58 Committee. We are talking about wanting to have Highway 58 look nice and vegetated but at the same time obviously the people who have businesses along Highway 58 want people to know that they are there and we've got to find some way that we can do both and you are going to find it.

Talking about trees. In view of the storm drainage plan (?) I asked them to identify twenty-four inch and larger diameter in assessing the trees on their storm water plan. I think they located twenty-two twenty-four inch or larger live oaks, shown on that site plan. That will be a nice view when they do clear that out if they can maintain a number of those large live oaks. They may have their own plan, just wanted to let you know that they did do that much. I will reserve other comments on their plan to a little later time.

Ed Dowling - We did have a master gardener review all of these recommended "A" and "B" enclosures (?) vegetation so that is what you would work with in the area that we are talking about. This did come from the Tree Committee.

I thought we had long leaf pines on Emerald Isle. I thought that long leaf was the native tree that had in fact been replaced in a large part by loblolly because loblolly grows faster. I know we have (?) and that's not on the list. That wasn't one of my concerns but if you are using it, saying this is the list you have to follow, I'm not really sure.

Ed Dowling - These are recommendations.

Are you sure the ordinance doesn't say that you had to choose from that list? I'm not sure the list is complete.

Must be chosen from "A" and "B".

There were minor changes on pages 10 and 11 which we have to talk about and some other areas. So Ed, we are down to page 12 and 13, penalties.

Have McElraft look at item 2 on page 10.

That's been in the ordinance.

Just a little added note there.

I really do think Pat we could do something about where they are saying that, don't you?

I think so, just written up by the Town Attorney, I don't think we need to (?) anymore, do we?

That way the next time I yell at (?) for sliding down

So may not even (?) if an owner would put a sign, if we would supply signs that owners could buy. I'd love to have a sign on mine but it would look tacky. We put up our homemade signs but that is not effective, if you have an official looking sign.

I think the Beach Commission is coming up with a standard sign.

At the top of page 10, "disturbed natural areas used for the wastewater drain fields are provided with ground cover", could you not allow that to be re-vegetated?

That would be the repair field.

Maybe we need to be a little more specific about what type of ground cover would go, the idea is, I think is not leave it sand, plant some grass over it or something.

Grass is not on the list.

Carol Angus - On that same page, d-2, the last sentence, "a greater cut may require a wall" in regard to a hard cut. Jim would like to see that say, "a greater cut shall require a wall" that way he is off the hook.

I don't know so much about getting him off the hook but that is prime for consideration.

Jimmy Taylor - I don't want to leave it up to my decision.

It should be that way.

379.2, "A lot or parcel may not be graded until such time as the septic tank is installed and building permit is obtained", sometime you have to grade it to get your septic permit.

Carol Angus – This means that you cannot come in today to clear the lot so that it looks pretty so you can put it on the market to sell it.

This says the lot cannot be graded. I want to get a septic permit, how would I, this would prohibit it.

Carol Angus – It needs reworking, I just talked to Jimmy about that, but what it is trying to do is keep people from coming in and clearing the lot, just to market it, and three years down the line someone else buys the lot comes in and they don't particularly want to do it the way that you had it done, so it will save the vegetation on that lot until it is actually doing to be developed. We probably do need to re-work that a little bit.

Ed Dowling - This is up for debate I am sure among the realtors. We have tried to really narrow it down so there will be no argument on that. Everyone wants to put a septic tank in to sell a lot.

Where are you?

Carol Angus - Page 11, #379, #2.

It looks like the septic tank is going to be installed by Immaculate Conception.

Commissioner Farmer - On the other hand that's not going to stop what happened next to me where two lots were cleared two years ago, septic tanks were thrown in, and the lots were totally flattened.

Jimmy Taylor - This would stop such activity until such time as you're ready to build on it, immediately

Commissioner Messner – "and building permit is obtained

Jimmy Taylor – So you can't just grade the lot and say I'm going to build on it five years down the road.

It looks terrible; we call it the Sahara Desert. I can't believe that should we, for some reason try to put our house on the market now we wouldn't be affected by that.

Ed Dowling - Well maybe #1 needs to also be tightened up by adding "or improved in any way including removal of vegetation or trees in natural area".

Are you saying if I have a lot I cannot grade for my septic tank and install my septic tank?

Not without a building permit.

The septic laws are changing now and are such that (?), what people are trying to do is retain their buildability.

Tape 3 Side A

(?) what you can grade and what you can do on that, that's what the dunes and vegetation ordinance does, but the fact I can't put my septic tank in, some of these folks that have bought lots five years ago, their permits are about to expire, they are getting concerned about it, they want to come in and put their septic tanks in where they don't want to worry about it and if you turn around and say they can't there are a lot of people out there and there could be a major problem.

Why couldn't you say that you could clear just enough for the septic area? In your full vegetation, 45% vegetation, just enough to get a septic area in?

Doing that....

This is a policy decision but I think the problem that they would be that they would have to have a different kind of waste-water treatment system rather than a conventional system which maybe what we are going to accomplish it may be we are going accomplish a better environment. Maybe not necessarily different, that may not be able to get a septic permit. I mean, the permits are issued for five years and you have to get them renewed and if you don't get them renewed, the general concern is, I missed my five year period, if I don't get it renewed, I've got this property and I'm going to build on it and move down here and the issue is (?). I read the king's language as saying you have to put your tank in and then get a building permit before you can grade the lot or (?).

I think the intent is that you have

You have to put the septic tank in before you get the building permit, but you can go ahead and put the tank in once you get the tank permit.

Jimmy Taylor - Yeah, but one thing is you need to consider that's a conflict with my storm-water ordinance that we have just revised and adopted. "There will be no cutting, grading, hoeing, grubbing" unless I've got a storm-water plan. So if you are just going to put in your septic tank, then where's my storm-water plan. You need to know what size house you are going to build, where your appropriate surfaces are and where your collection areas are
(?) I'm gong to come back and tell you I can't do this design until I know within a 1/10 of a foot what the (?) of the existing grade for my footprint. I can't design the foundation not knowing where it's going to be, what elevation it's going to be. So I've got to clear this site before I can

Jimmy Taylor – Before he can do a storm-water plan.

Before I can do a grade plan.

There you go with your hand held

Without the storm-water plan I can't do the foundation system without having that information and I can't have that information without clearing that footprint.

Jimmy Taylor - Well then, that violates the storm-water ordinance.

Ed Dowling – Then you go in with your hand held equipment

I think that's called a catch 22.

Jimmy Taylor – That's right. Is that my decision again? I mean, I'll made it contingent to storm-water plan (?)

Ed Dowling – Well, I wanted to point that out, there is the site staking down there at 381 that we talked about. Should we put in the site staking to include the natural area as suggested. I for one think that's a good idea.

Commissioner Marks – (?) any problem with that at all, if we stake out the natural area as opposed to the other way around?

Commissioner Messner – It looks like it would be easier.

I think you would get a better job done.

I think we should flag the trees that (?)

Commissioner Marks – In the case of what you are working on, I'm not sure you've got anything (?)

I've probably got an old cedar in there that's greater than three inches diameter.

Commissioner Farmer - You have to keep it then, you have to build the swimming pool around it, with a tree right in the middle.

Commissioner Marks – Art, would that be workable, to flag the natural areas, would it be workable to set off the natural areas instead of the other way around?

You are going to flag the natural areas? I have a problem with flagging the natural areas, I just need to cut the footprint of the building so that I can establish the grades to do the foundation plan which is going to have an affect on how the storm-water is going to be (?) which is going to have an affect on how you are going to preserve whatever vegetation there is.

Commissioner Farmer – But once you flag the natural area, it doesn't matter what you do with the rest.

In this case, you are going to flag down, essentially down the rear yard, we going to flag down on this other side here right in front of the property and you really haven't flagged anything, you can't get in here, the rabbits can get through.

Commissioner Farmer – But you don't need to get in there because you are only flagging the natural areas.

In this instance I don't know that flagging that is a real advantage. At this point in time, but I think with the issue of the building permit which is the logical time when they are going to do the grading of the site, we are looking at only cutting with a chain saw this growth, clearing it out, vines and whatever out of there, hauling it off the site then when we finish the design they will come in and grade the site then you would have to delineate the natural areas because you don't want the natural areas disturbed any more than possible. Then survey has got to get in

there, go on and flag anything that is of concern, if we are going to look at three inches as a caliper put some flagging around every one of those, then we know what trade outs you are going to have, you've got this filmy thing in here called re-vegetation. It's going to be an inspector's nightmare.

Jimmy Taylor – It's going to be site specific to each individual. I mean 'cause, doing one thing is going to violate another part, another section of our ordinance that says you can't do it that way.

As many opinions as we all have in here, and then we all go to the site and probably you want to develop it one way and I want to develop it another.

Carol Angus – He's saying that it's going to have natural vegetation down here and we are showing all the vegetation is in this corner and in the back.

Jimmy Taylor – What I would have is a finger of vegetation in the rear of the lot and a finger to the north of the septic area.

We are going to try to preserve as much of that as possible but your site grading is going to, you've got to stay within the perimeter of your site and property lines and so if we've got a five foot field in here on the side of that house and a three to one slope,

Carol Angus – That house if right on the property line or on building line.

It's 10 ½ foot off that, so if does say hey we got a site you've got a retaining wall all the way around maybe he'll put the lot up for sale. I don't know where you get into this scenario. Till we get to that point I don't want to be site specific.

Ed Dowling – Any other things to comment. I think the Compliance with the Provisions that's standard. "A" and "B", Restoration of Dunes and Vegetation.

Pat, did you have something?

Commissioner Farmer – Yeah, Pat had something on penalties.

Commissioner McElraft – Yeah. I also had another question about, talking about doing some clearing. You can't even get the Health Department in to do a septic tank permit unless you do a little clearing of some kind to get them in here. So are we prohibiting that?

Jimmy Taylor - No. What I'm allowing there is hand clearing only. You are not going to take any heavy equipment in there to grade for the Health Department to evaluate it but surely you can go in there to cut paths through your lot, three foot path in there, hand clearing with chain saws or whatever for them to evaluate it.

It's that what Art was going to do that he?

Art Daniels – I want to clear cut the footprint of the house, when I say clear cut, that's not clearing and grubbing, that's only clearing.

Commissioner McElraft - But you are talking about hand clearing?

Art Daniels - Hand clearing with chain saw.

Commissioner McElraft – But that would be prohibited but not to get (?)

Art Daniels – Ann lives next door and (?) see where the house is going to go and deck and pool, hopefully where they are all going to go.

Jimmy Taylor - So basically what, in implementing what Art is saying, it's going to have to be some common sense judgment calls made in the field that may not follow the exact language in our ordinance but we're going to meet the intent but there's just a little bit different way of getting to that. We are just going to have to implement that in the field. It's going to be a call that I am going to have to make.

It's incumbent on the designer, I've always been a (?), so I've always had people looking at me off sides, it's not something new to be (?). You've got to keep it clean on the inside so people can see, this is going to be one of those situations where a lot of people are going to be looking and I am going to try my best to provide plausible answers to a bunch of questions. I may not have a solution for everybody's perceived problem but at any rate.

Commissioner McElraft - Well, to me that makes sense because he is trying to comply with what our end result is. He can go in there and leave 45% or 50% vegetation and cut down all those things that the neighbors want him to leave so, I think doing what he is wanting to do should be O.K.

Jimmy Taylor – Like I said, it is just going to be a little bit different from exactly the way the ordinance reads for storm-water.

Art Daniels - 'Cause if you won't find a lot that's got more stuff going on than this one.

Jimmy Taylor – It's all grown, laid-up and run thickly toward the back and the salt has kind of altered the vegetation that has grown up on the backside of the salt-spray.

Commissioner McElraft – I had a question about the fine, the \$500.00 a day. At what point does that start, how is the owner notified? Page 13.

You will notice Derrick Taylor has some suggestions on that. He made several suggestions about (?).

Commissioner McElraft - O.K., posting it on property you'd let the builder know if there was a violation. Mailing it to the house, should that be, so that they couldn't say they didn't get it, should that be registered?

Carol Angus - We send everything certified.

Commissioner McElraft – Certified, O.K., good. At that point, when does the \$500.00 a day start?

I believe the \$500.00 starts the day they receive it and it continues every day until it is remedied. As a practical matter, you know what a judge is going to do, O.K.. The fact of the matter is, the way it was done before, if you look at the strike throws, \$50.00 to \$500.00 is the Statute but case law says that is not a proper way to do it, you have to set a particular amount. Of course the judge is going to do what he wants to do and make whatever arrangements he wants to make, the whole intent is to have a (?).

Frank Rush – What do you think about making out a Civil Citation as opposed to a Misdemeanor. That is one thing I meant to discuss with Derrick.

If it's a misdemeanor before we just follow the previous (?) of determination (?)

That way we keep the money, for one thing, the civil citation keeps the money in the Town and then that could be used for re-vegetation and re-forestitation projects. Any fines that we got could be put in the kitty for us to re-forest and re-vegetate the island. I think that's a great idea.

I'd still like to see it from the time the homeowner gets notice because

Carol Angus – We get them that won't pick up the certified mailing. I get them back, never opened. No mail receptacle or whatever and that's the tax notice address we are using. Commissioner McElraft - O.K., so if they have hired somebody to do it then they should be watching it or have a general contractor watching it so posting it also on the property should be dual notice, O.K.

Ed Dowling - 402, I don't think there is anything there.

We thought we could really finish this.

Commissioner Farmer - Sorry.

Ed Dowling - Thank you for being so.

Commissioner Farmer – No, you guys have done a great job and I think this shows you how hard this really is.

Jimmy Taylor – It just shows you how much work goes into everything like this that nobody ever sees, the hours and hours that go into it and you get to a point, then you get a few more eyes on it and just make it better.

Frank Rush - Do you all want to try to get Roy Brownlow and somebody from Pine Knoll Shores to come?

Ed Dowling – Why have the Town charged twice for his service for one thing.

Frank Rush – It's up to you. If that's what you prefer we will set it up that way then. Recognize that I sense people are going to want to do this fairly quickly, it may be at a date that not everybody can attend, there is certainly no intention to exclude anyone it's just very difficult to schedule thirteen people. I will work on setting it up for sometime next week, if that's possible. Can we just have Roy Brownlow, and that way we can go ahead and get him and we can really concentrate on his head and then if you all deem it necessary to have him afterwards that's fine.

Commissioner Farmer – It has to be a public meeting.

Carol Angus - I can still put it on the Planning Board agenda.

That would be great.

Frank Rush - I think it might be easier to do this in more of an informal setting than a Planning Board Meeting. Ed, why don't you and I talk after this and try to pick a date and work from there.

Ed Dowling - When is the best time for Frank?

Early in the morning or late in the afternoon, I can do, we can work it out.

Frank Rush – We do have the Institute of Government coming on the 29th at 9:00 A.M., Commissioners have an earlier meeting at 8:30 A.M. that day, don't forget, sorry Doje. I guess, depending on the sub-committee's progress maybe we can try to reconvene this whole group sometime in early August or so. By the time you guys get back together it's probably going to be another week or so.

Respectfully submitted,

Carolyn K. Custy
Certified Municipal Clerk