

1 MINUTES OF THE SPECIAL MEETING OF
2 THE EMERALD ISLE BOARD OF COMMISSIONERS
3 AND THE EMERALD ISLE PLANNING BOARD
4 TUESDAY, AUGUST 12, 2003, 9:00 AM – TOWN HALL
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7 Present for the meeting were Mayor Art Schools, Commissioners Dick Eckhardt,
8 Emily Farmer, Doje Marks, Pat McElraft and Floyd Messer. Planning Board
9 Members present were Anne Erikson, Pat Patteson, Ed Dowling, Pam Minnick
10 and Jim Craig. Planning Board Members Frank Erwin and Joe Quigley were
11 absent. Others present were Town Attorney Derek Taylor, Town Manager Frank
12 Rush, Town Clerk Rhonda Ferebee, Planning Director Kevin Reed and Michael
13 Harvey with Benchmark.

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15 **DISCUSSION – WASTEWATER PERMIT REQUIREMENTS/SITE**
16 **MODIFICATIONS/DUNES AND VEGETATION ORDINANCE**
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18 Kevin Reed, Planning Director, explained the “Catch 22” issue in the new Dunes
19 and Vegetation Ordinance regarding site modifications necessary to obtain a
20 building permit. Mr. Reed said that to address this situation he was trying to add
21 an additional exception that would say “we will allow for modifications to the site
22 as required by the Carteret County Health Department in order to allow for the
23 issuance of a Wastewater System Permit”. He noted that when he took this
24 issue to the Planning Board he was asked exactly what was meant by
25 modifications. The Planning Board requested that a representative from the
26 Carteret County Health Department appear at this joint meeting to address both
27 Boards simultaneously to clarify the issue.
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29 Mr. Rush, Town Manager, then introduced to the Board members Curtis Oden
30 and Ryan Davenport from the Carteret County Health Department.
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32 Mr. Oden, Program Specialist with the Carteret County Health Department
33 addressed the Board members. He said that he had been with the Health
34 Department for 26 years and had seen Emerald Isle develop. Mr. Oden
35 introduced Ryan Davenport, Environmental Health Specialist with the Carteret
36 County Health Department.
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38 Mr. Oden distributed copies of the statutes for wastewater systems. He
39 highlighted the portion of the statutes pertinent to this “Catch 22” situation. He
40 explained that there is 3-tier permitting process. The first permit is called the
41 Improvement Permit. This permit will determine whether you can get a
42 wastewater system. If the lot is suitable, you then move on to the second permit
43 which is the Authorization for Wastewater Construction. This second permit is
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3 issued when the site is ready to build or you are able to put in the wastewater
4 system. He noted that they may issue an Improvement Permit with conditions,
5 what they call site modifications. The Improvement Permit's are valid for five
6 years. The second permit, the Authorization for Wastewater Construction, which
7 allows you to get a building permit, is also valid for five years. Mr. Oden then
8 discussed the various types of systems used.

9
10 Mr. Rush asked, if in terms of modifications that are required, you can get the
11 Improvement permit and the Improvement permit will specify certain
12 modifications that need to be done in order to receive the Authorization for
13 Wastewater System Construction. He gave the example of a challenging site
14 that, based on the site conditions, would need modifications before they could
15 issue the Construction Authorization. In this situation, the applicant could get
16 their Improvement permit and it would say if they modify their site in a certain
17 way they could then get their Construction Authorization.

18
19 Mr. Oden said that this was correct. Mr. Oden said they would issue a site
20 modification sheet that would give the applicant the necessary requirements. He
21 added that these modifications would have to be completed before they would
22 issue the Construction Authorization permit. The Construction Authorization
23 permit is what allows you, by statute, to get a building permit, prior to that, the
24 law states that you shall not permit any construction.

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26 Mr. Oden then discussed the third permit which is the Operation Permit. He said
27 the laws state that no Certificate of Occupancy can be issued prior to receiving
28 this third permit from the Health Department.

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30 Mr. Reed posed the question to Mr. Oden and Mr. Davenport as to how many
31 permits in Emerald Isle actually required site modification. Mr. Oden said
32 probably 50%.

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34 Mr. Rush asked in general what kind of area would have to be cleared to actually
35 make the modifications to get the permit.

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37 Mr. Davenport said for a typical 4-bedroom, single family house you were looking
38 at grading an area approximately 20' x 50' and that's on a good lot. Mr.
39 Davenport said that on a marginal lot it could go anywhere, depending on if you
40 had to bring in fill or use an LPD system or conventional drain lines.

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3 Mr. Rush described to Mr. Oden and Mr. Davenport that the Town of Emerald
4 Isle does not allow any clearing of a lot, whatsoever, with a very minor exception
5 until a building permit is issued. Obviously a building permit is not issued until
6 the Wastewater permit is issued. Mr. Rush said that the question for the Board
7 to decide is should the Town allow modification in order to receive a Wastewater
8 permit prior to having the Building permit in hand. He said that this is the issue
9 that's on the table for discussion and he hopes to get guidance from this meeting
10 and take the proposal to the Planning Board at their August meeting.
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13 Following discussion about this issue Mr. Rush noted two key provisions:
14 One in Section 19-334 says that the applicant shall be required to demonstrate
15 that he or she has applied for a Town of Emerald Isle Building permit that's in
16 order to get the Dunes and Vegetation permit and in Section 19-335 (10) it says
17 nothing in this article shall be construed to allow for the installation of wastewater
18 system on an undeveloped lot unless a Building permit has first been obtained
19 from the Town of Emerald Isle. He added that the only clearing that would be
20 allowed in this situation would be the area that the Health Department required
21 for site modification. Once that work was completed and they had their
22 Construction Authorization they would still have to get a Building permit before
23 they could do any overall clearing of the lot, or install the septic system.
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25 Mayor Schools suggested adding "construction authorization" to the wording in
26 the exception as written by the Planning Department to clarify the type of permit.
27 The exception would then read as follows:
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29 Modifications to a parcel, as required by the Carteret County Health Department,
30 in order to obtain a construction authorization wastewater system permit.
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32 Direction was given to Mr. Rush and Mr. Reed to put something together based
33 on the discussion today to bring back to the next Planning Board meeting.
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35 **DISCUSSION – STATUS OF WEST END SUBDIVISION**

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37 Kevin Reed, Planning Director, brought the board members up to date on the
38 status of the West End Subdivision since the Board of Commissioners meeting
39 held on July 8, 2003. He stated that all activities at this time are halted pending
40 issuance of a Major CAMA permit and a Stormwater Management permit from
41 DWQ.
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43 Mr. Rush said that he appreciated Mr. Cook's responsiveness after he was
44 contacted after the last board meeting in making efforts to get things underway.
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3 Commissioner Eckhardt asked for some background on the situation as to why
4 the work was halted.

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6 Mr. Reed said that as part of the CAMA permitting process Terry Barrett (CAMA)
7 made a site visit and at that time discovered that there were activities underway
8 regarding removal of the roadbed. She felt within her jurisdiction that those
9 activities should be halted until the actual issuance of the Major CAMA permit
10 and at that time asked the developer to cease the removal of the old roadbed
11 and he did and no further development has taken place on site.

12
13 Commissioner Farmer asked when the CAMA permit had originally been applied
14 for and Mr. John Odum with Prestige Land Surveying said that it was applied for
15 after the July 8th meeting. Mr. Odum said that they had gone to Land
16 Management to get the 404 permit to fill the wetlands that they had requested
17 and initially they thought that Land Management was going to apply for the
18 CAMA permit and then they decided that he, Mr. Odum, should do it and he
19 hadn't until shortly after the July 8th meeting.

20
21 Mr. Cook stated that when he spoke with Mr. Rush on July 11th he told Mr. Rush
22 that he had applied for the CAMA permit and was waiting for it and after several
23 other calls found out that they in fact had not applied for it. Since that time he
24 had spoken with Mr. Rush and Mr. Reed the following Monday morning. On that
25 same Monday they did apply for the CAMA permit. Tuesday he called and told
26 him that equipment was on site to take the road up and since then he had talked
27 with Terry Barrett, he had carried an application to Department of Water Quality
28 (DWQ) and he felt that all applications are now in and current and he had not had
29 any negative comments to date from any department.

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31 Mr. Cook also said that since that time he had been out to the property with Mr.
32 Reed to look at where the road had been taken up and Dunes and Vegetation
33 permit had been applied for and he felt the site was much better now stormwater
34 wise than it was three weeks ago.

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36 Mr. Rush said that the final plat approval was given in June 2002 by the Town
37 Board and Mr. Cook applied for his Corps permit in November 2002 and by the
38 time the permit was actually issued in writing by the Corps it was April 2003.

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40 Commissioner Farmer asked about the permit extension since she was absent at
41 the last board meeting.

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3 Mr. Rush said that final plat approval was June 11, 2002. The Letter of Credit
4 expired on May 14, 2003. After that time the Town has until September to cash
5 the Letter of Credit. He added that on his own volition Mr. Cook went ahead and
6 got an extension of that Letter of Credit to September.

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8 Commissioner Farmer asked if it was the Letter of Credit that made it impossible
9 for the Town to say the time has expired and therefore the plat approval is no
10 longer valid.

11
12 Attorney Taylor said no, he said that he thought that the Town might have taken
13 the chance to cancel the approval but if it had, one of the problems is that the
14 ordinance as it is currently written requires the Town to record the plat. The plat
15 had not been recorded and then reading the ordinance it states that it is the
16 Town's responsibility to record the plat instead of the developer. He said this is
17 something the Board may want to address if they don't want this to occur again.

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19 Commissioner Farmer felt that this should be looked at again by the Planning
20 Board.

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22 Mr. Rush said that the issue today for this meeting is that the Board wanted an
23 opportunity to discuss this directly with Mr. Cook. He said that the options are
24 limited. We can cash the Letter of Credit and undertake the project ourselves
25 and finish that, the timetable will be similar in terms of getting the CAMA permit
26 or an extension could be granted to Mr. Cook to go ahead and finish these
27 improvements. Mr. Rush said that the decision for the Board is on what date
28 they want to have the option to cash the Letter of Credit.

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30 After the discussion of different alternatives with Mr. Cook and Mr. Odum,
31 Attorney Taylor said that either the Letter of Credit is cashed because the time
32 has expired or they work out something with the subdivision ownership through
33 their counsel to work out a contract.

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35 Attorney Taylor asked Mr. Cook what he thought about the idea they're talking
36 about which is creating a contract between the Town and Mr. Cook or his
37 company which would essentially say at this point, that within 60 days from the
38 date of CAMA permitting he would complete the improvements necessary barring
39 some unforeseen act of God and that if after that period of time it hasn't
40 happened his final plat is gone and he would have to come back through the
41 process again.

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3 Mr. Cook said he understood and would use his best efforts to get the work done.

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5 Attorney Taylor said that he would work this out with Mr. Cook's attorney in
6 putting together something that would satisfy both parties.

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8 Mr. Rush suggested that they lose the ability to cash the current Letter of Credit
9 on September 14. The next Town Board meeting is prior to September 14. He
10 felt that they could take this opportunity for Town Attorney Derek Taylor to work
11 with John Wessell on a binding contract and if that is not feasible come back with
12 another recommendation on how to proceed with this.

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14 **DISCUSSION – PROPOSED AMENDMENTS TO CHAPTER 19 – ZONING –**
15 **TO ESTABLISH REGULATIONS FOR LARGE COMMERCIAL STRUCTURES**

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17 Mayor Schools asked if there was anyone present who wished to speak on this
18 item prior to the beginning of this discussion.

19
20 Ronnie Watson expressed his concern regarding the proposed requirement of
21 4.2" stormwater retention. He noted that if he had to comply with the 4.2"
22 stormwater requirement he would not have enough land to put his proposed
23 hotel.

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25 John Odum said that his concern was the 12' setback from the property lines on
26 each side of the building, especially if the building is protected with sprinklers.
27 He felt there should be an either/or situation here. He was also concerned with
28 the proposed 4.2" stormwater requirement.

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30 Kevin Reed, Planning Director, stated that the proposed changes were the result
31 of a considerable amount of work done by a three person appointment of the
32 Planning Board and Michael Harvey with Benchmark culminating in three
33 amendments being proposed to the Town's Zoning Ordinance. The first
34 amendment requires language to be added to each of the three commercial
35 districts to require the installation of sidewalks along all commercial
36 developments. The second amendment would create a definition for retail
37 shopping center and community or regional shopping center(s). The third
38 amendment would add a list of 19 specific development guidelines for community
39 or regional shopping center(s).

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Mr. Michael Harvey, Benchmark, said that part of the rationale for requiring a ten year – two hour storm event, based on his experience as a Planner was that the ten year – two hour storm event was a more realistic storm plan. He said that having said this however, he had conversations with Mr. Rush and Mr. Reed and the Town Attorney this morning and that he was suggesting that the Town consider dropping the 4.2” requirement and stick with the 2” stormwater requirement that was currently in the ordinance. He felt that one of the reasons for his decision was that the Town could be conceivably charged with being arbitrary and capricious by forcing a standard on one type of development and not enforcing it uniformly.

The question was raised by Ms. Erikson if hotel complexes should be included.

Mr. Harvey stated that was a decision for the Planning Board. He said that when originally asked to look at this issue they were concerned mainly with large retail structures. He said that if the Planning Board, planning staff and council wanted to include additional uses he wouldn’t dissuade them. He added a large structure is a large structure.

Commissioner Farmer said that she felt it would be arbitrary and capricious not to include any large structure.

Mr. Harvey said that part of the reason that the focus is on retail is because the parking standard is a lot more intense for commercial shopping center versus hotels.

Ms. Erikson mentioned hotel resorts where you would have hotel, shops, restaurants and you would have in and out traffic.

Commissioner McElraft said that then it would be included because you would have a shopping center.

Mr. Harvey suggested the study of large scale hotel development, possibly creating a new defined use.

Ms Minnick asked Mr. Harvey if he thought it would be beneficial for them to make another entire amendment basically dealing with hotels.

Mr. Harvey said he recommended they look into this and that the Town’s Planner determine the best course of action and make recommendations to the Planning Board. He said that they would not have the same issues necessarily with a large scale hotel that you might have with a community shopping center.

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Commissioner Marks mentioned regarding a stormwater study for the Town that the crucial areas weren't strictly limited to the western portion of the island. She noted there was one small section in the eastern end zoned commercial that was not a factor. She said that the stormwater trough along Coast Guard Road extends further to the east almost to Archers Creek and should be taken into consideration. She said there were large tracts still sitting there that have the potential for shopping centers, hotels and the impact on the floodwater situation.

Mr. Harvey mentioned in reference to Mr. Odum's question about access as to whether he would have a problem with some allowance for a sprinkler protected building. He thought that with all commercial development no matter what the size of the building there would always be problems with interaction between vehicular traffic, pedestrian traffic, and commercial traffic access to the site. By requiring access areas to allow for the directed access points for certain types of vehicle whether it be emergency, commercial service, parking areas are also for employees and pedestrians of the site, you are creating a situation where you will minimize the interaction between these multiple types of traffic and creating a site that is actually safer.

After discussion of this Proposed Ordinance Amendment To Establish Regulations for Large Commercial Structures and the related issues it was recommended that it go back to the Planning Board at their August meeting and then to the Town Board meeting in September.

Mayor Schools had to excuse himself from the meeting earlier due to another appointment and in his absence Mayor Pro-Tem McElraft adjourned the meeting at 12:05 PM.

Respectfully submitted:

Rhonda C. Ferebee
Town Clerk