

**MINUTES  
SPECIAL MEETING OF THE EMERALD ISLE BOARD  
OF COMMISSIONERS AND EMERALD ISLE PLANNING BOARD  
TUESDAY, JANUARY 25, 2005**

The special meeting was called to order at 6:PM by Mayor Art Schools.

Present for the meeting: Mayor Art Schools, Commissioners Floyd Messer, Nita Hedreen, Robert Isenhour and John Wootten.

Also present from the Planning Board were: Ceil Saunders, Eddie Barber, Robert Conrad, Robert Smith, Ken Sullivan, James Craig, and Gerald Huml.

Others present were Frank Rush, Town Manager, Mitsy Overman, Asst. Town Manager/Finance Officer, Richard Stanley, Town Attorney, and Kevin Reed, Planning Director.

**3. Adoption of Agenda**

Motion made by Commissioner Wootten to adopt the Agenda. The Board voted unanimously in favor of the motion.

**4. Acceptance-Resignation of Commissioner Pat McElraft**

Motion made by Commissioner Isenhour to accept Pat McElraft's resignation from the Board of Commissioners. The Board voted unanimously in favor of the motion.

**5. Acceptance –Resignation of Commissioner Hedreen.**

Commissioner Hedreen submitted her resignation to the Board. Commissioner Messer made a motion to accept Commissioner Hedreen's resignation. The Board voted unanimously in favor of the motion.

**6. Appointments to Board of Commissioners.**

**a. Appointment to fill Commissioner McElraft's term expiring in December, 2007.**

Motion made by Commissioner Messer to appoint Commissioner Hedreen to fill the unexpired term ending December, 2007. The Board voted unanimously in favor of the motion.

**b. Appointment to fill Commissioner Hedreen's Term Expiring in December, 2005.**

Motion made by Commissioner Messer to appoint Pete Allen to fill the vacancy on the Board with a term expiring December, 2005. The vote was unanimous.

## **7. Installation of New Commissioners-Oath of Office**

Mayor Art Schools administered the Oath of Office to Commissioners Nita Hedreen and Pete Allen.

## **8. Dune and Vegetation Ordinance**

Kevin Reed, Planning Director, explained that the current Dunes and Vegetation Ordinance currently requires that 35% of the total area for residential property must be retained as natural area and may not be disturbed. An on-site septic system may not be located in the required natural area, and a grading permit is required prior to the commencement of land disturbing activities. As far as commercial zoned properties B-1 or B-2 must retain 25% of the total area as natural. Commercial property zoned B-3 must retain 15% of the total lot area as natural. The natural area for all commercial properties may be used to support on-site septic systems. A grading permit is required prior to commencement of land disturbing activities.

The other big component of the ordinance is the tree protection criteria. If someone wants to remove a tree that has a diameter of 3” or greater and measured at a height of 36” above the ground, a permit is needed to remove the tree. There is no charge for the permit. There are three changes proposed by the Planning Board. 1) add a statement to the “Intent” section of the ordinance to “preserve the rights of property owners to develop while understanding the impact of development on the natural environment.” 2) Change the size of the “protected” trees from 3” to 4”. 3) Increase the fine for violations from \$500 to \$1000. The fine is in place if you fail to restore any damaged natural areas or “protected” trees within a 60-day period.

Planning Board member Eddie Barber wanted to know the rationale between the 25% for B1 and B2 and the 15% requirement for B3. Kevin Reed said he did not know the rationale. He was not part of the process that established those figures. Mr. Barber asked about other communities and if they were similar to ours. Kevin Reed said he did not know the specifics, but a number of communities, while they have a minimal amount of natural area to be retained, they are more interested in replanting activities.

Eddie Barber asked Kevin to go over the percentage requirement for residential vs. commercial again. Kevin said that the area to be retained as the natural area can be disturbed in commercial property for the installation of a septic system, unlike the residential zone.

Commissioner Wootten commented the difference between B1, B2 and B3, is different types of businesses and the locations are different on the zoning map. He said B1 and B2 appear to be the smaller lots right on Hwy 58. Frank Rush said the town did not have any in B1 district and only a handful in the B2 district. Kevin said if you look at the intent of the two zoning districts, B1 and B2 would be the type of districts closer to the residential sections. Frank Rush said he would like for the Board, at some time in the future, to consider doing away with the B2 zoning district.

Planning Board member James Craig said that since the B3 zone required 15 % retainage and part of it could be used for septic, it may not remain 15% undisturbed. Kevin Reed said that

was correct. It could be as little as little as 5%. Frank Rush said the residential district used to be 45% retainage and you could include the septic area, and it was not uncommon to get calls from citizens saying they did not retain 45%. They would imply that the staff had done something wrong. Frank said it was confusing for the public. Eddie Barber agreed that it was very confusing and maybe needed to be clarified. Commissioner Wootten said is there any reason not to make the change that B3 had to retain 15% and the septic cannot be in the 15%. Frank Rush said you could certainly do that. It would be a more stringent approach.

Commissioner Wootten asked if the current situation was broken. The Town does not have that much commercial development left. Commissioner Hedreen referenced the Land Use Plan and it was discussed at that time there wasn't a lot of undeveloped commercial property left. Planning Board member Ken Sullivan ask about re-development. There are possibilities for re-development here in Emerald Isle. Frank Rush said maybe the current situation is not broken, but would ask everyone to consider making our approach consistent between residential and commercial.

Planning Board member Bob Smith wanted to know what happens when someone comes in with the prospect of developing a commercial piece of property and they have to adhere to the 15% requirement, does anyone go out and look at the property to see exactly what is there before work begins. Kevin Reed said whether it is residential or commercial property, a site visit is done before the grading permit is issued. Planning Board member Jerry Huml thought the current system was working well. James Craig said maybe we could find out what the number is. Has the number been 5, 8 or ten percent and if that is a workable level, turn that into a hard number. Commissioner Wootten said the trouble with that, it looks like the Board is lowering the percentage. Planning Board Member Bob Conrad agreed and said that if you lessen the percentage it will be perceived as cutting back on the natural area.

Commissioner Messer said it did not matter if you raise it to forty or fifty percent and you start bulldozing trees, people are going to complain. Eddie Barber said we don't have to lessen that percentage, but make it easier for people to understand. Commissioner Messer thought the percentages were alright the way they are.

Jerry Huml wanted to know how everyone felt about Section 19.331, Intent. It talks about preserving , but does not say anything about property rights. Commissioner Wootten thought those modifications were fine, but did not think the modifications went far enough. There needs to be a distinction between developed and un-developed residential property. We need to be stern on the 35% natural area, but once that property is developed, he did not think it was right to require a permit to remove a tree. Commissioner Isenhour agreed with Commissioner Wootten. Commissioner Wootten wanted to know how many people had requested a permit and have we said no to anyone. Kevin said that in 2004, we received fifty-five (55) requests to remove trees that were deemed to be protected under the ordinance. They denied a portion of one of those request. Kevin said there are standards in the Dunes and Vegetation Ordinance, such as, does it endanger someone, endanger a structure, will the removal of the tree foster the growth of other trees or is it diseased or damaged. And finally, will it be replanted. Jerry Huml said a simple fix, after hearing comments and reviewing the ordinance would be to remove those sections dealing with permit requirements to remove trees.

Pat McElraft said she would like for the Board to address the fact the town has a “list” of approved trees. People should be able to plant anything in their yard. Kevin Reed said if someone inadvertently disturbs a natural area that was slated not to be disturbed by the development activity, then we might suggest they replace the vegetation with what you would normally find in a natural area. Kevin said the town has guidelines that talk about what is acceptable. Ken Sullivan asked the question if you cut down a twenty inch tree, do you put a three inch tree in its place. Kevin said if you remove a protected tree, you have to replant a tree at least three inches in diameter. Bob Smith said the ordinance states that if a person does not want to comply with the ordinance, there is a fine in place to encourage them. Commissioner Messer said the fine was a pretty good incentive for them to comply with the ordinance. Eddie Barber ask about the list. Kevin said there was no list in the ordinance, but they do have, as an advisory tool, a list of native species you might find in a natural area. Commissioner Isenhour wanted to know how well published is that list. Kevin said it was part of the working papers of the department. Eddie Barber asked if someone wants to plant, or replant, do they have to use plants from the list. Kevin said as a rule, in reestablishing a natural area, they try to use plants that you would find in a natural area. Bob Conrad said from his experience, if you don’t plant indigenous plants, chances are they are not going to survive. Frank Rush wanted to give the Board a very real example. Let’s say it is an area on the east end of town, where there aren’t a lot of trees, just rolling dunes, grasses, etc. Someone goes in and bulldozes over the natural area and they get caught. They have to restore that natural area, i.e. the topography and the vegetation. Is it the feeling of the two Boards that the person should be allowed to restore the topography and put sod on that topography, or should that person have to plant yuccas, beach grass, sea oats, etc.? Does the Board want to add sod to the list? The staff approach in the past has been you have to replant the area with native vegetation. Commissioner Hedreen said she would like to see some flexibility. Pat McElraft suggested adding sod to the list. Bob Smith made a recommendation to leave it like it is. It is working, within reason, and there is always going to be somebody that will disagree. Commissioner Wootten wanted to make sure Bob was in agreement with removing the section(s) that require a permit to remove a tree(s). Bob Smith agreed to delete sections that require a permit to cut tree(s). Town Manager Frank Rush wanted to go over two items. He wanted to know if everyone was comfortable with changing the 3” requirement to 4” and if the Board wanted these changes on the February agenda? The members agreed with changing the 3” requirement to 4” and to include these changes on the February agenda.

## **9. Exterior Color Schemes for Commercial Development**

Kevin Reed said the recommendation from the Planning Board to the Town Board some months ago on exterior colors for commercial structures keeps being brought up. The Town currently regulates colors in commercial areas for new construction or the repainting of anything permitted after January 13, 1998. Commercial structure are exempt from adhering to the Town’s color scheme requirements unless the repainting exceeds fifteen percent of the value of the structure.

The Town Board asked the Planning Board last year to review the requirements to 1) simplify the color chart for the Town and 2) look at the possibility in requiring all commercial structures, regardless of when they were constructed, to comply with the color chart requirements.

Kevin said he had done some research as to how other communities address the issue regarding the exterior colors for commercial structures. Kevin said he included in his memo to Frank some indication from other communities how they handle the color requirements. All of those communities have chosen to use descriptive methods when saying what are acceptable colors. Bob Conrad wanted to know the object in having the color requirements. Commissioner Isenhour said the object in having the color requirement was so the commercial area did not look like a carnival. Commissioner Isenhour said he liked the wording used by other towns, rather than trying to use a chart. Commissioner Isenhour said he was talking commercial structures. When it comes to residential, he has a different feeling about it. He thinks it's a matter of private property, and as much as he does not like some of the colors, he would defend someone's right to paint with any color they chose. Eddie Barber wanted to know what the difference between commercial and residential was. Commercial Wootten said there was a difference between a commercial piece of property that is adjacent to the only thoroughfare in town. Commercial Wootten said the cluster of commercial buildings we have here in town needs to be protected for gaudiness. Eddie Barber said if we are going to have a color chart, then we need to do away with the grandfather clause. It is when you start making exceptions that ill feelings surface. If you are going to have a color chart in the commercial district, then everyone needs to play by the same rules. He does not think the rules should be different based on when the building was built. Ken Sullivan agreed.

Commissioner Wootten mentioned Kernersville, N.C. and Duck, N.C. which referred to colors as subtle, neutral or earth tones colors. This could be for the façade of the building. Then they could pick a color off the old chart for the trim. Mayor Schools said the thing that bothered him were the ones that have numerous colors. The individual color is alright. Eddie Barber felt the Town did not really need a color chart. Commissioner Wootten wanted to know if everyone thought the terminology or wording was sufficient to handle the color of the façade. Eddie Barber thought the description adopted by Duck, N. C. would work well. Eddie said this would be a better approach than a color chart. Town Manager Frank Rush asked how we deal with someone that just wants to repaint. Bob Smith said everyone is going to want something different when it comes to colors. Commissioner Messer did not think the two Boards should be the ones to decide, on an individual bases, what colors are used. Bob Smith said if someone comes to the Planning Board and wants to paint a building blue with white trim, then let them do it, as long as it is within reason. Commissioner Isenhour wanted to know from Kevin if he was comfortable in deciding what is earth tones, subtle, neutral, etc. Kevin said he has access to a resource book that is used by design professionals in trying to determine whether or not the colors meet the criteria. Commissioner Isenhour said that is the route we should take rather than trying to use a chart.

Commissioner Hedreen said to get rid of the color chart. Commissioner Messer and Wootten agreed. We can ask Kevin to come up with the wording to change the ordinance after Kevin has had time to research other sources he mentioned earlier. All were in agreement.

Town Manager Frank Rush said he would like to schedule a retreat for the Town Board, and he has tentatively chosen Wednesday, February 16<sup>th</sup> at 6PM. Commissioner Hedreen said Friday, February 18<sup>th</sup> would be better for her. Everyone was in agreement to set the retreat for Friday, February 18<sup>th</sup> at 8:30 AM.

Commissioner Wootten said he found out that the Planning Board members get paid twenty-five dollars per meeting and would not get paid tonight because it was a joint meeting. Commissioner Wootten made a motion to pay the Planning Board members for the meeting tonight. Vote was unanimous.

There being no further business, Commissioner Messer made a motion to adjourn. Meeting adjourned at 7:28 PM.