



Minutes
Town of Atlantic Beach
Planning Board Meeting
August 1, 2017

Planning Board Members

Present

Neil Chamblee
Llewellyn Ramsey
Rich Johnson
Norm Livengood
Rich Porter
Curt Winbourne

Planning Board Members

Absent

Steve Joyner

Staff Present

Lee Browning, Inspections Director
Megan Hunter, Secretary
Arrington Moore, Management Assistant
Michelle Shreve, Planning Director

Others Present

Ann Batt, Town Council
Eddie Briley, Town Council
Chad Meadows of CodeWright

CALL TO ORDER

Chairman Chamblee called the meeting to order at 6:05pm. Johnson made a motion *to open* the meeting, seconded by Porter. Vote was unanimous, 5-0. Motion carried.

MOTION TO EXCUSE ABSENT PLANNING BOARD MEMBERS

None absent. No motion made to excuse.

PRESENTATION AND REVIEW OF UDO UPDATE PUBLIC HEARING DRAFT

Chamblee stated that this was the most important piece of business that the Town has had since he has been on the Planning Board. This was the first revision to the UDO in roughly 9 years. The Planning Board received a 328 page packet on July 26th of the revised UDO. On July 28th, the Planning Board received recommended changes made by outside legal counsel. He noted that this was a substantial document. He wanted to take this time to canvas the Planning Board members to see if they recommend that they pass this document to Town council for approval.

Johnson stated that he was not comfortable recommending at this time. He thought the legal counsel was an excellent idea. The purpose of the UDO project was to improve format and usability without changing the substance. Some of the legal recommendations changed the scope of the UDO project from format changes to material changes in the substance. The Planning Board needed more time to study and understand those changes.

Porter stated that he agreed. He thought that given the significant changes recommended by legal counsel, the Planning Board needed to take a step back and make sure that they understand what they were getting into. There have been some limited discussions about process changes, but this process had been going on for over a year. He wanted to put it off for another month so that the Planning Board was clear about what they were doing because the UDO would be in effect for a significant amount of time. Porter was not in favor of moving forward at this time.

Winbourne agreed. He thought that the Planning Board needed more time to carefully review what outside counsel recommended.

Ramsey agreed. She believed the outside counsel had some good ideas, but the Planning Board had not seen them yet. The Town has had a lot of suits. She thought the Planning Board needed to take this legal counsel and make sure they understood it, and encouraged a joint work session with Town Council. She could not vote on something she hadn't read and didn't understand.

Livengood agreed. He agreed there was a lot to absorb and that the Planning Board needed time to review it.

Ramsey made a motion *to table* the public hearing until a future date (August 17 at 6:00pm) for a joint meeting with Town Council and Planning Board to clarify any changes beyond the proposed legal and technical changes in the updated UDO.

Motion made by Llewellyn Ramsey, Seconded by Norm Livengood. Vote was unanimous, 5-0. Motion carried.

Based on that motion, the public hearing for the UDO update was postponed. Chamblee noted that several citizens were in attendance to make a public comment about the conservation district. He thought it was prudent and fair to invite them to make public comment at that time.

John Kurek of 1108 East Fort Macon Road- He acknowledged that the Planning Board was a volunteer board and thanked all members for volunteering their time. Previously there had been checks and balances for the RSC zone. Projects would be presented to Planning Board for a Conditional Use Permit, then it would be put before the Board of Adjustments where conditions could be put on the project. He thought that the RSC description was vague. Who was going to limit the development of this zone? He asked for someone to explain to him item four in the notes on page 3-5 of the UDO draft.

Michelle, the Planning Director, explained that State stormwater permits were similar to the redevelopment permits that have been used at The Circle. The State stormwater permit overrides local municipal stormwater regulations.

Kurek also commented that he thought that 45 feet was too high to develop. He suggested 25 feet to the roof peak instead so as not to obstruct existing homeowners' views. By his calculation, roughly 17 houses could be developed in that area of East Fort Macon Road. He wanted to see that development limited.

Ramsey asked if David Sledge, the owner of the area in question, had submitted any plans for development of that area. Shreve answered no. Ramsey stated that the Planning Board has heard of no development at this time, and that is not the reason they were tabling the decision to recommend the UDO draft.

Kurek said he understood the reason for tabling. He wanted to see limitations put on the number of and height of houses for that area.

Ramsey asked what the standard residential height was.

Michelle answered 45 feet. She stated that the lots are difficult for the property owner to develop, but as long as the Planning Board did not prohibit development per the Zoning Code, the Planning Board was okay legally. If the Planning Board said he could not build, the Town would have to pay him for that development restriction. The Town had to let him do the least intense development, which happened to be single family residences. That has been in place since 2009. Sledge is held to the same dimensional standards as he was in 2009, as well as the other properties that are in that district. He was granted a conditional use permit and it took him five years to build the house, with a Certificate of Occupancy issued this year. He was not held to any standards other than regular single family residential standards. The procedure is being changed from a conditional use permit to an administrative approval process, which gives more dependability as far as limitations. If there are concerns about things such as impervious surface for this district, the Planning Board can look into adjusting that; however, it cannot limit his ability to develop without the Town purchasing a conservation easement.

Porter wanted to return to Kurek's comment about what seemed to be ambiguity of land fill and stated that the limitations are mentioned on page 3-6 of the UDO draft. Porter commented that the 45 foot height limit is town-wide. He felt that this limitation could not be changed for one specific zone.

Kurek asked how this zone qualified as a conservation zone when it allowed the same type of development that is allowed in the rest of town.

Porter asked if the conservation requirements in this zone as proposed were more or less stringent than those under a conditional use permit.

Michelle replied more stringent and described the new process would make it more stringent. There are other areas in town that are under this designation that nobody has asked about.

Kurek stated that people buy in this area for the view.

Chamblee stated that his neighbor wanted to build, which blocked Chamblee's view. His neighbor had the right to develop because it was his property. The conservation regulations are very stringent, and Sledge will do what he has to do to meet those so he can develop. He didn't see how you could limit the height of houses.

Porter stated that any limitations put on this area, would also affect other areas of town with that same zone designation.

Wit Smith of 100 Willis Ave – Smith asked who the legal counsel was.

Ramsey answered Tom Terrell. He assisted the Town with the Seaside suit.

Trace answered that the Town's attorney is Derek Taylor. The attorney who helped review the UDO is Tom Terrell.

Smith stated he didn't understand how you could build in a marsh.

Porter stated this was the first he had heard of this issue and wanted to postpone the adoption of the UDO draft because of it.

Smith asked if anyone on the Planning Board had spoken with CAMA.

Chamblee stated that the Planning Board was made aware of this issue only yesterday. To his knowledge, there was no suggestion of development.

Michelle clarified that there was no proposal to develop.

Smith wanted to know how the pictures of that area were published.

Michelle clarified that the images were 3-D renderings only and graphic interpretations of the code to illustrate the dimensions. She had spoken with the property owner and he wanted know what development of homes would look like for that area. He had a lot of hoops to jump through before he comes before the Planning Board. If he can make it right with Army Corps of Engineers and the Planning Board, it will be a very environmentally friendly structure.

Smith asked who determines if it is an environmentally friendly structure. That is subjective.

Michelle agreed; however, the Army Corps of Engineers is more stringent. The Town is a small municipality and is limited in what it can do. The Army Corps of Engineers do a lot of the heavy lifting as far as protecting the wet lands.

Smith asked how could the Planning Board not be aware of this issue when they have a copy of the UDO.

Michelle said they have had a copy of the UDO draft since March, but this only became an issue with a recent Facebook post.

Johnson stated that the Planning Board is unaware of any plans for Sledge to develop. What makes Smith think that Sledge is planning to develop?

Smith stated the image in question.

Johnson clarified that there are images for each district to be used as examples. That image just happened to be the artwork used to illustrate for that zone. The image should not be taken as evidence that Sledge is planning a project. This issue might be a misunderstanding.

Michelle reiterated that this is only an example and apologized that they have been given the impression that this is a development proposal because it is not.

Smith wanted to let the Planning Board know that his concern did not arise out his desire for a view.

Ramsey stated that the Planning Board's concern was that the outside counsel has inserted suggestions, but it did not come to the Planning Board in advance of a public hearing. She didn't feel that they can vote on something they haven't gone over. The UDO draft has been made available to the public for a while.

Chamblee stated that their decision to not talk about the UDO had nothing to do with this issue.

Smith didn't understand how an individual could build in a marsh.

Ramsey pointed out projects that had been built near marshland, Palm Suites and the area down by the post office.

Porter noted that Smith had some valid concerns for the environment. Community input is always valued and he invited Smith to come to other Planning Board meetings for conditional use permits to make suggestions for the conditions.

Smith remarked that he would like to come to the public hearings. He understood that you could build on a lot where there is dirt, but that is a marsh, not a lot with dirt.

Wilton Pate at 102 Willis Ave – He stated that a conservation area is one that is friendly for wildlife and fisheries. He was concerned that they were rezoning the conservation area to single family dwelling area.

Livengood stated that no zoning was being changed.

Pate commented that conservation cannot coexist with single family dwellings.

Winbourne agreed and that he abhorred doing anything detrimental to a conservation area. He is hoping that CAMA and other pertinent authorities will make it difficult to build. It is not within the Planning Board's power to say someone can't build. To his knowledge, there was no plan to build at this time.

Pate stated that he thought parts of the UDO were vague.

Ramsey noted that was why the Planning Board needed more work sessions.

Porter invited Smith to come to the meeting and encouraged the community to help develop ordinances that affect them.

Ramsey stated that there were going to be upcoming vacancies on the Planning Board and the Town needed people to participate.

Eddie Briley of 225 Moonlight – Briley stated that the Federal and State governments are the authorities that determine the areas that can be developed. If the Town put more restrictions on development, the State could override those restrictions. The Town is limited is what it can control. The community needs to have input, but that input needs to go in the right place.

Smith asked how an individual could own marsh.

Briley said that would need to be argued with Corps of Engineers.

Vada Palma 116 Island Quay Court – She remarked that she has watched the land disappear. This situation reminded her of Animal Farm. She was shocked when Bay Ridge, Coral Bay, and Island Quay sound-side developments went up; however, they were built close to the road where there is firm soil composition. It was to her understanding that the only developable area was where the Sledge house currently resides. The rest of the area was marshland and inappropriate for building, and she was shocked when she learned that Sledge was looking into more development. She thought that the development isn't sustainable. She doesn't want it developed, but she doesn't know how it could be stopped.

Winbourne remarked that many of the Planning Board members felt the same way.

Michelle stated that if he had lots that aren't buildable per Army Corps of Engineers, then the Town is okay as long as the Town said he could develop. The Town has done what they need to do legally so that it won't get sued or have to purchase that land.

Palma stated that surely CAMA wouldn't let him build there.

Ramsey noted that Sledge hasn't spoken with any authority.

Michelle said that she spoke with Roy Brownlow with CAMA and said the situation with 8 ½ Marina cannot happen again. It is not acceptable to dredge up and back fill wetlands anymore just for a single family home. The Town is relying on the experts at the State and Federal level to be the environmental expert, to protect those areas.

Palma asked if those experts had been contacted, and if not could they be invited.

Michelle said that it was up to David Sledge to go forward with that inquiry.

Winbourne asked if any other parts of that property were buildable.

Michelle said that there was an area that could potentially be developed. He has parcelled the land into 4 different parts.

Livengood asked about the status of the three houses at 604, 608, and 612 West Fort Macon.

Michelle invited Mayor Cooper to speak on the status of those houses.

Mayor Cooper said those three houses have been there for 10 years and were permitted before that district was zoned as conservation in 2009. State law allowed for those permits to be extended and those houses have been in the works for the last several years. The conservation district is a bit of a misnomer because it has always allowed for single family houses. The Town does not have the authority to tell an individual that they can't build on their land. The Town is one layer of regulation and the Federal is the ultimate authority. Tonight's meeting is not about this particular project. It is a good time to have public comment because tonight's meeting is about revision to the UDO. There are certain things the Town can control through zoning restrictions such as density and setbacks if Sledge does get permits from the State. The Board of Adjustment is another check and balance for development as long as clear standards can be added to the UDO that the Board of Adjustment is allowed to consider criteria in the issuance of a conditional use permit. He asked Chad for confirmation on the Board of Adjustment.

Chad stated that the Town could do a variety of things. The RSC district is the current R1C. There is no change in the district, except it has now been made more stringent when it came to land fill and the removal of trees. Could the Town go further? Absolutely. CodeWright did not go further because this was not a substantive exercise. The goal was make to make the UDO easier to understand. This conservation is appropriate if the Town wants to make changes to the R1C district. The reason CodeWright suggested removing the conditional use procedure is because it sets up a climate for negotiations to take place. If the Town used the major site plan permit, there is more predictability and remove negotiation. The possibility of unequal treatment of the violation of due process is removed. One of the main goals of this project was to make the Town more legally defensible. Reducing the reliance on negotiation processes in the form of quasi-judicial proceedings is one of the ways that can be done.

General public conversation is held.

Chamblee reminded the public that the mayor had the floor.

Cooper stated that another joint work session would be a great idea and one was scheduled for August 17th. The Planning Board and Town Council could look into more stringent controls on conservation district at that time.

Chamblee closed the public comment session of the meeting at 7:04PM.

ADJOURNMENT

There being no further business Winbourne made the motion *to close* the meeting at 7:04PM, seconded by Ramsey. Vote was unanimous, 5-0. Motion carried.

These minutes were approved at the September 5th, 2017 meeting of the Atlantic Beach Planning Board.

TOWN OF ATLANTIC BEACH

ATTEST:



Megan Hunter - Planning Board Secretary



Neil Chamblee, Chairman of the Planning Board