

## MINUTES OF THE DARE COUNTY PLANNING BOARD MEETING

At the request of the Dare County Board of Commissioners, the Dare County Planning Board held a special meeting on Monday, April 29, 2002. This meeting was held at the Administrative Annex located at 204 Ananias Dare Street, Manteo, NC 27954

**CALL TO ORDER** 7:10 PM

**MEMBERS PRESENT** Elmer R. Midgett, Jr. – Chairman John Myers  
Jon Britt Marcia Parrott  
Jim Kinghorn Joe Thompson

**MEMBERS ABSENT** Mary Aldridge

### OLD BUSINESS

#### *Osprey Ridge Subdivision (Formerly Four Seasons West Subdivision) – Duck – Preliminary Plat Review*

Mr. John O'Connor, Attorney representing Mr. Bob DeGabrielle was present for the review of this preliminary plat.

The preliminary plat for this division was reviewed and tabled by the Planning Board on April 8, 2002. The Board tabled this plat because the developer had not obtained a stormwater management permit from the State of North Carolina for the subdivision.

Chief Planner Donna Creef presented staff comments and told the Board that subsequent to that the developer appeared before the Board of Commissioners on April 15, 2002 and they discussed the matter. She stated as a result of the discussion with the Board of Commissioners, it was decided that if and when Mr. DeGabrielle obtain the stormwater management permit from the State, the Planning Board would hold a special meeting to reconsider the tabled item and then if necessary the Board of Commissioners would hold a special meeting if it was prior to their next meeting. This item was scheduled after receiving notice from Mr. DeGabrielle's attorney Mr. O'Connor that the permit had been issued. A copy of the stormwater management permit was provided to the Board for review and is on file.

Mrs. Creef stated the preliminary plat would be forward to the Board of Commissioners for review at their May 6, 2002 meeting.

Staff recommended preliminary approval.

Mr. John O'Conner addressed the Board. He stated that he is Mr. DeGabrielle's attorney and has met some of the Board members before. He stated this is only his second time here. He further stated he is not exactly sure what the Board wants him to do.

Chairman Midgett pointed out the cemetery currently located on the property. He commented that this cemetery needed to be depicted on the plat with a note and language addressing unrestricted access and maintenance should be included in the restrictive covenants.

Mr. O'Connor indicated depicting the cemetery on the plat would not be a problem.

Board member Jon Britt stated he couldn't support this subdivision due to the absolute destruction of the land. He stated that he knows the Planning Board doesn't require a grading plan, but he thinks that the destruction of this Maritime Forest and the creation of what looks like an airstrip should not happen again.

Mr. Britt suggested the Board look at the Subdivision Ordinance and consider developing a plan to start requiring grading plans.

Donna Creef advised Mr. Britt that he should refer that recommendation to the Town of Duck come May 1<sup>st</sup>.

Mr. Britt stated that he is not just saying this should be done only in Duck, but all areas of the County. He stated he doesn't want to see land destroyed as this has been anywhere in the County.

Joe Thompson made a motion to recommend approval of this preliminary plat to the Dare County Board of Commissioners subject to the graveyard being depicted on the final plat and language being included on the plat as well as in the covenants to address the maintenance and access to the cemetery. Chairman Midgett seconded this motion.

Vote: 3 ayes (Chairman Midgett, Joe Thompson, & John Myers)  
3 noes (Jon Britt, Marcia Parrott, Jim Kinghorn)

The Vote was tied. Board member Mary Aldridge was absent.

Donna Creef stated the recommendation of approval for this division would be forwarded to Board of Commissioners for their review on May 6, 2002. She further stated the Commissioners would be informed that this motion for approval was tie with a 3-3 vote.

Ray Sturza indicated that he is of the opinion that a tie fails.

Chairman Midgett indicated that he is not willing to let it go at that. He commented that some times the Board is forced to vote on things that they really don't like. He stated the Board may not like the reason as to how we got here, and he has no obligation to anybody on this vote one way or the other.

Chairman Midgett stated he would not be embarrassed to send this division back to the Commissioners with a denial. He stated that the Planning Board tabled the item last month due to the developer's lack of securing the necessary stormwater management permit. The developer now has his permit. Chairman Midgett stated regardless of how the Board feels about how we got here, and the situation, are we not jerking the rug out from underneath him?

Planning Director Ray Sturza stated that the Planning Board is an advisory panel and the recommendation is not binding on the County Commissioners. He stated that the staff's

recommendation is going to be that the preliminary plat be approved because the necessary permits have been obtained.

Mr. Sturza pointed out for those that didn't or couldn't vote in the affirmative on a recommendation to approve the preliminary plat may want to offer their own motion to indicate a negative recommendation or that the approval of the plat be denied and include with it the reason for the recommendation that be denied and that would help clarify the situation.

Mr. Sturza told the Board that most negative votes or negative actions on a development plan must include the reason for it and the opportunity to resolve the failure that may have occurred. In the case of the previous plat having not passed muster, the reason was there wasn't a stormwater management permit, and the opportunity to resolve that occurred which was to secure the permit. So in the absence of any other reasons to the contrary then the assumption would be that it would be approvable or that the recommendation would be favorable. If there are other aspects of the plat or if there is an underlying reason and you alluded to one that didn't have any statutory underpinning then that could be part of your motion. Unfortunately we don't have limitations on tree removal or that kind of thing in that particular district.

Chairman Midgett asked the Board members that voted in the negative if there is any reason other than the fact that they are not happy with the way we got here or the fact that the land clearing was not done properly? He also asked if they felt the developer hasn't lived up to the spirit or the letter of the ordinance?

Board member Jim Kinghorn expressed concern that the property was cleared prior to obtaining approval, and asked if this was a proper sequence of affairs. He also asked if the Planning Board was preempting in the eleventh hour the ability of the Town of Duck to make decisions?

Mr. Sturza informed Mr. Kinghorn that the sequence is in fact proper. He explained that the original design of the division had been approved, and the only difference between what you is being approved now and what had previously been approved by the Planning Board and Board of Commissioners, which authorized land clearing activity, was an area that had been indicated on the previous plat as an amenities lot. As a result of this approval, this area will be converted into a lot that will be designated for purposes of sale. So actually the land clearing activities that occurred, occurred under proper procedures.

Mr. Sturza explained that when the when newly incorporated places occur within the boundaries of an unincorporated county it always leaves kind of a statutory or a regulatory vacuum. At some point you cross a threshold between what is a new corporate entity and incorporated place and what is the remnant umbrella of the County. Sometimes the incorporation papers that create that municipal place clearly specify what that trigger will be or when that point will occur. In the absence of that there is this date like May 1<sup>st</sup> when this incorporated place will occur and we can't operate under the assumption that certain things would have to wait until that date or move past that date. We basically said, and we are going to continue to be the regulatory agency for that new incorporated place for at least 6 months. We are going to continue to staff it and do things. So there is a transition period in there. The question remains, and the answer seems to be whatever originated with us will complete itself with us. Again, a lot of the things that, you can

have a perspective on it, I can't tell you that it was in fact intended to be that way. It may have been, I appreciate your concern and I can't tell you the exact answer except to say come that day things would be different and up until that time they certainly have the right to make submission and move through procedures it was during the time that the general assembly was considering the bill to create the incorporated place and up until a compromise was reached about how they would have a share in the occupancy tax revenue there was some uncertainty as to whether or not the incorporation would ever even occur and then it had to go through a referendum vote. All that uncertainty out there was enough to cause people to want to submit plans for whatever reason ahead of the uncertainty.

Mrs. Creef informed the Board of a conversation she had with Mr. Paul Keller who will be the mayor of the Town of Duck. She stated that Mr. Keller indicated that in his conversations with the soon to be town attorney for the Town of Duck, it appears that there is a 60-day period rule. She stated what started with the County stays with County until complete.

Board member Marcia Parrott asked if the Board has had conversations in the past about pieces of property that have a lot of unusual topography to them and the care that we want taken regarding land clearing? She commented that with the speed at which this second meeting was called, she did not have the time to go back and look at any of the previous divisions with similar topography. She stated that the Board was never given the opportunity to discuss the topography and clearing of the land. Ms. Parrot stated that the Planning Board has a history of development with the people who did Four Seasons that they don't go in and lay waste to the land from end to end. So when we're looking at that subdivision and that approval process we are looking at it from a standpoint of how they have developed their other pieces of property up there.

Mrs. Creef told Mrs. Parrot that these issues were discussed during the planning board review the first time. She stated that after all this property changed hands, she and Ray consulted with the County Attorney and he was very emphatic that that approval transferred and that is how we have proceeded on the review of this.

Marcia Parrot stated that's where her problem is. When the Planning Board approved it the first time there was a different developer with a different concept? Now there is a second developer who slid under there, went in and did what he wanted to with the land and now is coming back and asking for our stamp of approval, of which she has a problem with.

Mrs. Creef asked Mrs. Parrott if she shared those concerns with the developer at the last meeting.

Mrs. Parrott stated that she did not.

Mrs. Creef stated the Board didn't table it because of those concerns but due to the lack of the stormwater management permit.

Jon Britt commented the item was tabled because of the lack of the permit and never really had a discussion about it. That was our procedure, you don't have a permit; we don't even discuss it.

Chairman Midgett stated that was his fault for not kicking it around when it was in front of us.

Jon Britt stated that the comments that he is making tonight about this are the same he was going to make last meeting. He stated that the Board never launched into a discussion on this. He stated he agrees completely with Marcia that the Board talked hard and long about Founder's Ridge. It was possibly our mistakes to look at Four Seasons and say well they'll just do fine and maybe we should have discussed it more. He stated that he still couldn't support this division because he believes it is completely against the intent of RS-1. What they did is the absolute opposite of the intent of the RS-1 district. It is suppose to, preserve sand dunes, coastal wetlands, unique natural features and it just got destroyed. Mr. Britt stated that is where his objection lays and remains.

Mrs. Creef stated that the weight of the Boards 3-3 vote would be presented to the Board of Commissioners. They will understand that was not a unanimous vote, and the record will reflect what the Board's concerns are.

Board member Joe Thompson commented that he is not one to try to advise people, and he just tries to do the best job he can. He stated that of all the different boards of which he has served, the Planning Board has been the most consistent in its decision making of any board he has ever been a part of. He stated he is proud of that aspect. He stated that there is a division here and he sees it as a healthy thing. He also commented that given the way that this second meeting was brought about, he is personally as one member of the Board, does not have any problem with sending this to the County Commissioners with a 3-3 vote.

Mr. Sturza stated that in the absence of an affirmative vote I think there is an assumption of negativity. He noted that there is an absent member (Mary Aldridge), and if the absence is excused he believes the vote is assumed to be positive.

Chairman Midgett asked whose job is it to excuse her?

Mr. Sturza stated that would be the Chairman's responsibility.

Chairman Midgett stated that Mrs. Aldridge did leave a schedule of where she was going, and has called to check in twice since she's been gone. He further stated that she has received her agenda packets and has read them so he will consider her absence excused.

Mr. Sturza stated that the Planning Board action tonight is important procedurally. That being the reason the Board of Commissioners chose not to act, but request that they approve the preliminary plat with it on your table. They chose not to act contrary to the procedures. So in terms of procedures they deferred, but they said in terms of timing we would like for you to get this off the table in an expeditious manner. Mr. Sturza stated that he is not uncomfortable with you the Planning Board adjourning this meeting with the motion being left at a 3-3 tie and the decision as to the excused absence being referred to the County attorney. He stated that he will consult with the County Attorney on the matter and if he says an excused absence is an affirmative vote then it would be reported to the Commissioners that way. If he says the vote is based on the members present then it will go to them as a tie vote.

Joe Thompson stated that he spoke with a couple of the County Commissioners so what he is about to say will not come as a surprise. He stated he has never been one to have a problem, although sometimes occasionally late. He stated he has been pretty loyal to this Board and travels the furthest of anyone. He commented that he just returned from Europe where in London one of the most endearing properties he found was with what they call standing in the "queue". He explained queue means standing in line. He stated he happened to be in Europe during the time of the passing of the Queen Mum. He stated that people were waiting 8 – 10 hours just to view the Queen Mum. He stated that no one jumps the queue; it is taboo in everyway. Mr. Thompson further commented that this meeting was jumping the queue, both as a Planning Board member, as a developer, and as a taxpayer and he stated he doesn't appreciate it. He further stated that it is out of order in a lot of ways and he came up here to serve his duty, but hopes that the County Commissioners learn a lesson. I think that jumping the queue is bad business.

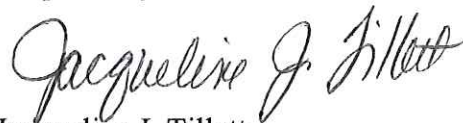
Marcia Parrott and Jon Britt indicated that they totally agree with Mr. Thompson's comments.

**OTHER BUSINESS**

Chief Planner Donna Creef informed the Board of a special meeting/workshop on the Land Use Plan to be conducted on May 21, 2002 at 7 PM. She stated that she and Ray were at a Coastal Resources meeting this past week and they have a new set of guidelines for Land Use Plans that are coming in effect on August 1, 2002. She stated the County has to have their plan in before then.


There being no further business before the Board a motion to adjourn was made by Marcia Parrott, seconded by Jon Britt.

Respectfully Submitted,



Jacqueline J. Tillett  
Senior Administrative Support Specialist

**APPROVED: May 13, 2002**



Elmer R. Midgett, Jr. – Chairman  
Dare County Planning Board