

## MINUTES OF THE DARE COUNTY PLANNING BOARD MEETING

The Dare County Planning Board held their regularly scheduled meeting on Monday, May 13, 2002. This meeting was held in the meeting room of the Dare County Administrative Annex building, 204 Ananias Dare Street, Manteo, NC.

**CALL TO ORDER** 7:00 PM

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

**MEMBERS ABSENT** Jon Britt

### APPROVAL OF MINUTES

John Myers pointed out a typo on the second page of the minutes of the April 29, 2002 meeting. Mr. Myers stated the sentence should read, "Are we not jerking the rug out from under him". A motion to approve the minutes of the April 8, 2002 and the April 29, 2002 subject to the change as pointed out was made by John Myers, seconded Joe Thompson.

Vote: Ayes – Unanimous

### NEW BUSINESS

#### *Wind Over Waves, Phase 1 and an amendment request for Wind Over Waves, Phase 2 – Salvo*

Chief Planner Donna Creef presented staff comments. She stated it is a preliminary plat for Phase 2 of Wind Over Waves and an amendment to Wind Over Waves, Phase 1. Phase 1 was approved and recorded in 2001. She stated there was an amendment to the wetland map that resulted in a better delineation as far as getting more upland area. They were able to reconfigure the lots and get a couple more lots out of phase 1. Mrs. Creef stated that a copy of the new wetland delineation was submitted and is on file.

Additional road improvements will be constructed to access the lots in Phase 2. A temporary cul-de-sac at the end of North Sanddollar drive and Otter Way will be installed and used until Phase 3 is constructed

Mrs. Creef suggested the Board discuss the construction of large bedroom houses on these lots. She also suggested a restriction on the location of pool improvements in the rear yard setback area of lots 1 – 8.

The lots in this division will be served by central water from the Dare County regional system. Individual septic systems will be used.

Mrs. Creef pointed out that the plat does not depict a dumpster site for the second phase and should do so.

Mrs. Creef said except for the minor revisions, the proposal meets the technical requirements and the necessary State permits are in hand. Pending the submission of satisfactory comments from the Health Department staff recommends a favorable report.

A motion to recommend approval of the requested amendment for Phase 1, Wind Over Waves Subdivision was made by John Myers, seconded by Joe Thompson.

Vote: Ayes – Unanimous

John Myers, seconded by Mary Aldridge made a motion to recommend approval of the preliminary plat of the proposed Wind Over Waves, Phase 2 subject to the following:

1. No pool improvements shall be located within 10' of the rear lot lines along lots 1-8.
2. A dumpster site shall be depicted on a revised plat.
3. A revised preliminary plat being submitted depicting the upland area and the total area on for each lot.

Vote: Ayes – Unanimous

***Hedrick Parcel – Hatteras – Sketch Plan - Conditional Use Permit***

Assistant Planner Donna Creef presented staff comments. She told the Board this is a sketch plan for a two-unit group housing project in Hatteras Village.

On April 15, 2002 the Dare County Board of Commissioners enacted a moratorium on group developments, group housing projects, and multi-family projects. Mrs. Creef stated that this project is exempt from this moratorium because it was submitted prior to the enactment of the moratorium.

Mrs. Creef noted that an aerial photograph with an overlay of proposed improvements was included in the Board's packet. An approximate wetland line is depicted. She stated that this wetland area precludes the division of the tract into two lots hence the proposal for a two-unit group housing. One dwelling is depicted within close proximity of the wetland area. The lot coverage calculations should be based on the 30% lot coverage standard of the R2-A district. On previous projects the Board has requested that the lot coverage standard be applied to the upland area of the property.

Mrs. Creef commented that existing improvements are located on the site and will be removed before the new dwellings are constructed. Concrete driveway improvements with parking will be constructed to access the dwellings. The group housing regulations specifically require roadbed widths of 20 feet. The dwellings will be connected to the Dare County central water system and individual onsite septic systems will be installed. Comments from the Health Department included in the Board's packet indicate that the property is provisionally suitable and are on file.

The Improvements have been depicted in conformance with the applicable setbacks of the Zoning Ordinance and the 30-foot CAMA buffer requirement.

Mrs. Creef noted that the Board would want to discuss drainage on the site.

The Board discussed the proposed project at length. No official action was taken.

***Welles Division – Frisco – Preliminary Plat***

Donna Creef told the Board this is a preliminary plat for a 3-lot division in Frisco. She stated the tract consist of approximately 13 acres with wetlands located throughout parcel one and two. The plat was originally submitted by Rankin Surveying as an exemption, but due to the size of the tract staff felt it did not meet the criteria of the exemption standards in the Dare County Zoning Ordinance.

Mrs. Creef pointed out that parcel three features an existing residential structure. She also noted that the plat does not indicate the type of water service proposed for the site or a dumpster site. Mrs. Creef stated the Board will want to discuss access to parcel 3 in anticipation of further division of this parcel in the future.

Mr. Casey of Dixon, Dixon and Casey were present to respond to the staff comments. Also present was Mr. Welles.

Mr. Casey presented a revised plat for the Board's review. He stated in addition there are some comments and a copy of the easement that governs access to parcel 3.

Mr. Casey told the Board that the easement was originally a 12-foot easement that was revised later to become a 16-foot easement that runs through an additional easement to a state road. By the terms of the original easement, which remains unamended, the access is restricted to a single residence. Mr. Case told the Board before they divided off parcel one and two it could be viewed as two separate parcels given the canal and the physical restrictions and expense it would place on access.

Chairman Midgett asked if a garbage truck had been over that bridge and will a fire truck cross the bridge?

Mr. Casey stated that Mr. Welles doesn't have curbside service.

Chairman Midgett stated that he feels that if this Board going to approve the division with this as an easement there needs to be some assurance that if Mr. Welles house catches on fire that somebody can get to him to put it out.

Mrs. Creef stated that a disclaimer signed by Mr. Welles would be sufficient.

Mr. Casey told the Board that Parcel 3 couldn't be further divided due to the terms of the access easement. He stated if Mr. Welles was going to subdivide it he would have to work out some other means of access.

Mr. Casey told the Board that the wetlands delineation has been applied for and is due on May 23<sup>rd</sup>. So if in fact the Board were to recommend approval on this, he would request that it be conditioned on receipt of the satisfactory CAMA approval.

The Board discussed the easement and the concern regarding further division of Parcel 3. The Board concurred that there is no guarantee that further division of Parcel 3 would be possible.

A motion was made by Marcia Parrott, seconded by Jim Kinghorn to recommend approval of this division subject to the following conditions:

1. The submission of a wetland survey for Parcel 1 and 2.
2. The submission of clarification of the access easement that leads to Parcel 3.
3. The property owner/developer obtain verification from the Frisco fire Department concerning the existing 16' access and bridge to Parcel 3.

The items shall be submitted prior to review by the Dare County Board of Commissioners.

Vote: Ayes – Unanimous

***John F. & Mary T. Fleming – Avon – Conditional Use Permit***

Chairman Midgett explained the order of the meeting as follows:

1. Staff comments
2. Public comments
3. Applicant presentation

Zoning Enforcement Officer Lorraine Tillett presented staff comments. She told the Board an application has been submitted by John and Mary Fleming on behalf of their daughter Karen Fleming seeking authorization to conduct private kite surfing lessons from their home located at 40321 Williams Drive in the village of Avon. The area is zoned R2-A which permits home occupations and residential businesses by right of conditional use permit.

Ms. Tillett stated Mrs. Fleming proposes to have one assistant, and the number of people coming to the home will be limited to only students. Lessons will be from 9:30 am – 12:30 pm and 1:30 pm – 4 pm on a daily basis. A sketch survey depicting parking, the duplex home, and beach area was included in the Board's packet for review.

Ms. Tillett stated that Ms. Fleming proposes to use a portion of the home as an office, dressing facilities and bathroom. Students will be brought to the home, check into the office, change clothes and proceed to the private beach area for the lesson.

Staff offered the following comments for discussion by the Board.

1. Definition of a home occupation.
2. Allowable area of home for use. Ms. Tillett commented that the area proposed for use as office space and changing appears to exceed the allowable area for use.
3. Handicap parking, accessibility, bathrooms and ramp. Ms. Tillett commented this might not be an issue, as this type of operation may not fall under the federal guidelines for handicapped services.
4. Pending litigation between Mrs. Fleming and the adjoining property owner, Mrs. Barbara Reardon.
5. Impact of proposed use in a residential district.

The following rendered public comments:

1. Barbara Reardon, resident of Williams Road, representing several residents (Sam & Judy Poluso, Carol Oliver & John Gray and his daughter Alicia) Ms. Reardon stated that she is strongly opposed to the prospect because of the following reasons:
  - ❖ She feels it is a very dangerous sport activity at the beginner level to existing recreational enthusiasts, neighbors, and beach goers.
  - ❖ Parking not adequate (no overflow)
  - ❖ Road over use (operating on a private road; two cars cannot pass at the same time and there is no turn around)
  - ❖ Noise from the instructor as well as kite smacking against water
  - ❖ Type of Business – not a cottage business.
2. Mary Lee Fenich, full-time resident in Avon. Lives on Reef Dr., which is 40 yards north of the proposed business. Ms. Fenich stated the following reasons for opposition to Ms. Fleming's request:
  - ❖ Operated business with out permit
  - ❖ Lack of parking/overflow
  - ❖ Noise from the instructor and kite against the water
  - ❖ Flags and inflated plastic markers
  - ❖ Danger of kite lines that are 100' long and sharp as a knife
  - ❖ Definition of cottage business

Ms. Karen Fleming addressed the Board. She told the Board that she and Ms. Reardon are currently in litigation and have had problems for the past two years. She stated the litigation has nothing to do with her kite surfing lessons. She further stated that the photographs submitted by Ms. Reardon have nothing to do with her kite surfing lessons, and the photos were of friends visiting her.

Ms. Fleming stated that Ms. Reardon also uses the easement between their properties and she has recent photographs of people at her house parking in the easement. All of that has to do with the

kite surfing but it does have to do with the objections that I am receiving. The motivation behind them should also be considered. Valid objections need to be considered and objections with the motivation behind them in the truthfulness of the photographs, etc. that you may have.

Ms. Fleming addressed the following issues:

1. Safety - The lines are not 100 feet long. The kites are powerful and there are dangers involved that is why beginners are taking lessons. Ms. Fleming stated that she did not have one mishap last year and conducted 146 lessons.
2. Ms. Fleming stated that there are several (11) sound front homes in the vicinity that are rented to and the advertising is geared towards windsurfing, kite surfing, kayaking, fishing and waterfront activities.
3. Ms. Fleming stated that the lessons are conducted approximately 250 feet offshore. She further stated that Ms. Reardon's roommate kite surfs and was out in front of her house teaching a friend to kite surf two weeks ago.
4. Noise – Ms. Fleming stated there really is no noise. There is going to be some noise if it is on shore, if she is on her deck she is going to hear it. Ms. Fleming stated that is not just her Ms. Reardon hears, but also the people in the nearby rental house.
5. Traffic – Ms. Fleming stated that last year she did have a couple of times when there were a few more people there than she cared for. She stated she no longer works for the shop she worked for last year, and is doing this on her own, so she will have control over how many people come back there. She stated that there would be two people per lesson maximum. A maximum of two cars. She stated she is not creating any more traffic than the weekly rental house that sometimes has 5 and 6 cars staying at that one home.

The road, Williams Road is an easement and there are issues with it. There have been issues with it for the nine years that she has lived back there. Repairs are a problem. Every time there is a storm or an over-wash the road needs to be repaired. It is not state maintained because the residents can't seem to agree on everyone signing. I have tried several times myself to have it taken care of, no one can agree.

Chairman Midgett told Ms. Fleming that the scope of the operation bothers him. He stated that when the Board envisioned the home occupation provisions for the R2-A is was so that somebody could conduct some sort of small business on their premises. He stated that one of the big objections here is your business is spilling out beyond your premises into public trust areas. He further stated that this proposal seems to be going beyond that to a larger degree than he is comfortable with.

John Myers stated he is going to have a real hard time supporting because there are so many negative this about it and there have been so many complaints.

Marcia Parrott told Ms. Fleming that she needs to take some steps to clarify situation with the easement and the septic system, and delineate what she has and what she can do with her property before she will feel comfortable about moving forward on this. She stated there is too much going on with the property.

John Myers, seconded by Marcia Parrott made a motion to recommend denial of the conditional use permit submitted by Ms. Fleming due to concerns that there is too much happening on the property, resolution of the problems with the existing easement and resolution of the problem identified by the Dare County Health Department regarding the existing septic system.

Vote: Ayes – unanimous

***Hatteras Estates Subdivision, Section 1 – Hatteras - Amendment – Preliminary***

Donna Creef presented staff comments. She told the Board this division was originally recorded in the late 1960's. At that time the current property owner purchased 7 lots and they have remained undeveloped. The lot are currently zoned C-2 and now the property owner is requesting that the lot lines be reconfigured based on the 15,000 square foot minimum lot size requirements.

To accomplish this and to avoid nine driveway cuts along NC 12, the developers propose to install a 25' wide access easement along the rear of the lots. Four emergency access points will be construction along NC 12 as noted on the plat. No structural improvements will be located within the 25' access easement. Comments from the Public Works Department concerning the maneuverability of the 25' access easement for solid waste pickup will be needed as well as comments from NCDOT. Covenants for the division should include language concerning the maintenance of the 25' easement and the emergency access easements.

Mrs. Creef noted that water for the division will be supplied by Dare County and onsite individual septic systems will be installed.

Mrs. Creef stated that the amount of land disturbing is less than 1 acre therefore State Sedimentation and Erosion Permit will not be necessary. Drainage easements will be established along the lot lines as noted on the plat.

Pending the submission of satisfactory comments from NCDOT concerning the emergency access easements along NC 12, staff recommended a favorable report.

Mrs. Creef suggested that a condition of the plat be that there be no pool improvements located in that 25' area where the minimum building line begins.

After length discussion, a motion to recommend preliminary plat approval subject to the following conditions was made by Mary Aldridge, seconded by Jim Kinghorn.

1. The location of a dumpster site for the division be depicted on a revised plat.

2. The submission of favorable comments from NCDOT on the proposed emergency access drives prior to review by the Dare County Board of Commissioners.
3. The covenants and the plat shall contain language stating that no pool improvements can be located in the front yard setback area.

Vote: Ayes – Unanimous

***Holly Ridge Subdivision – Roanoke Island – Preliminary***

Donna Creef presented staff comments. She told the Board the proposed site for this seven-lot division is located on the north end of Roanoke Island. The property is located on the existing Holly Ridge Road. The site is zoned R-1 and is proposed to be served by private wells and individual on-site septic systems for wastewater treatment.

Mr. Larson the developer and Mr. Ray Meekins, Surveyor were both present.

Mrs. Creef stated that the main concern is the design of lot 6 and 7 as flag lots with each lot having a 10' wide pole front on Holly Ride Road, and the possibility of lot 6 being further subdivided due to its square footage.

Mrs. Creef stated that the Board of Commissioners have recently expressed concerns about access easements and the County's acceptance of the easements as a feature of subdivision design versus a publicly dedicated right-of-way.

Mr. Meekins provided a plat that demonstrating that the use of private wells and septic systems can be situated lots according to the setback rules of the Dare County Health Department.

Mrs. Creef noted the rear yard setback of the R-1 district is 25' and not 20' as noted on the plat, and dumpster site is not depicted. These items need to be corrected/added to a revised plat. She also suggested the Board discuss drainage of the site with the developer.

After discussing the proposal and configuration of the lots at length, Joe Thompson, seconded by Mary Aldridge made a motion to recommend preliminary plat approval subject to the following:

1. The square footage of lot 6 will be reduced to less than 40,000 square feet to preclude future division of this lot. Language will be included in the covenants addressing this as well.
2. A turnaround shall be installed at the end of the 20' access easement. The easement area shall be improved with gravel and shall conform to the sub-base standards of NCDOT.
3. The submission of satisfactory comment from the Dare County Health Department.
4. The location of a dumpster site shall be depicted on a revised plat.

Vote: Ayes – Unanimous



**OTHER BUSINESS**

Donna Creef reminded the Board of the Land Use Plan Update Workshop scheduled for May 21, 2002 at 7:00 PM.

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

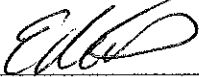
This meeting closed at approximately 9:50 PM

Respectfully Submitted,



Jacqueline J. Tillett  
Senior Administrative Support Specialist

APPROVED: June 10, 2002



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