

MINUTES OF THE DARE COUNTY PLANNING BOARD MEETING

The Dare County Planning Board held their regularly scheduled meeting on Monday, December 8, 2003. This meeting was held in the meeting room of the Dare County Administrative Annex, 204 Ananias Dare Street, Manteo, North Carolina.

CALL TO ORDER 7:00 PM

MEMBERS PRESENT	Elmer R. Midgett, Jr. – Chairman	Marcia Parrott
	John Myers	John Finelli
	Richard “Ricky” Scarborough, Jr.	Joe Thompson
	Jim Kinghorn	

APPROVAL OF MINUTES

After pointing out a typographical error in the first paragraph on page 2 (changing 1,500 square feet to 15,000 square feet) Jim Kinghorn made a motion to dispense with reading the minutes of the November 10, 2003 Planning Board meeting and to approve them with the correction as noted. This motion was seconded by Marcia Parrott.

Vote: Ayes – Unanimous

OLD BUSINESS

Waves Soundside, Inc. – Waves – Final Plat

Senior Planner Donna Creef presented staff comments for the final plat of Waves Soundside, Inc. subdivision. She told the proposed subdivision consists of six lots that were recommended for approval by the Planning Board earlier this year and approved by the Board of Commissioners.

Mrs. Creef stated that staff visited the site on November 20, 2003 and found that the road improvements were complete; the roadside swales had been installed as depicted on the approved preliminary plat but had not been stabilized with grass. She further stated that there were no STOP signs or street signs up. Satisfactory test results on the road improvements are on file. Comments from the Water Department were submitted on November 21, 2003 indicating that they are still waiting for final approval from State on the waterline improvements.

Mrs. Creef noted that a condition of preliminary plat approval was that lots 1 and 6 would not have access from NC 12 as stated in Note 17 on the plat. However, there is an existing asphalt parking area and ingress/egress on lot 1 that appears to be serving the commercial use on lot 2. Mrs. Creef noted that these improvements were not depicted on the preliminary plat submitted for review and approved by the Board of Commissioners. She stated that this is in conflict with the condition of approval and should be removed. Mrs. Creef suggested two alternatives for correcting the conflict, as follows:

1. Remove the asphalt parking improvements and closure of entrance.

2. Re-review the proposed division to remove the condition restricting access to lot 1.

Mrs. Creef stated that staff favors the first alternative in an effort to decrease the number of driveway cuts on NC 12.

Mrs. Creef told the Board that conversation with the surveyor indicated the property owner will remove the access to comply with the condition previously set.

Mr. Ray Meekins of Seaboard Surveying & Planning, Inc. representing the developer was present. Mr. Meekins stated that there was no intent to circumvent the conditions placed on the preliminary plat approval. He explained that the buyer of lot 1 plans to put a commercial business there and would like to use the existing asphalt for parking area and wanted it shown on the plat. He stated that he was trying to accommodate the concerns of the developer and the proposed buyer.

A motion to table this item until the January meeting to allow the developer time to comply with the conditions of the original preliminary plat approval was made by Joe Thompson, seconded by Ricky Scarborough.

Vote: Ayes – Unanimous

Duke Woods – Roanoke Island – Reconsideration of access issues

County Attorney Norma Mills explained that the purpose for reconsideration of the Duke Woods Subdivision proposal is to consider additional information related to the issue of access into the subdivision. The Planning Board recommended preliminary plat approval of the proposed Duke Woods division with access into the subdivision off of Sunnyside Drive.

Ms. Mills commended Chairman Midgett and the Planning Board members for taking this really unprecedented and extraordinary measure in providing this opportunity for reconsideration, and taking the initiative to bring this issue back to the Planning Board so that the various parties and citizens who have a interest in this subdivision have the opportunity to present information the Board did not have the opportunity to consider in previous deliberations. She also commended the Board for their willingness to go beyond what the public meeting law requires in providing notice of agenda items for meetings.

Ms. Mills gave a brief statement of a matter of law that in her opinion is very relevant for the Board's deliberations on this matter. She stated that the Planning Board considers the facts of a particular subdivision proposal, determines whether or not the various factors of that plat (lot size, lot coverage, access, etc.) meet the technical requirements of the County Subdivision Ordinance. She stated that it is the Board's job to make factual findings in giving a recommendation for approval to the Board Commissioners for final approval.

Ms. Mills noted case law existing in North Carolina affirmed by the Court of Appeals in 2001 in the case of Naziola vs. Land Craft Properties. She explained that this case was in Greensboro

and is very similar to this matter. She told the Board that in this case a subdivision proposal was presented to the Greensboro City Council for consideration. The proposal was approved by the Council and some of the property owners in the vicinity of the new proposed subdivision challenged that approval. On appeal of the Zoning Administrator and the Zoning Boards initial determination, which was favorable, the court of appeals held, "When Zoning restrictions are met, and when subdivision regulations as set out in a local ordinance are complied with permits and approval must be issued." Ms. Mills stated that the Dare County Subdivision Ordinance follows suite with this as it has since its inception in the mid 70's. The Planning Board shall grant approval or disapproval of a subdivision proposal/ preliminary plat and then forward that recommendation on to the Board of Commissioners. If the plat is disapproved for recommendation the Board must state specific reasons for the recommended disapproval

Comments were rendered by the following:

Tom Imeson, resident of 128 Sunnyside Drive. Mr. Annison spoke on behalf of the property owners in the Sunnyside Subdivision. He stated that as a group, residents of Sunnyside Drive have hired an attorney, and an engineering consultant. He spoke to the issues of safety, congestion and equitable treatment of the Sunnyside property owners.

Mr. Imeson stated that the Sunnyside property owners understand that the Board has the responsibility and authority to provide for the orderly growth and development of the County for the coordination of streets and highways within proposed subdivisions with existing or planned streets and highways. He stated they have also read the Dare County Subdivision Ordinance and it of course includes as one of the purposes to provide safe, convenient and economic circulation of vehicle traffic.

Mr. Imeson presented several exhibits and discussed the following issues:

1. Exhibit #1 - Articles regarding the proposed access and 40 foot easement written by Mr. Francis Meekins that appeared in The Coastland Times.
2. Exhibit #2 – Map of Sunnyside Subdivision – Discussed easement and stated it is proscribed to the property owners on Dolphin Road and those properties in the Sunnyside Subdivision. Discussed possible access through Dogwood Hills Subdivision as acquired by Lonnie Jones.
3. Exhibit #3 – Declaration of Restrictions and Covenants for the Subdivision - He noted that in Article 9 states that the streets and roads in this subdivision are dedicated to public use. However, the maintenance will be the sole responsibility of the adjacent property owners until they are brought up to the standards of the N.C. Department of Transportation and accepted in the State system. Mr. Imeson stated that the maintenance by the Sunnyside Property owners represents an undue financial burden.
4. Exhibit #4 – Engineering evaluation for the purpose of noting existing site conditions of Sunnyside Drive prepared by Coastal Engineering.

5. Exhibit #5 – Petition signed by affected property owners.

Bob Noffsinger, resident of Dogwood Trail, west of the proposed subdivision submitted a petition signed by 86 residents of Candella Drive, Langley Lane, and Dogwood Trail opposing the traffic from the proposed Duke Woods Subdivision being routed through their neighborhood.

Mr. Noffsinger stated that the roads in the neighborhoods of Langley Lane, Dogwood Trail and Candella Drive make a one mile loop that connects to highway 64 via Candella Drive. Since it is not a through road the traffic is primarily limited to residents. He stated that the low traffic volume and the circular layout of the road make it very conducive to walking, jogging, bike riding, etc. by both children and adults. He stated that the families have enjoyed the safety of their neighborhood road and the quality of life it has provided. The safety of the residents, especially the children would be decreased.

Reba Acree Alston 20 year resident of 148 Langley Lane asked that the Board consider all of the aspects to finding a way to solve this problem.

The developer Linda McCown was present and made the following comments:

1. There is a boundary agreement recorded (DB 228 PG 572) in the Dare County Register of Deeds between W.S. Meekins and Mary D. Meekins, Fred M. Wescott, Elizabeth Etheridge Wescott, John W. Daniels and Wife Louise and Lonnie and Genevieve Jones. She presented a copy as an exhibit and pointed the area in question out on the map (triangular sliver). Ms. McCown stated this agreement was recorded prior to the subdivision plat.
2. Ms. McCown presented a copy of Mr. Philobotte's deed, the developer of the Sunnyside Subdivision, which addresses the 20 foot easement. She stated that it is stated in the deed it says that it was conveyed together with perpetual easement of right-of-way over the 20 foot easement which is expanded later on to 40 foot, runs along the northerly line of the Meekins and the W.S. Meekins tracts which said easement shall be used in common with all persons who have an interest in said easement by conveyances as recorded in Dare County Public Registry their heirs and their assigns. The easement was continually granted to people who purchased property in that area.
3. Ms. McCown noted that she disagrees about the statements regarding Sunnyside Drive being a private road. She commented that just because a road is not in the State of North Carolina's street maintenance system doesn't mean that it is not public. She noted case law in North Carolina that has been in existence since the 60's that states if you purchase lots in reference to a plat then such streets become dedicated to public use and the purchaser of the lot or lots acquires the right to have all and each of the streets kept open and it makes not difference whether or not the streets be in fact open or accepted by the governing boards.

4. Amended covenants for Sunnyside Subdivision – Ms. McCown stated that the covenants for the Sunnyside Subdivision grant the right for an owner to grant access across their property. She stated that Mrs. Jones, the owner of lot 8, granted Orville Beach West and Jerry Tillett the access easement to get to a portion of the 20 acres. She stated the covenants have been modified to take that right away. She further stated that they did not follow the rules in the restrict covenants which say that a 60 day notice is to be given to everyone in the subdivision. Ms. McCown presented a copy of the declarations covenants for the Sunnyside Subdivision of record at the time the preliminary plat was submitted to the Planning Board for review. She noted that the owners of lots 1, 2, 8 & 15 have the right to grant access to other lands.

5. Dogwood Hills access – Ms. McCown stated that she cannot use the access the Mr. Jones purchased because it was not purchased from the developer of the Dogwood Hills division. Mr. Jones purchased 60 feet of lot 13 from Saint Basnight and the restrictive covenants state that all lots can be only used for residential purposes.

Ms. Mills stated that the Subdivision Ordinance is where the Board would look for the definition of public and private streets. There are public streets and there are private streets.

After lengthy discussion, the Board concurred that the previous approval still stands. The Board also requested that further investigation of the 40 foot easement and what it legally means in terms of proscriptive be conducted by the County Attorney.

A motion of a resolution that the County Attorney investigates the easement in question and what rights if any the developer has in the earlier recommendation to favorably forward this to the County Commissioners was made by Joe Thompson, seconded by Jim Kinghorn.

Vote: Ayes – Unanimous

Chairman Midgett explained that the Board has said that a recommendation of approval will be forwarded to the Dare County Board of Commissioners with the stipulation that the 40 foot easement that exists from D. Victor Meekins Road to Sunnyside Drive be reviewed by the County Attorney to see if he developer does have access or the ability to use it. With that it will go forward to the Commissioners.

OTHER BUSINESS

Stormwater Drainage Issue – Discussion

Steve Shriver, County Engineer was present. Also present was Senior Planner Donna Creef.

Donna Creef presented staff comments regarding the draft amendments provided for the Board's review.

The Board reviewed and discussed proposed amendments to the Subdivision Ordinance, Draft fill standards, and amendments for retaining walls drafted by Steve Shriver. Board concurred to continue to work on the fill standards language as well as the retaining wall language.

A motion to recommend approval of the draft amendments to the Subdivision Ordinance as submitted by staff subject to the addition of language addressing phased developments and plats that have preliminary plat approval as suggested by the Board and the deletion of the sentence in amendment #C, (Pipes shall not be installed at an elevation so that the flow is impeded or cause a backup of the water on one side of the culvert.), was made by Marcia Parrott, seconded by Ricky Scarborough.

Vote: Ayes – Unanimous

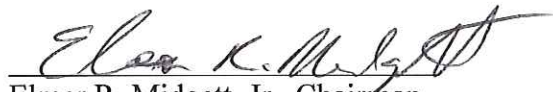
There being no other business before the Board a motion to adjourn was made by Joe Thompson, seconded by Marcia Parrott.

Respectfully Submitted,



Jacqueline J. Tillett
Senior Administrative Support Specialist

APPROVED: 1/12/04



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