



TOWN OF OAK ISLAND
PLANNING BOARD
PROPOSED AGENDA
November 20, 2014 – 10:00 a.m.
OAK ISLAND TOWN HALL

- I. **Call to Order** – Chairman Randy Moffitt
- II. **Agenda Amendments**
- III. **Approval of the Agenda**
- IV. **Approval of Minutes:**
 1. September 18, 2014 Meeting
 2. October 9, 2014 Training Session
 3. October 16, 2014 Meeting
- V. **Public Comment:** Please state your name and address for the record.
- VI. **Old Business**
 1. Recommendation of consulting firm to develop a comprehensive land use plan and unified development ordinance;
 2. Revisions to Chapter 32 Vegetation
- VII. **Adjourn**

MINUTES
TOWN OF OAK ISLAND
PLANNING BOARD
September 18, 2014 – 10:00 a.m.
OAK ISLAND TOWN HALL

Present for the Planning Board: Chairman Randy Moffitt, Vice-Chairman Ted Manos, Members Art Skipper, Dick Marshall, Helen Cashwell, Virginia Campbell and Clay Jenkins, Planning and Zoning Administrator Josh Crook and administrative assistant Kathleen Snider.

Chairman Moffitt called the meeting to order at 10:03 a.m.

Chairman Moffitt amended the agenda and added New Business 4, discussion of documents handed out by Mr. Crook at the start of the meeting. Ms. Campbell questioned whether the Board should add the ordinances Town Council has asked them to review to the agenda. Mr. Crook said that the first thing Council has asked the Board to review is parking, which is on the agenda, and that is where the Board will start. The question of whether to do a comprehensive plan will be discussed next month. **Mr. Skipper made a motion to approve the agenda as amended. Mr. Manos seconded and the motion passed unanimously.**

Public Comments:

Michael Hicks, 2212 E. Pelican Drive: Mr. Hicks spoke in his capacity as co-chair of the Tree City USA working group. He said that with regard to the Chapter 32 proposed revisions the Board is being asked to consider at this meeting, the revisions are a culmination of nine meetings and five months of work by representatives of Development Services, Public Works, Tree City USA Working Group and the Environmental Advisory Board. He said these revisions would facilitate vegetation plans and inspection of lots and creates the likelihood of survival of plantings following construction and reflect the realities of a smaller Town staff and a need for different vegetation requirements depending on the size of the lot and its location. It would also simplify enforcement and compliance of the ordinance. He thanked everyone involved in the process, especially Josh Crook and Steve Edwards, who brought a lot of expertise to the table.

Bob Germaine, 6610 Kings Lynn Drive: Mr. Germaine said that regarding parking, living on the beach and observing rentals all year long, there are more cars parked at the rentals during the summer than there are bedrooms. He said that last year at a rental across the street from his home, there were 24 people in that home and 12 vehicles at a 4-bedroom house. There are trailers with boats and trailers bringing paraphernalia to the beach. He recommended going along with Councilor Winecoff's decision of one parking space per bedroom and asked the Planning Board to vote for that.

Kelly Germaine, 6610 Kings Lynn Drive: Ms. Germaine said that regarding the Black & Veatch presentation, she encourages the Board to seek the answers for questioned asked at that meeting. These answers are needed before we move ahead with anything else. She said that the Utilities Department presentation is not on the agenda.

Chairman Moffitt said it had been included in New Business Item. No. 2, and that Ms. Cashwell had asked that Steve Foster and David Kelly present information on the current conditions.

Mr. Skipper made a motion to approve the Minutes of the August 21, 2014 meeting. Ms. Cashwell seconded and the motion passed unanimously.

Old Business Item No. 1 - Residential Parking Requirements. Mr. Crook provided three separate ordinances within the packet; the previous ordinance, what is in effect now, and what was proposed to Council by the Planning Board. Prior to the ordinance changing, the requirement was two parking spots up to four bedrooms, three parking spots for five to six bedrooms and four parking spots for seven bedrooms and more. The Planning Board made a recommendation that we have two parking spots up to four bedrooms, three parking spots at five bedrooms, four at six bedrooms and five at seven bedrooms. Town Council has suggested that we have one parking space per bedroom up to seven. The Planning Board has been directed to come up with a comprehensive plan for parking for single-family residences. Chairman Moffitt said it's never a good idea to make existing houses non-conforming. With this ordinance the way it is, there are a lot of residences all over the island that are non-conforming. The Chairman asked the Board to keep in mind that there are have full-time residents here and this ordinance will affect them as well. Ms. Cashwell said she agreed. She said parking is very fluid. She has three bedrooms and had eight cars parked at her house yesterday and that's not unusual. They park in the right-of-way. She has room for six cars in her driveway. She said seven parking spaces is a moderate accommodation for everybody. Chairman Moffitt said that Council probably realized that this ordinance does make a number of houses non-conforming, and they would like for us to come up with a plan that maybe doesn't make so many houses non-conforming. Ms. Campbell asked what difference it makes if a house becomes non-conforming. Mr. Skipper said it makes a lot of difference and that anytime you have a non-conforming house and it becomes more than 50 percent destroyed, you can't build back. Chairman Moffitt said you have to build back to current code and current code may not allow for another parking space. Chairman Moffitt further explained how this ordinance could affect current homeowners and Ms. Campbell said that we are gearing this ordinance to a fairly small percentage of houses that might burn down and have to be rebuilt. Mr. Marshall said you will have a smaller percentage of large homes having a problem, too. Mr. Marshall said we have been kicking around parking for over a year and he wanted to know why the Council can't put it back on the rental companies to limit the parking. Ms. Campbell said she doubted it would be enforced. Mr. Marshall said he is the largest on the island and he would enforce it. Ms. Campbell said there are many smaller homes along the beach and she has yet to see one small home with only two cars. A four-bedroom home with two parking spaces is not sufficient. One of the reasons for the new parking ordinance was to discourage people from building seven-bedroom houses because they wouldn't have enough places to park. Chairman Moffitt said he disagreed and asked to move away from the rentals, and look at what's going on on the other side of the island and the existing homes. Vice-Chairman Manos said in the woods there are a lot of streets without access to the backyards. On the beach there is access to from two sides of the road. If somebody on the beach had to rebuild, there would be access to parking. He suggested the Board recommend a change to the ordinance and segregate the beach side from the woods side and use the old ordinance in the wooded area of the island. Anything new on the beach will be on stilts and there will be plenty of parking. Ms. Cashwell said she doesn't see anything wrong with the Planning Board's recommended ordinance and she doesn't see a problem with it. Mr. Marshall said the problem is the oceanfront houses. **Ms. Cashwell made a motion to send the ordinance back to the Council as it is.** There was no second to the motion. There was further discussion among the Board members about parking requirements. Chairman Moffitt said the Board needs to keep in mind the permanent homeowners being mixed with the rentals on the beach side, and making one ordinance affect everybody the same way is what makes it difficult. The Board had further discussion about whether two spaces was adequate for a four-bedroom house. Chairman Moffitt said the issue is the non-conformance and until everyone understands that issue, the Board could argue about it all day. He suggested the Board table the issue until next month. Mr. Marshall said all that is needed is one bad hurricane to make a lot of homes non-conforming. **Ms. Cashwell made a motion to send back to the Council the June 2014 recommendation that says the maximum number is seven parking spaces.** **Mr. Skipper seconded the motion.** Vice-Chairman Manos said it is a bad idea, that we should separate

the beach from the woods. **The motion passed 5-2 with Chairman Moffitt and members Skipper, Marshall, Cashwell, and Jenkins in favor and Vice-Chairman Manos and Ms. Campbell opposed.**

New Business 1: Conditional Use Permit Application submitted by Johnson & Taylor, LLC. This permit is for a transient residence to be built in a hangar at the jetport. Mr. Crook said Phoenix Landscaping, Mr. Epstein, flies back and forth from his home office to here to make sure his business is run appropriately. He has purchased a hangar and asked to add living quarters to the hangar facility. He will also store equipment for his landscaping business there. Mr. Crook said this is a common practice elsewhere, but Oak Island's current ordinance doesn't specifically address this issue. Mr. Crook said a CUP is needed in the AD district for him to put a dwelling in a building. Vice-Chairman Manos asked where it said it had to be a permanent dwelling. Chairman Moffitt said in the AD a dwelling at all is not allowed, but a transient dwelling in an airport hangar would need a conditional use permit. Mr. Crook referred the Board to Table 18-116. According to the Building Code, residential aircraft hangars shall not exceed 2,000 square feet in area and 20 feet in building height. Chairman Moffitt said he is certain that it is more than 2,000 square feet in area. Ms. Cashwell said on his plans, the renovation is 2,000 square feet. Building Codes Administrator Steve Edwards has contacted the Department of Insurance for an interpretation to determine if it is the structure or just the living quarters, and until he hears back from them, it would not be prudent for the Board to make a recommendation. Mr. Edwards said there is access between the current hangars for a fire truck to get to the hangar. Mr. Edwards said it was pretty clear to him that the 2,000 square feet is the hangar area, which is exceeded. He is researching it further. He also asked the NFPA for information regarding laws that regulate hangars under Section 409 and that would address residential occupancy in a hangar as well. Mr. Crook said he believed the zoning could be approved. Ms. Cashwell asked why the Planning board was looking at this if there were so many questions. Mr. Crook said that Chairman Moffitt did some research and discovered an issue just the day before the meeting. Mr. Crook said the Department of Insurance has chief inspectors that the Town building inspectors consult with when they feel it is necessary. Chairman Moffitt said this is a state building code question. Mr. Skipper said the Board should wait until more information is available before making a decision. Vice-Chairman Manos said he's seen the hangar and the part to be turned into a dwelling space looked to him like it comprised maybe 10 percent of the hangar space. He said he couldn't conceive that a code would preclude dwelling space in a hangar greater than 2,000 square feet. **Mr. Skipper made a motion to table this issue until next month's Planning Board meeting. Ms. Caswell seconded, and the motion passed unanimously.**

New Business Item No. 2: Discussion of review of the May 13, 2014 Black & Veatch presentation to Town Council. David Kelly, Public Utilities Director, presented a PowerPoint with an overview of the current numbers of the sewer system, a copy of which is attached and hereby made a part of these Minutes. Chairman Moffitt said that Mr. Kelly's and his department neither designed nor installed this system; he facilitates it. The sewer system and its fees do not fall under the purview of the Planning Board. It is a town staff-operated, enterprise fund. Mr. Kelly said he was asked to present an overview of the sewer system with flow numbers for the last two years. He said the Utility Department takes care of several things including water, wastewater treatment and collection, meter reading, park maintenance. Mr. Kelly said the Town is using 28 percent of our usage assuming everyone was hooked up to it. Mr. Kelly said that one thing to consider is that during the construction phase, people bought lots and made three-lot parcels and that was included as one \$4,200 fee and now they are going back and selling these and re-subdividing and they having to install different equipment. There is flow available for the people. Ms. Campbell asked why they assumed a lower usage for the oceanfront. Mr. Kelly said the 2001 study used the flow currently on Yaupon Beach to determine the needs of Long Beach. He also said the design was based on flow per lot, not per parcel; we are under the design assumptions currently. The Town is billing everybody including those not connected into the system. Mr. Marshall asked Mr. Kelly how many

people were not hooked up; Mr. Kelly said he did not have an exact number. Ms. Cashwell said there are approximately 1,500 houses not connected to the sewer. Mr. Kelly said he's going back through the drawings, along with Black & Veatch, to determine how many connections there are per pit. Ms. Cashwell said the Town would probably pick up some capacity after that is done. Mr. Foster said there is a state statute that requires a customer hook up with the sewer system. The Town has a rough estimate of 1,200 total who have not hooked up, or 10 percent. There are also more than 200 open permits and staff is looking at those to see if they are duplicates, etc. Mr. Foster said staff is going over some options with the attorney for additional methods to make customers hook to the system. Mr. Kelly said the system was designed with growth in mind. If a hotel were to be built, staff would have to meet with AirVac to make sure the system could accommodate it. The developer would have to add infrastructure though, so it wouldn't affect the normal property owners. Ms. Cashwell asked how the Town keeps track of combined lots. Mr. Kelly said the Town charges tap and impact fee for the second lot. The fees go into a capital reserve fund, which is part of the enterprise fund. Mr. Foster said when the sewer was first put in, a lot of things changed. It was originally estimated at \$42 million. The collection system is estimated at \$130 million. The assessments should have been somewhere between \$11,000 and \$13,000 versus the \$4,200. The Town increased the sewer district fee and borrowed funds from the accommodations tax to help offset the deficiencies in paying the bonds. The Town is paying the accommodations tax fund back 11.75 percent over three years. This will be the second-year increase out of three different increases. The Town owes another \$40 million plus to Brunswick County for expansion of the plant. Ms. Cashwell said she doesn't understand why these impact fees are going toward improvement and expansion instead of back to the enterprise fund to pay off that debt. Mr. Foster said they are going to the enterprise fund and toward paying off debt. Chairman Moffitt said the capital reserve is inside the enterprise fund. If the Town can keep its bond ratings up, it could refund the bonds within a few years. The callback on those is 10 years. Some of the bonds are around 4-5 percent interest, which is pretty expensive. If the Town could refinance at a lesser amount, it would help the Town. Also, if the 7,100 residential and several acres of commercial property on the Williamson tract would be developed, the Town could use some of our capacity to help fund the sewer. Mr. Foster has talked to Mr. Crook about the possibility of developers buying capacity. Mr. Crook said if the Town charges the Williamson tract at the current rate of \$8,242 it would be \$46 million.

At 11:34 the Planning Board took a break. At 11:46 the Planning Board reconvened.

Ms. Cashwell said the one thing the Town has not addressed was swimming pools, what happens when the pools are drained, and what that does to the sewer system. Chairman Moffitt said that water does not go into the sewer system but is recirculated. Mr. Marshall said you don't throw the water away and start over. Ms. Cashwell said she knows some who are not recirculating it.

Mr. Crook corrected the amount for the proposed development of the Williamson tract from \$46 million to \$64 million.

New Business Item No. 3: Revisions to Chapter 32 Vegetation. Chapter 32 is not something the Planning Board generally considers, but Mr. Foster asked the Planning Board to review it as it affects development in the Town. Mr. Crook said this is an easier ordinance to enforce and easier to understand for the layperson. Vice-Chairman Manos said he doesn't understand the root protection zone language. Mr. Crook said the way it was written was difficult to understand, and homeowners and contractors couldn't get a forklift on the property due to the large radius around the trees; that was stricken from the ordinance and that is to be deleted. The ordinance has been modified to say the root protection zone is 3 feet by 3 feet around the tree; 85 percent of trees were dying due to not enforcing the root protection zone. Ms. Cashwell said she asks that there should absolutely be no bush hogging or clear cutting allowed. She said

she's seen it and it happens all over the island. There needs to be some reasonable vegetation left at least to protect the sand. Mr. Crook said this ordinance requires trees to be saved 5-inch in diameter or greater, to be marked during the development permit process. Bush hogging is allowed, but trees can't be cut down by bush hogging. Clear cutting is not allowed at all. Ms. Cashwell said in reality we have clear cutting on the lots today. Chairman Moffitt said he was not aware of any. Mr. Crook also said he is not aware of any clear cut lots. Ms. Cashwell said it's ludicrous to allow clear cutting on a lot and call ourselves Oak Island. Chairman Moffitt said he's been building for ten years on this island and has never clear cut a lot; he keeps as many trees as he can and most people want to keep all the trees they can so he doesn't see this as being too big of an issue. Mr. Skipper has been involved in a lot of new construction, and he can't remember anyone ever clear cutting a lot in many years. A lot is not supposed to be cleared without Development Services seeing it first. Mr. Crook said bush hogging a lot, it is much easier to walk on a lot. There is no permit for bush hogging. If someone wants to bush hog a lot, every tree at least 5-inches in diameter has to be saved. When someone wants to develop a lot, five trees are required to be saved on each lot. Specimen trees, including pine trees, can be saved. Black pines look like a bush to the non-trained eye. If there were six black pines on a lot and six are required, another tree won't have to be planted if those six pines can be saved. The ordinance is now tailored to what grows here. Vice-Chairman Manos asked if there are specimen trees that are appropriate for the beach. Mr. Crook said no, but other vegetation can be planted, such as sea oats. Mr. Crook said if he, as a town forester, goes to a beachfront lot that is to be developed and there are no trees present, he cannot require they be planted under the current ordinance. Under the revision, if they do not have adequate vegetation on the lot to hold the sand, the Town will a tool now to require some kind of vegetation. Chairman Moffitt said this ordinance would put an undue burden on the landowner to replant trees that they didn't previously have, and he can go back at a later time and take them out with no repercussions. Mr. Crook said the goal of this ordinance is to preserve and protect a canopy that is being lost. Chairman Moffitt said a homeowner should not be forced to plant trees because he didn't have enough trees to save. We have previously lost canopy that should not have been lost due to the ordinance not being enforced. Oak Island is known for its oak trees, and people want to see that. This was the majority opinion of Council, the environmental committee and Tree City. Chairman Moffitt said you can meet this ordinance by leaving tall pine trees, which nobody wants to keep in the event of a hurricane. Mr. Hicks said long leaf pines will weather a hurricane just fine. The goal of the land use plan was to maintain as much natural beauty as possible. Black pines and red cedar live on the beach. **Ms. Cashwell made a motion that we accept this ordinance as written. Motion failed for lack of a second. Mr. Marshall made a motion we accept the ordinance as presented, modified to reflect removal of the requirement of five trees. The motion was not seconded.** Erosion control has to be planted per state building code. Mr. Marshall said for a lot with black pines that are not indigenous to the area, he doesn't understand why it should be required to put back indigenous trees. Mr. Jenkins said some kind of tree is better than no tree. The Board discussed possible alternatives. **Vice-Chairman Manos made a motion to amend Section 32-76 by adding the wording "In circumstances where there is no existing tree on a lot and said lot is on front beach, then no requirement shall be imposed to replant a specimen tree, but other vegetation appropriate to the area shall be required. In other areas, not on second row, there shall be a minimum requirement that at least two trees be placed on each lot regardless of the number removed."** **Mr. Marshall seconded the motion.** Chairman Moffitt said the ordinance could be scaling, so that if five trees on the lot can be saved, then that would be the minimum that would be saved for that lot. If there were only four or three, then four and three and down to two. Anything two or fewer would be require two be planted. Mr. Crook said the way the ordinance is written now, a lot can be clear cut and three palm trees be planted; what the Board is suggesting is not enforceable. The Board has to include the list that Chairman Moffitt came up with in the motion and he has to be able to explain it to Council. Vice-chairman Manos amended his motion to add "Notwithstanding the above" to the beginning of his suggested wording; he later changed it to remove "not on second row." Mr. Crook suggested the following: Motion to amend

Sec. 32-76 (1) for lots with available sewer, striking “if fewer than one existing specimen tree exist per 1,450 square feet of lot size or if no trees exist on said lot, a minimum stocking of one specimen tree with a minimum caliper at breast height of at least two inches shall be achieved through planting per 1,450 square feet of lot size,” to be replaced with “If fewer than the required number of trees are existing on the lot outside of the development area, then at least...” Chairman Moffitt suggested adding something like “and then you would have to leave the number of trees in that area either by leaving or planting to meet that number, whatever that number is, but at least two, up to five.” Vice-chairman Manos suggested adding the language he gave earlier. Vice-Chairman Manos then suggested tabling this until the next meeting so that Mr. Crook can bring it back to the Board. There was not a vote on Vice-chairman Manos’ earlier motion. **Mr. Skipper made a motion that we table this issue. Vice-Chairman Manos seconded the motion and it passed unanimously.**

New Business Item No. 4: Mr. Crook asked the Planning Board to read the document he provided from the School of Government. In instances when the Planning Board deals with map amendments, zoning changes, ordinance changes and the like, the Board customarily says it is consistent with the CAMA Land Use Plan. The Board can no longer make that blanket statement, but must explain why it is consistent in detail. Whenever the Board makes a recommendation to Council, it must describe the elements of the controlling land use plan and how the amendment is or is not consistent. It must be written clearly so that if anything is challenged in court, it is documented.

The Council requested the Board interview two firms, consider two proposals and make a recommendation for the firm that will best be able to assist the Town with the Comprehensive Land Use Plan and the UDO. Mr. Crook asked the Board provide him with their questions at least 10 days prior to the meeting. Mr. Crook will share them with the Board, compile the questions and the Board will prepare to interview these firms to make a recommendation to the Council. The Board can’t get together as a group and talk about it outside of a meeting. Chairman Moffitt said that if it is possible, the Board should consider the CUP that was tabled today at the October meeting. Ms. Campbell asked if it would be appropriate to talk to other towns and talk to them about what they thought of the performance of these firms. Mr. Crook said it would be appropriate. Ms. Campbell asked how the Board can get all this work done if they can’t meet other than during open meeting times. Ms. Cashwell said as long as you don’t have a quorum, you can. Mr. Crook said this Board is known for being transparent, for holding meetings at Town Hall and that decisions aren’t made prior to coming to the meetings.

Mr. Skipper made a motion to adjourn, seconded by Ms. Cashwell. The motion passed unanimously.

The Planning Board adjourned at 12:52 p.m.

Randy Moffitt, Chairman

Attested: _____
Kathleen Snider, Clerk to the Board

MINUTES
TOWN OF OAK ISLAND
PLANNING BOARD – TRAINING SESSION
October 9, 2014 – 10:00 a.m.
OAK ISLAND TOWN HALL

Present for the Planning Board: Chairman Randy Moffitt, Members Dick Marshall, Helen Cashwell, Virginia Campbell and Clay Jenkins, Planning and Zoning Administrator Josh Crook, Administrative Assistant Kathleen Snider, and Allen Serkin from the Cape Fear Council of Governments.

Chairman Moffitt called the meeting to order at 10:00 a.m.

Mr. Crook handed out copies of the Town of Oak Island Code of Ordinances relevant to the Planning Board's role and responsibilities. Mr. Crook introduced Allen Serkin to conduct general training to the Planning Board. Mr. Serkin presented a PowerPoint, which is attached to these Minutes. Mr. Serkin said this is a general training presentation, not specific to Oak Island. This is a very legal discussion about statutory authority based on State regulations.

Mr. Crook said the Planning Board is not required to have quasi-judicial public hearings, but the Town does it to be transparent. The Planning Board follows the form and function of the quasi-judicial hearings. Mr. Serkin said there may be better ways to do things than Oak Island does it now, and there may be opportunities to modify the procedural requirements to better suit how the Town operates.

Mr. Serkin said regulations for wetlands are the same generally no matter where they are. Wetlands are independent of the zoning district or the location of that wetland. Chairman Moffitt said the Army Corp. of Engineers decides what happens to the wetlands. The Town doesn't make those rules.

Mr. Crook said he handed out information on how the Board should write their consistency statements. The Board can make recommendations that are not consistent with the current 2009 CAMA Land Use Plan, but there is now a requirement that motions made by the Board contain a consistency statement. The statement must explain in detail why it is or is not consistent with the CAMA Land Use Plan.

Ms. Campbell asked how other Board's get all of this work done. Mr. Serkin said Boards can direct staff, hire consultants, have a subcommittee, or do it themselves. The Board can have a subcommittee as long as there is not a quorum. Ms. Campbell said groundwork must be done and that this work can't be done in an hour long meeting. Mr. Crook said as long as open meeting laws are followed, and it is an advertised, public meeting. Ms. Campbell said the rules and regulations want to muzzle the Board because they can't informally work together in an informal environment. Mr. Serkin said this is the business of the Town and the Board should be conducting the business of the people before the people and the goal is transparency. Ms. Campbell said she doesn't agree with it, but that's the way it is. Mr. Serkin said to be very careful about deciding anything outside of a meeting. Decisions need to be made at the public meetings.

Mr. Serkin said personal liability of the Board members is limited unless you are negligent. That doesn't mean Planning Board members can't be named in a lawsuit. As public officials, the Town assumes legal liability unless you operate outside the bounds of what is allowed, e.g. lying under oath. Mr. Serkin said it's appropriate for the Board to do what the people of Oak Island want. It's not what the Planning Board wants. Meeting behind closed doors doesn't allow the Board to get the feedback they need to make planning decisions. The Board needs to be aware of what the public does want and needs the public's feedback. Mr. Serkin said the Board serves at the pleasure of Town Council. That limits the Board's purview. Mr. Crook said the Planning Board has a limited scope. The Board makes recommendations to Town Council, Town Council creates policy.

Ms. Cashwell made a motion to adjourn. Mr. Marshall seconded and the motion passed unanimously.

The meeting was adjourned at 11:23 a.m.

Planning Board Training for the Town of Oak Island

October 9, 2014

ALLEN SERKIN, AICP, CZO
DIRECTOR OF LOCAL GOVERNMENT SERVICES
CAPE FEAR COUNCIL OF GOVERNMENTS



Legal Context

- Local governments are creatures of the state and have no inherent powers.
- In “home rule” states, local governments have broad authority - state legislatures have delegated any powers that do not conflict with the state or federal constitution.
- In “Dillon’s Rule” states, local governments only have those powers expressly granted to them by their legislatures.

Legal Context

NC is not strictly a “home rule” state; however the General Assembly has delegated a significant authority to local governments, including:

- Powers expressly granted (N.C.G.S);
- Powers fairly implied in or incident to those expressly granted; and
- Powers essential to the declared objectives and purposes of the local government.

Types of Zoning Decisions

Legislative – Policy decisions including adoption, amendment, or repeal of regulations.

Examples: zoning text amendment, rezoning (map amendment) and also annexation, budget
Final decisions generally reserved for the governing board (city council, county commissioners).

Advisory – Recommendations on plans, text and map amendments, etc. Not final decisions, therefore, less regulated. Typically a function of the planning board and/or staff.

Administrative – Routine activities like issuing permits, enforcement, etc. typically handled by professional staff, but sometimes by planning board or governing board.

Quasi-judicial – Formal actions where the decision makers apply discretion in applying existing policies to individual or special cases. Quasi-judicial (i.e. court-like) decisions use evidentiary hearings to gather facts and evidence and have very specific requirements. Decisions can be made by the governing board, planning board, or board of adjustment.

Why Plan?

- Assist elected officials with decision-making
- Offer solutions to community problems
- Address growth issues and development pressure
- Guide economic development
- Efficient development and delivery of public services
- Protect cultural and environmental resources
- Preserve land values/protect investments
- Generally enhance the quality of life in the community
- To meet legal requirements
 - Land use regulations must be made "in accordance with a comprehensive plan."
 - Recently adopted Land Use Plan is a prerequisite for NCDOT Transportation plans.

Planning & Zoning Basics (§ 160A-383)

- Zoning regulations shall be made in accordance with a comprehensive plan.
- Zoning regulations shall be designed to promote the public health, safety, and general welfare.
- Zoning regulations shall be made with reasonable consideration, among other things, as to the *character of the district* and its peculiar suitability for particular uses, and with a view to *conserving the value of buildings* and encouraging the most *appropriate use of land* throughout the city.

Planning & Zoning Basics (§ 160A-383)

Regulations may address, among other things, the following public purposes:

- to provide adequate light and air;
- to prevent the overcrowding of land;
- to avoid undue concentration of population;
- to lessen congestion in the streets;
- to secure safety from fire, panic, and dangers; and
- to facilitate the efficient and adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

Planning Board Basics (§160A-387)

FOR INITIAL ORDINANCE ADOPTION:

- The planning board must either prepare or review and comment upon a proposed zoning ordinance, including both text and maps.
- The planning board may hold public hearings on the proposed ordinance.
- The planning board must make a written recommendation regarding adoption of the ordinance to the governing board.
- The governing board cannot hold its required public hearing or take action until it has received a recommendation from the planning board.
- The governing board may refer the ordinance back to the planning board.

Planning Board Basics (§160A-387, 383)

FOR SUBSEQUENT ORDINANCE ADOPTION:

- All proposed amendments to the zoning ordinance or zoning map must be submitted to the planning board for review and comment.
- The planning board must provide a written recommendation addressing plan consistency, i.e. whether the proposed amendment is consistent with any adopted comprehensive plan or other adopted, applicable plan.
- If no written report is received from the planning board within 30 days of referral of the amendment to that board, the governing board may proceed in its consideration of the amendment without the planning board report.
- The governing board is not bound by the recommendations, if any, of the planning board.

Planning Board Basics

- Terminology: Planning Board a.k.a. Planning Commission, Zoning Board, Planning & Zoning Board, etc.
- A local government must establish a planning board in order to enact Zoning and Subdivision powers (§160A-387), may split duties among multiple boards.
- Three members minimum and proportional representation required for ETJ areas (§160A-361, 362).
- All meetings are subject to open meetings requirements.
- Other details left up to discretion of local government:
 - Number of members (5 or 7 typically)
 - Non-resident participation
 - Qualifications (unless also Historic Preservation Commission)
 - Terms, vacancies, attendance

Planning Board Statutory Powers (§160A-361)

- Make studies of the area within its jurisdiction and surrounding areas;
- Determine objectives to be sought in the development of the study area;
- Prepare and adopt plans for achieving these objectives;
- Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;
- Advise the council concerning the use and amendment of means for carrying out plans;
- Exercise any functions in the administration and enforcement of various means for carrying out plans that the council may direct;
- Perform any other related duties that the council may direct.

Core Planning Board Responsibilities

Primary Role / Decisions: Advisory

- Makes recommendations on ordinances (including text and map amendments)
- May comment on certain plans, plats and permits
- Conducts studies
- Prepares plans
- Any other related duties assigned by the governing board

Other Roles / Decisions:

- Administrative – May have approval authority for certain plans/plats; may have other assigned duties.
- Quasi-Judicial – May review conditional/special use permits requests.

Other Planning Board Responsibilities

- Governing board may authorize planning board to receive and disburse funds or enter contracts.
- Planning boards may receive/provide technical planning assistance from/to other planning agencies.
- Planning boards must certify "redevelopment areas" targeted for urban redevelopment pursuant to §160A-513.

Open Meetings (§ 143-318.9-18)

- "Whereas the public bodies that administer the legislative, policy-making, quasi-judicial, administrative, and advisory functions of North Carolina and its political subdivisions exist solely to conduct the people's business, it is the public policy of North Carolina that the hearings, deliberations, and actions of these bodies be conducted openly."
- Each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting.
- "Official meeting" means a meeting, assembly, or gathering together at any time or place (including teleconference or other electronic conference) of a *majority* of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction of the public body.

Open Meetings (§ 143-318.9-18)

- A social meeting or other informal assembly or gathering together of the members of a public body does not constitute an official meeting (unless called or held to evade the spirit and purposes of the law).
- If a schedule of regular meetings is established, a current copy of the schedule, showing the time and place, shall be kept on file with the clerk.
- If the schedule of regular meetings is changed, the revised schedule shall be filed with the clerk at least seven calendar days before the first revised meeting.
- If a special meeting is called, the time and place of the meeting shall be posted on the public body's bulletin board or on the door of the room where the meeting is held at least 48 hours before the time of the meeting.

Open Meetings (§ 143-318.9-18)

- If an emergency meeting is called, notice shall be provided by phone, email, or the same means used to notify the members and immediately after the members are notified. Only business connected with the emergency can be conducted at an emergency meeting.
- Any person may challenge in superior court the validity of any action taken by a public body at a meeting in violation of the open meetings law.
- The open meetings law does not create a right to be heard, only a right to attend. Those who attend have no guaranteed right to speak unless guaranteed by local ordinance, policy, or guideline.
- A person who willfully interrupts, disturbs, or disrupts an official meeting AND refuses to leave the meeting after being so directed by the presiding officer is guilty of a Class 2 misdemeanor.

Site Plan Approval

N.C.G.S. §160A-393(b)(3): “Decisions on the approval of site plans are quasi-judicial in nature if the ordinance authorizes a decision-making board to approve or deny the site plan based not only upon whether the application complies with the specific requirements set forth in the ordinance, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision on the findings of fact to be made by the decision-making board.”

Subdivision Plat Approval

N.C.G.S. §160A-377(c): “...an ordinance shall be deemed to authorize a quasi-judicial decision if the city council or planning board is authorized to decide whether to approve or deny the plat based not only upon whether the application complies with the specific requirements set forth in the ordinance, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision to be made by the city council or planning board.”

Conditional and Special Use Permits

- *Quasi-Judicial procedures are required.*
- Decision must be based on the standards in the ordinance.
- The burden of proof is on the applicant to show that the standards have been satisfied.
- If sufficient evidence is presented to show that the standards have been met, the board must approve the permit. If contradictory evidence is presented, the board must find that the standards are met or the permit must be denied.

Quasi-Judicial Procedures (1)

Voting* – A simple majority is required to issue CUP/SUP. Vacant seats and disqualified members are not considered members for determining majority where qualified alternates not available.

Hearing – Evidentiary hearing to gather facts, not public opinion. A detailed record of the hearing is required, including detailed minutes or, preferably, verbatim transcripts or recordings. Hearing for each case must be opened and closed.

* affected by S.L. 2013-126

Quasi-Judicial Procedures (2)

Witnesses* – Evidence must be presented under oath and cross-examination must be allowed. Board may subpoena witnesses. The chair or clerk to board may administer oaths.

Evidence – Evidence must be substantial, competent, and material and must be entered into the record and kept on file. Hearsay and non-expert testimony cannot be the basis for a decision or for establishing a fact. Board members may not gather evidence outside of the hearing and ex-parte communication is not allowed. Only evidence presented at the hearing and subject to cross-examination should be considered.

Quasi-Judicial Procedures (3)

Findings – Written findings of fact are required. Where there is conflicting evidence, the Board must specify what it determines to be the facts that are the basis for the decision.

Rehearings – The Board may not hear a case a second time unless there is a significant change in site conditions or the ordinance. Appeals are made to the Superior Court and must be filed within 30 days.

Precedent – Prior decisions are not legally binding. Each case is decided based on its own merits and based on its own facts, but similar situations should generally be treated alike unless the facts justify finding otherwise.

Quasi-Judicial Procedures (4)

Conflict of Interest – The NC Constitution gives parties to QJ decisions the right to an impartial decision maker, so conflicts of interest must be avoided.

Open meetings – All meetings and all deliberations must be open to the public, but deliberations and decision may be separate from hearing.

Liability – Board members are public officers and have limited liability.

Conflict of Interest (Quasi-Judicial)

Members are disqualified from participating, not just from voting, in the following situations:

- Fixed opinion prior to hearing
- Undisclosed ex-parte communication
- Close family, business, or other relationship with an affected person
- Financial interest in outcome

If objection is raised and member refuses to recuse, rest of board votes on recusal.

Sample Findings of Fact

- Section 12-5(a) of the Zoning Ordinance required a 15' side yard setback in the R-10 zoning district when the structure was constructed.
- The applicant constructed the accessory structure in the summer of 2013 without a permit and in violation of the side yard setback required at the time of construction.
- The zoning enforcement officer visited the site on 2/28/2014 and identified the following violations...
- The proposed development project is expected to generate an average of 35 weekday P.M. peak hour vehicles according to the ITE Parking Generation manual 4th Ed.

Sample Conclusions of Law

- The applicant's hardship is self-imposed because he/she knew or should have known that a permit was required prior to construction.
- The hardship is not the result of site characteristics but is common to all commercial property in the neighborhood.
- The zoning administrator denied the permit appropriately because the proposed building should be classified as a primary structure, not an accessory structure.

Findings of Fact/Conclusions of Law Considerations

- Must be in writing
- Must be signed by the Chair or other authorized member.
- Must explain the logic behind the decision.
- Who will prepare them?
- When will they be prepared?
- When are they approved?

Testimony/Evidence Considerations

- How should non-expert testimony be handled?
- How should hearsay be handled?
- Time limits generally not permitted.

Sample Hearing Process/Sequence

1. Chair opens hearing and announces case.
2. Witnesses are sworn in.
3. Staff gives summary overview the case.
4. Appellant (or attorney) presents case, documents, evidence, witnesses. ZBA may ask questions. Chair allows cross-examination.
5. Objectors present case, documents, evidence, witnesses. ZBA may ask questions. Chair allows cross-examination.

Sample Hearing Process/Sequence

6. Applicant's rebuttal.
7. Objector's rebuttal.
8. Chair summarizes evidence and excludes hearsay, opinion. ZBA may add/clarify.
9. All parties may offer objections, corrections, additions to Chair's summary of evidence.
10. Deliberation and determination of facts and conclusions.
11. Motion and vote. Hearing closed.

Questions?



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MINUTES
OAK ISLAND PLANNING BOARD
October 16, 2014 – 10:00 a.m.
OAK ISLAND TOWN HALL

Present for the Planning Board: Chairman Randy Moffitt, Vice-Chairman Ted Manos, Members Clay Jenkins, Art Skipper, Helen Cashwell, Virginia Campbell, and Kathleen Snider.

Chairman Moffitt called the meeting to order at 10:00 a.m.

Ms. Cashwell made a motion to approve the agenda as presented. The motion was seconded by Mr. Jenkins and the motion passed unanimously.

Public Comments: None.

Public Hearing: None.

OLD BUSINESS ITEM NO. 1 – Conditional Use Permit Application submitted by W. Epstein Builders regarding renovating an aircraft hangar at the Cape Fear Regional Jetport. Mr. Edwards, Building Codes Administrator, said that transient lodging is approved by the Department of Insurance as a mixed use with an airplane hangar and the application can move forward. The architect is working on plans to comply with the State codes. Chairman Moffitt said the airport staff was highly in favor of approving this permit. **Vice-Chairman Manos made a motion to approve the Conditional Use Permit under Section 18-116 Hotels, Motels and Transient Lodging and impose a condition under Section 18-226(b) and 18-224 that the structure will comply with all building code requirements. Ms. Cashwell seconded and the motion passed unanimously.**

NEW BUSINESS ITEM NO. 1 – Interview with Holland Consulting Planners: Present from Holland Consulting Planners were Dale Holland, Landon Holland and Wes MacLeod. Vice-Chairman Manos asked for a short presentation on what they normally do, how much they use the prior land use plans that have been in place, and the difference between the CAMA Land Use Plan (LUP) versus the land use plan they intend to create. Ms. Cashwell asked how often, by law, the LUP has to be updated. Mr. D. Holland said there is no state statute regulating LUPs or stating that a town has to have a comprehensive plan. The statutes state that zoning must be based on a comprehensive plan, but do not require that a town has a comprehensive plan. The state statutes were revised in 2005 to add a provision that says that zoning decisions have to be consistent with the comprehensive plan or the Board or Council has to set forth why it made a decision that was inconsistent with the comprehensive plan. CAMA LUPs are under the North Carolina Administrative Code, and it is recommended to update the plan every five years. In the last seven or eight years, that hasn't been happening. There used to be financial assistance for that that is no longer available. Generically, it is recommended to

update the plan every five to eight years. That doesn't mean it has to be completely rewritten every five to eight years, but updated. The Board needs a plan to base its zoning on. The Board can no longer make canned decisions, but must demonstrate that it has looked at each individual request. Mr. L. Holland said a CAMA LUP is legislatively required and were generally funded. Since CAMA plans are mandated, they do not have the public involvement seen in a Town-initiated plan. The comprehensive is the concept document, and the Unified Development Ordinance is the final, regulatory document containing the details and the plan for accomplishing the concepts contained in the comprehensive plan. Mr. D. Holland said the community involvement is very important in this process. Mr. L. Holland discussed the use of the website during this process and keeping the public informed of what's going on in the community and enable the public to provide input. All agendas, minutes and sections of the work being done on the plan will be available on the website. A survey is also posted through the website. The plan document will be "bombarded" with maps and graphs and graphics. Mr. Crook said that this will tie the CAMA LUP in with all the other plans the Town has paid for over the last decade into one cohesive plan. Mr. D. Holland said their firm is mainly focused in North Carolina and have done more than 100 land use plans, 20-30 UDOs and 40 or more zoning ordinances. The company has done both the comprehensive plan and UDO in Polk County, Laurinburg, Atlantic Beach, Kinston, etc. He emphasized form-based code concept requires patience to implement, education for the staff, public and community to understand it, and will only benefit limited areas of Oak Island. Mr. Holland said they would make recommendations to the Town and tell the Town what it needs to do to get where it wants to go. Generally, it is an 18-month period of time to develop the plan and the UDO. If Oak Island requires it be done faster, corners would have to be cut. Regarding the fee, he can't compare his cost with others. Vice-Chairman Manos pointed out that the proposed fees are substantially higher in price than the Council of Governments. Mr. L. Holland said included in their fees is everything he needs to cover what Oak Island wants. They would minimize Town staff time, prepare notices and maintain the website. Mr. Crook said the Town Council, through the manager, approved the Request For Proposals (RFP), and the Council determines what is paid and who is hired. The charge presented to the Board is to choose the best firm for the Town. Mr. L. Holland said he will provide manpower estimates. Mr. L. Holland said the plan would acknowledge the differences between the island and the new bridge corridor, as they can be vastly different.

The Planning Board took a break from 11:16 a.m. to 11:30 a.m.

NEW BUSINESS ITEM NO. 2 – Interview with Cape Fear Council of Governments. Chris May, Allen Serkin: Mr. May said to start, he would work with the Town to figure out the top five things the Town wants to achieve and what is broken that can be fixed. They want to create a plan that everyone can live with and when the plan is done, the Council of Governments (COG) will still be there as a resource. In the last 15 years, the COG has done at least 20 zoning-related land use plans and 10 CAMA LUPs in this region. He has a pool of resources that he can pull in when necessary. He would determine what has worked in the past to get the public involved and use that method. Mr. May recommended starting with ordinance revision. He said the CAMA LUP was

more of an environmental protection plan; the comprehensive plan goes beyond that and touches on economic development, etc. Mr. Serkin said the CAMA LUP can be revised and used as a starting point. The policies in the Town's CAMA LUP are generally good. Mr. Serkin said the RFP sounded like the Town wanted a brand new comprehensive plan, brand new UDO and possibly a form-based code; that may be more than the Town needs. Mr. Crook said that all these plans have to be in one place and this plan will incorporate all our plans into one document. Ms. Cashwell said if the Town uses the UDOs by themselves and refer to the other plans the Town has, she doesn't understand why we even need to do the land use plan. Mr. Serkin said the land use plan must be in place before you can develop the UDO. When the Town puts together all of its various plans, it will sort out the conflicting provisions. The plan then serves as the guiding document for the UDO. Mr. Serkin said he is not convinced form-based code is what Oak Island needs. Form-based code generally means that the physical structure is more important than user occupancy of the structure, and is more appropriate for progressive communities with an existing urban footprint. An example of why form-based code wouldn't work is the recent mini-motel issue. Ms. Cashwell said the CAMA LUP includes all the items Mr. Serkin mentioned would be contained in a comprehensive land use plan, and when the Unified Development Ordinances are done and you come to something that refers to that, it would just be necessary to put an item in there that says "based on Page 62 of the CAMA LUP, here's the definition." Ms. Cashwell doesn't understand reinventing the whole wheel and going back and re-doing the land use plan, and that now we are talking about three separate documents. Mr. Serkin said the goal would be to have a comprehensive plan that also qualifies as a CAMA plan. He would recommend the final official ordinance document be available on the web, but said a web-based document as it develops is tricky. Those documents would always need to be tweaked and the website would have to be rebuilt every time an amendment was made. Mr. May said the work they do for the Town belongs to the Town. Each step of the way can be made available to enable the public to see progress to date. Mr. May said there should be a lot of graphics included to ensure it's understandable and it would incorporate maps.

Chairman Moffitt made a motion to return to the November meeting for discussion on direction to give to the Town. Second by Mr. Skipper and the motion passed unanimously.

Mr. Skipper made a motion to adjourn. Ms. Cashwell seconded and the motion passed unanimously.

The Planning Board adjourned at 12:40 p.m.

**TOWN OF OAK ISLAND
PLANNING BOARD
AGENDA ITEM MEMO**

Agenda Item: Old Business Item No. 1

Date: November 13, 2014

Issue: Recommendation of consulting firm to develop a comprehensive land use plan and unified development ordinance.

Department: Planning & Zoning

Presented by: Josh Crook

Presentation:

Estimated Time for Discussion: 30 minutes

Subject Summary: During the October 16, 2014 Planning Board meeting the Board conducted interviews of Holland Consulting Planners and Cape Fear Council of Governments to determine which firm is best qualified to provide the Town with a comprehensive land use plan and a unified development ordinance. Both firms answered questions and provided insight as to how they would be the best choice to administer this very important and essential project. Staff believes that it is their duty to work diligently and effectively with whichever firm the Board recommends to Council and will not be making a recommendation for their preferred service provider.

Attachments: Plan elements and key points from both firms.

Recommendation: The Board should provide a recommendation to Council as to which firm they believe will best serve the needs of the Town for this essential visioning project.

Action Needed: Provide Recommendation to Council

Suggested Motion(s): (1) Motion to recommend Holland Consulting Planners to provide consulting services for the comprehensive land use plan and unified development ordinance; or
(2) Motion to recommend the Cape Fear Council of Governments to provide consulting services for the comprehensive land use plan and unified development ordinance.

Funds Needed: Negotiable

Follow Up Action Needed: Notify the recommended firm.

Holland Consulting Planners

Proposal Service Elements/ Key Points

HCP estimates completion within 18 months

HCP will provide all dedicated CLUP website administration, advertising of meetings, public notices, citizen sign up/question sheets, email responses to questions, and copies of drafts to appropriate locations

HCP to provide all research and analysis to include stakeholder interviews, inventory and assessment of existing conditions, plan framework, and design.

Project Initiation

HCP will organize a one day study area visit and start up meeting

HCP will develop a specific citizen participation plan (CPP)

HCP to conduct meetings with Staff, Planning Board, Council, and other committees to collect relevant data

HCP to establish and maintain a dedicated and interactive website for the CLUP

HCP to review all existing official ordinances, plans, and documents relevant to Oak Island and the surrounding area

Citizen Participation Plan

HCP will establish along with Town Staff the (CPP) protocol with Council, Planning Board, and other committees

HCP recommends (3) four-hour work sessions with Planning Board and (3) four-hour work sessions with Council. (All meetings will be advertised, posted on their website, and open to the public.

HCP recommends an increased number of stakeholder meetings with a shorter duration than what was requested in the RFQ.

HCP will conduct a mid-project public review meeting between (6) and (9) months into the CLUP process.

HCP will conduct multi-day planning charrette (Stakeholder meetings usually broken up in to small working groups)

HCP will submit draft CLUP to Planning Board for approval.

HCP recommends conducting an open house/public review meeting after Planning Board approval.

HCP will conduct a meeting with Planning Board to prepare the CLUP presentation for Council

HCP will submit the CLUP to Town Council for consideration and conduct the public hearing

Cape fear Council of Governments

Proposal Service Elements/ Key Points

CFCOG proposes a 2 year timeline for completion

CFCOG recommends we hold a minimum of 16 stakeholder meetings

Phase I

Establish expectations with Town Staff, and appropriate Boards or Committees

Gather relevant and necessary work

Identify requirements and review existing plans

Phase II

Updates maps

Incorporate relevant data

Phase III

Establish poll questions and discussion topics

Develop and administer public participation survey

Review and summarize findings of public participation survey

Work with Town Staff to create public Draft

Phase IV

Develop policies and implementation strategies

Incorporate public input, prepare and deliver to the Council

Review and edit comprehensive land use plan

Review LUP with Planning Board and Council

Deliver completed LUP to Council and Division of Coastal Management

**TOWN OF OAK ISLAND
PLANNING BOARD
AGENDA ITEM MEMO**

Agenda Item: Old Business Item No. 2

Date: November 3, 2014

Issue: Revisions to Chapter 32 Vegetation

Department: Planning & Zoning

Presented by: Josh Crook

Presentation:

Estimated Time for Discussion: 20 minutes

Subject Summary: During the September 18, 2014 Planning Board meeting the Board for the most part approved the revised Tree and Vegetation ordinance as presented. However, Section 32-76 of the ordinance was discussed in great detail. The Board tabled the matter and instructed staff to bring back a revised draft ordinance based on their discussion. Members of the Tree & Vegetation Advisory Group and staff have attempted to accurately modify the draft ordinance. Staff believes that the proposed draft ordinance presented in your packets does reflect what the Board wanted to recommend to Council.

Attachments: Revised Ordinance

Recommendation: The Board should provide a positive recommendation to Council that the draft ordinance will substantially improve the delivery and enforcement of the Tree & Vegetation Ordinance for the entire Town and that the draft ordinance is consistent the CAMA Land Use Plan Policy:

Policy 2.A.10: Tree Protection: The Town will encourage the preservation of natural resources including existing tree canopies. The Town recognizes the importance of trees and other existing vegetation to its quality of life, including reducing the amount of urban runoff and protecting water quality by helping filter contaminants from stormwater runoff, and policy to protect mature trees and native vegetation and to reforest and landscape where appropriate.

Action 2.A.10.a: The Town will continue to enforce the tree protection and preservation ordinance.

Action 2.A.10.b: The Town will support reducing tree and vegetation loss during development.

Action 2.A.10.c: The Town will support reducing damage to trees during construction.

Action 2.A.10.d: The Town will support replacing tree and vegetation lost during construction.

Action 2.A.10.e: The Town will support planting trees where none exist on appropriate sites

Action 2.A.10.f: The Town will support the maintenance of trees and vegetation remaining after construction is completed.

Action Needed: Provide Recommendation to Council.

Suggested Motion: Motion to recommend the proposed revision of Chapter 32 Tree & Vegetation Ordinance to Council for approval noting that this action is consistent with the CAMA Land Use Plan Policy 2.A.10, Tree Protection and Actions 2.A.10 a-f.

Funds Needed: \$0.00

Follow Up Action Needed:

ARTICLE II. TREE MANAGEMENT PROGRAM

Sec. 32-31. Applicability of article provisions.

This article applies to town-owned or controlled property including leased property and public rights-of-way within the town.

(Ord. of 3-10-2009; Amend. of 5-15-2012)

Sec. 32-31.1. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Caliper. The measurement of the diameter of a tree; measurement is taken at breast height or four and one-half feet above ground level. If a tree splits or forks into multi-trunks, the trunk is measured at its narrowest point below the split or fork.

Hazardous tree. Any tree that has the potential of causing property damage or loss.

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Pruning. The elimination of live and dead branches from a tree's crown to improve tree structure, enhance vigor and/or maintain safety.

Topping. The severe cutting back of branches to a stub, bud, or a lateral branch not large enough to assume the terminal role.

Town forester. The qualified designated town employee who is assigned by the town manager to carry out the provisions of this chapter.

Tree. Any plant 15 feet in height or over at maturity.

Tree value. For applications under this chapter shall mean the appraised value of a tree based on the latest edition of the "Guide for Plant Appraisal" by the Council of Tree and Landscape Appraisers.

Utility. Public utilities, businesses or organizations in the business of supplying communication services, electrical energy, gas, heat, steam, water, or sewage disposal and treatment.

(Ord. of 3-10-2009; Amend. of 5-15-2012)

Sec. 32-32. Tree City U.S.A. advisory board; responsibility.

The Tree City U.S.A. advisory board or its designated successor shall be the advisory body charged with the task of carrying out advisory responsibilities of this article.

(Ord. of 3-10-2009; Amend. of 5-15-2012)

Sec. 32-33. Duties and authority of town forester.

There shall be a town forester position assigned by the town manager. The town forester shall have the following duties and responsibilities.

(a) Preserve and enhance the town's urban forest through the management of the town's urban forestry program and the administration and implementation of the comprehensive urban forest plan as developed with the Tree City, U.S.A. advisory board and as adopted by town council.

(b) Supervise the planting, maintenance and removal, as necessary, of trees on public property in coordination with affected town departments. Direct town employees in tree removals and plantings.

(c) Assist the Tree City, U.S.A. advisory board with the formation of, and any revisions to, the comprehensive urban forest plan and provide administrative staff services.

(d) Develop and periodically update arboricultural specifications and standards of practice governing the planting, maintenance, removal, fertilization, pruning, and bracing of trees and shrubs on public property. Arboricultural specifications and standards of practice shall be based on the most current arboricultural practices described in the American National Standards Institute ASC A300 standards for tree care operations, as amended.

(e) Reviews all development plans submitted by the town to ensure compliance with town ordinances, master plans and standards. The town forester and/or development services staff shall make a physical site inspection prior to issuance of any building permit and recommend specific changes if necessary.

(f) Inspects construction and utility work sites on public property to ensure compliance with plans, permits, and ordinances; issues stop-work orders and assesses penalties for violations with development services staff.

(g) Designs, implements, and provides maintenance specifications for all landscaping on town property with development services staff.

(h) Enforces the provisions of this chapter with development services staff.

(Ord. of 3-10-2009; Amend. of 5-15-2012)

Sec. 32-34. Damage to trees.

(a) It shall be unlawful to intentionally damage or destroy trees planted on municipally owned or controlled property except as a part of a town-authorized improvement program. It shall also be a violation of this code to attach or place any rope or wire (other than one to support a young or broken tree), sign, poster, handbill, or anything to any such public tree.

(b) A person damaging a tree on public property shall be liable to the town for any loss of value. In the event damage is so pervasive as to result in the treatment or removal of the tree, the person damaging such tree shall also be liable for costs of treatment or removal. Values of public trees shall be appraised in accordance with the Council of Tree and Landscape Appraisers Guide for Plant Appraisal, 9th Edition, as amended. These values will be kept on file in the town's community development services office.

(c) Any violation of the provisions of this article shall be deemed a misdemeanor making the violation subject to punishment in accordance with section 1-7 of this Code in addition to the recovery of damage assessed as outlined in subsection (b) above. ~~The moneys collected from these fines and/or recovery claims will be placed in the town tree preservation trust fund and be used for education and the placement of specimen trees on public property in town.~~

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(Ord. of 3-10-2009; Amend. of 5-15-2012)

Sec. 32-35. Arbor Day celebration.

The town shall annually hold an Arbor Day celebration that focuses attention to the value of trees in the urban environment.

(Ord. of 3-10-2009; Amend. of 5-15-2012)

Sec. 32-36. Approved tree list.

The town or its designee shall maintain a list of approved trees for various applications on municipal property.

(Ord. of 3-10-2009; Amend. of 5-15-2012)

~~Sec. 32-37. Tree inventory.~~

~~The town shall maintain an inventory of trees on municipal property. This inventory shall include tree location, species, diameter or caliper size, height, visible defects, power line proximity, sidewalk proximity, and tree pruning and removal recommendations for the next five years. The inventory will also identify all available planting spaces. Each tree that is inventoried will be appraised in accordance with the Council of Tree and Landscape Appraisers Guide for Plant Appraisal, 9th Edition, as amended. This inventory shall be updated every five years. Information obtained from this inventory shall be used to write the comprehensive urban forestry management plan.~~

~~(Ord. of 3-10-2009; Amend. of 5-15-2012)~~

Sec. 32-38. Development of annual tree program.

The town or its designee shall annually review its tree installation needs including new projects and replacement of diseased or damaged trees in conjunction with development of the town's annual budget.

(Ord. of 3-10-2009; Amend. of 5-15-2012)

Sec. 32-39. Community awareness.

The town shall undertake programs, as may be determined by the Tree City USA advisory board or its designated successor and the public works~~recreation department's environmental education program~~ director, which enhance the community's awareness of the value of trees and qualify for points toward the Tree City, U.S.A. Growth Award.

(Ord. of 3-10-2009; Amend. of 5-15-2012)

Sec. 32-40. Maintenance of public trees/projects.

(a) ~~The public works department shall be responsible for the maintenance of trees on municipal property, under the supervision of the town forester or his designee.~~

(b) The town shall have the right to prune, maintain and remove any tree on public grounds which interferes with the safe flow of traffic, any traffic control device or sign.

(c) It shall be unlawful for any person to top or cut back to stubs the crown of any tree on public grounds.

(d) Trees severely damaged by storms or other causes where required pruning practices are impractical may be exempted from this section. This also includes dead, dying, or diseased trees as determined by the town forester or his/her designee and which pose a threat to the safety of the community.

(e) All other town departments shall cooperate fully with the public works department and the town forester or his/her designee in carrying out the responsibilities of this section.

(f) Planting, maintenance, and removal activities on public trees shall meet current arboricultural practices described in the American National Standards Institute ASC A300 standards for tree care operations, as amended. Town departments, contractors, community organizations and individuals performing tree related activities on town-managed property are required to adhere to these standards.

(Ord. of 3-10-2009; Amend. of 5-15-2012)

State law reference— Cultivating or removing timber from public lands, G.S. 14-130.

Sec. 32-40.1. Hazardous trees.

(a) Every owner of any tree overhanging a street or sidewalk within the town is responsible for pruning the branches so that such branches shall not obstruct vehicles or pedestrians. Provided further, that all property owners within the town are hereby required to cause the removal of any dead or diseased trees on their property whenever such trees constitute a hazard to life and property, or harbor insects or diseases which constitute a potential threat to other trees.

(b) If the owner or owners of any lot or other real property within the town, after the giving of two-days' notice in writing by the town manager or his/her designated representative, shall refuse or neglect to perform the duties in connection with his or their property as specified in subsection (a) hereof, the town manager or his/her designated representative is hereby authorized to enter upon the property and have said tree and/or branches cut and removed; and the cost thereof shall be charged against said premises and shall constitute a lien thereon.

(c) In case the owner of any lot or other real property is unknown or his whereabouts is not known or is a non resident of this state, then a copy of the written notice herein above referred to shall be posted upon the premises for a period of 48 hours and, before any action to enforce such lien shall be had, the town clerk shall make an affidavit setting out the facts as to the unknown address or whereabouts of nonresidents; and, there upon, service of the publication as now provided for by law against a nonresident defendant may be had, and an authority ad litem shall be appointed to notify the defendant by registered letter addressed to his last known place of residence if same can be found.

(Ord. of 3-10-2009; Amend. of 5-15-2012)

Sec. 32-40.2. Protection utilities.

Public utilities shall exercise reasonable care and utilize best management practices to avoid damage and injury to public trees during the installation and maintenance of its facilities. The town's forester or his/her designee will provide assistance on any utility project to see that the public utilities can be installed or repaired with minimal damage to any public tree.

(Ord. of 3-10-2009; Amend. of 5-15-2012)

Sec. 32-40.3. Notification for work near public trees.

(a) No person or business shall perform any grading, excavation, place any fill, compact the soil or construct any building structure, street, sidewalk, driveway, pavement or public utility within 25 feet of any public tree without first notifying and consulting with the development services staff. Any such work shall be conducted in accordance with this article.

(b) Any public utility constructing or maintaining any overhead wires or underground pipes or conduits within 25 feet of public trees shall consult with the development services staff prior to performing work which may cause injury to public trees.

(Ord. of 3-10-2009; Amend. of 5-15-2012)

Secs. 32-41—32-70. Reserved.

Sec. 32-71. Purpose of article.

(a) The purpose of the tree and vegetation preservation program is to provide a means to preserve and manage significant ~~natural wooded~~ areas and specimen trees in the community.

(b) The objectives of the program are as follows:

- (1) Maintain and enhance property values;
- (2) Preserve and enhance the visual appearance of the town;
- (3) Preserve unique and productive coastal habitats;
- (4) Reduce the impacts of development on the town's stormwater system;
- (5) Assist the town in preserving and enhancing the quality of its estuarine waters; and
- (6) Help create and protect the protective dune systems.

(Ord. of 3-10-2009; Amend. of 5-15-2012)

Sec. 32-72. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bush Hogging. The clearing of a lot using a Bush Hog or similar type mower for the purpose of ridding a lot of vines and shrubs, but leaving trees not large enough to be cut with a Bush Hog (usually with a caliper of greater than five inches at breast height). Bush Hogging is done prior to clearing and may be done without obtaining a permit. Rutting and soil disturbance is prohibited.

Caliper. The measurement of the diameter of a tree; measurement is taken at breast height or four and one-half feet above ground level. If a tree splits or forks into multi-trunks, the trunk is measured at its narrowest point below the split or fork.

Clearing. The permitted removal and proper disposal of exposed objectionable matter from an area. This may include, but is not limited to, trees, roots, grass, underbrush, rubble, any existing type of structures, rubble, brush, trees as well as roots and other debris which might interfere with construction of a permitted building. This may be done only after the issuance of a permit by development services, etc.

Clearing permit. A permit that must be obtained from development services prior to the removal and proper disposal of specimen trees and structures.

Crown. The totality of branches, twigs, and leaves extending from the trunk or main stems.

Drip line. The outside edge of the area underneath a plant which would be encompassed by perpendicular lines dropped from the farthest edges of the crown of the plant.

Dune. Those mounds of sand and/or sand management project areas, either manmade or natural, in existence as of December 10, 1999, and/or those restored by the town or other public entity after that date. A primary dune is the first mound of sand (measured from the ocean) that is six feet taller than the mean floodlevel for the area. Frontal dunes are the first mounds of sand that have enough vegetation, height and continuity to offer protection.

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Fence. A barrier intended to mark a boundary, screen a view or prevent intrusion that is designed and built in a sound workmanlike manner with adequate footings to withstand normal wear while keeping an attractive appearance.

Grading. Altering the shape of the ground surfaces to a predetermined condition; this includes stripping, cutting, filling, stockpiling and shaping or any combination thereof and shall include the land in its cut or filled condition.

Ground cover. Any plant less than three feet in height.

Introduced plant. Any nonexisting plant that is added during the development of a property.

Natural area. An area of at least 50 square feet comprised of native vegetation.

Overstory tree. Any species of tree that reaches a minimum height of 40 feet at maturity.

Parking facility. An area used for the parking, storage, or display of motor vehicles, boats, recreational vehicles, etc.

Peninsula. A planting area that extends out into the parking area, and is bounded on three sides by the parking area.

Permeable paving. Any paving which due to its inherent nature, or construction, allows fluids and gases to penetrate through it at least in some areas, such as described in the North Carolina Stormwater BMP Manual GRASSCRETE™ brand permeable paving.

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Preserved vegetation. Any plant or groups of plants existing prior to development of a property that is protected so that it remains after the development has been completed.

Pruning. The elimination of live and dead branches from a tree's crown to improve tree structure, enhance vigor and/or maintain safety.

Root protection zone. For a shrub shall be the area contained by the shrub's drip line. The root protection zone for a tree shall be the area defined by a concentric circle with a radius equal to the diameter of the trunk in inches at breast height by one foot but no less than 100 square feet one-third of the drip line, but not less than three feet. ~~Planting or open ground areas shall be located so that the trunk of any preserved tree is as close to the center of the open ground area as possible, and in no case shall the trunk be closer than one third of the maximum dimension of the designated open ground areas to any edge of that area.~~

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Rut. A long deep track made by the repeated passage of the wheels or tracks of a vehicle.

Shrub. Any plant between three feet and 15 feet in height.

Sketch plan. A vegetation plan submitted to the development services department staff in conjunction with subdivision of land, alteration of an existing drainage system, issuance of a clearing permit, issuance of a building permit, or start of site development. The sketch plan is a scaled drawing that shows the site information specified in section 32-74. Photographs are not acceptable to locate wooded areas and tree heights may be estimated on the plan.

Specimen tree. For the purpose of this chapter, any perennial woody plant, such as a lane shade or pine tree, which usually has one main stem or trunk and the following caliper measurements taken at breast height: a hardwood tree, six inches; a conifer other than species of southern pine, six inches; southern pines, 14 inches; and any small flowering tree; such as crepe myrtle, five dogwood, two inches.

Topping. The severe cutting back of branches to a stub, bud, or a lateral branch not large enough to assume the terminal role.

Town forester. Shall mean the qualified designated town employee who is assigned by the town manager to carry out the provisions of this chapter.

Tree. Any plant 15 feet in height or over at maturity.

Tree value. For applications under this chapter shall mean the appraised value of a tree based on the latest edition of the "Guide for Plant Appraisal" by the council of tree and landscape appraisers.

Understory tree. Any small tree that grows under the taller overstory trees. These trees can grow in the shade of the taller trees and usually stay short, even if they are very old. Examples of understory trees include Serviceberry (Amelanchier arborea), Flowering Dogwood (Cornus florida), Winged Elm (Ulmus alata), and Persimmon (Diospyros virginiana).

Utility. Shall mean public utilities, businesses or organizations in the business of supplying communication services, electrical energy, gas, heat, steam, water, or sewage disposal and treatment.

Vegetation plan. A plan submitted to the development services department staff in conjunction with subdivision of land, alteration of an existing drainage system, issuance of a clearing permit, issuance of a building permit, or start of site development. The vegetation plan is a scaled drawing that shows the site information specified in section 32-74. Photographs are not acceptable to locate natural areas and tree heights may be estimated on the plan.

Wooded area. Any vegetated area of 50 square feet or more, consisting of trees, shrubs, and/or ground cover where trees are the predominant form of vegetation.

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(Ord. of 3-10-2009; Amend. of 5-15-2012)

Cross reference— Definitions generally, § 1-2.

Sec. 32-73. Reserved.

Sec. 32-74. Vegetation plans required.

(a) ~~A sketch vegetation plan must be submitted to, reviewed, and approved by the department of community development services for the following actions:~~

- ~~(1) Recording a subdivision plat or subdividing land;~~
- ~~(2) Alteration of an existing drainage system;~~
- ~~(3) Issuance of a clearing permit;~~
- ~~(4) Issuance of a building permit; (includes demolition of structures);~~
- ~~(5) Issuance of a development permit.~~

(b) ~~Agricultural activities that do not involve artificial drainage of land and the maintenance, alteration, or improvement of an existing structure that does not involve a material increase in impervious surface are exempt from the requirement for a landscape/vegetation plan.~~

(c) ~~The sketch vegetation plan may be prepared in conjunction with the stormwater plan required by article V of chapter 18 of this Code and must include the following information:~~

- ~~(1) lot width and length~~
 - ~~(2) front, rear and side setbacks~~
 - ~~(3) location of house, driveway, walkways, and accessory buildings~~
 - ~~(4) species and location of all Location of wooded areas, specimen trees 5-inches `caliper at breast height and greater noted; (see definitions), overstory and understory trees to be left marked, and primary and/or frontal dunes with an (L) on the plan/worksheet (marked with flagging on the ground); trees to be removed marked with an (R) on the plan/worksheet vegetative cover;~~
 - ~~(5) location (2) Location of any wooded areas, specimen trees (overstory and understory), and primary or frontal dune vegetation that will be removed or destroyed during development or construction;~~
 - ~~(3) Location of wooded areas, specimen trees (overstory and understory), and primary or frontal dune vegetation that will be retained after development or construction;~~
 - ~~(4) Location and type of vegetation that will be replaced after development or construction;~~ and
 - ~~(5) Plan for replacement of any disturbed dune vegetation after construction, where applicable.~~
- ~~(d) Landscape and/or vegetation plans to be submitted should show the location of natural areas to be left vegetative species, size, and quantity to be protected or removed and/or location, species, size and quantity to be planted.~~
- ~~(7) location of areas to be filled~~

(Ord. of 3-10-2009; Amend. of 5-15-2012)

Sec. 32-75. Vegetation plan review.

(a) The vegetation plan will be reviewed by the town forester and development services staff for compliance with the requirements and guidelines provided in section 32-76.

(b) Plan submittal, review, and approval are mandatory for single-family and two-family and three-family residences or any land use activity. ~~Changes~~ No changes are to be made to the approved vegetation plan during the construction process must be approved and documented by without receiving written consent from the department of ~~community~~ development services. Compliance with the approved vegetation plan is required prior to issuance of a certificate of occupancy, and the recording of a final plat for all but single family residences.

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(c) Plan submittal, review, and approval is mandatory for major residential uses (multiple-family dwellings, townhouses, and condominiums), institutional uses, commercial uses, planned unit developments and subdivisions. ~~No changes are to be made to the approved vegetation plan during the construction process without receiving written consent from the department of community development services. Compliance with the approved vegetation plan is required prior to issuance of a certificate of occupancy or recording of a final plat for the uses.~~

(d) The developer of any project requiring compliance with this article must meet with the town forester and development services staff to discuss tree protection and other matters relating to this chapter prior to beginning land disturbing activities.

(Ord. of 3-10-2009; Amend. of 5-15-2012)

Sec. 32-76. Tree and vegetation guidelines.

Vegetation plans shall comply with the following guidelines:

(a) Provide for the retention and protection of existing trees and the planting of new trees as follows:

(1) For lots with available sewer, a minimum of one existing specimen tree shall be saved per 1450 square feet of lot size except where a determination has been made that the retention of existing trees would interfere with essential site improvements. ~~overstory tree or two existing understory trees shall be saved per 2,025~~ This determination will be made by the department of ~~community development~~ services following consultations with the developer. Every effort will be made to retain and protect specimen trees. ~~If retention is not a viable option, the minimum stocking level required will be dependent upon the number of specimen trees removed from the lot. One tree with a minimum caliper at breast height of 2 inches shall be planted for every specimen tree removed from the lot, up to five trees. Lots other than oceanfront properties shall have a minimum of two trees planted prior to completion of development. Oceanfront properties are excluded from these requirements. Owners of oceanfront properties are encouraged to preserve existing specimen trees, vegetation, and dunes. Where the vegetation is deemed inadequate by Development Services, a combination of trees and/or grasses will be planted to provide for a continuous planted area of 50 square feet for each 700 square feet of living area. If fewer than one existing specimen tree exists per 1450 square feet of lot size or if~~

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~~no trees exist on said lot, a minimum stocking of one specimen tree with a minimum caliper at breast height of at least two inches shall be achieved through planting per 1450 square feet of lot size. Owners will be encouraged to maintain specimen plants and existing dunes on ocean front lots. Where the vegetation is deemed inadequate, a combination of trees and/or grasses will be planted to provide for a continuous planted area of 50 square feet for every 700 square feet of living area.~~

(2) ~~For lots with no available sewer and a septic system will be used, a minimum of one existing specimen tree shall be saved per 1625 square feet of lot size except where a determination has been made that the retention of existing trees would interfere with essential site improvements. This determination will be made by the department of community development services following consultations with the developer. Every effort will be made to retain and protect specimen trees. If retention is not a viable option, the minimum stocking level required will be dependent upon the number of specimen trees removed from the lot. One tree with a minimum caliper at breast height of 2 inches shall be planted for every specimen tree removed from the lot, up to five trees. Lots other than oceanfront properties shall have a minimum of two trees planted prior to completion of development. If fewer than one existing overstory tree or two understory trees exist per 2,025 square feet of lot size or if no trees exist on said lot, a minimum stocking of one overstory tree with a minimum caliper of two inches or two understory trees with a minimum caliper of one inch per 2,025 square feet of lot size shall be achieved through planting.~~

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(2) ~~For lots with no available sewer and a septic system will be used, a minimum of one existing overstory tree or two existing understory trees shall be saved per 2,200 square feet of lot size except where a determination has been made that the retention of existing trees would interfere with essential site improvements. This determination will be made by the department of community development services following consultations with the developer. Every effort will be made to retain and protect specimen trees. If fewer than one existing specimen overstory tree exists or two understory trees exist per 1625, 2,200 square feet of lot size or if no trees exist on said lot, a minimum stocking of one specimen overstory tree with a minimum caliper at breast height of at least two inches or two understory trees with a minimum caliper of one inch per 1625, 2,200 square feet of lot size shall be achieved through planting. Staff in Development Services The town forester or his/her designee shall be available to answer any questions concerning which trees would be best to save or which species of trees would be best to plant.~~

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(b) Preserve and protect as much ~~natural~~ wooded area on the site as is practicable. Where existing trees and shrubs are being preserved or replaced, applicants ~~will~~ are encouraged to provide continuous planted areas of at least 50 square feet for every 700 square feet of building area.

(c) Incorporate existing vegetation, ~~natural~~ wooded areas, and specimen trees into required shoreline, wetland, and visual buffers where possible.

(d) Where vegetation is being replaced, applicants may select plant types from the list provided in Seacoast Plants of the Carolinas (University of North Carolina Sea Grant Program, Publication UNC-SG-73-06), "Trees for Oak Island", or other comparable resources.

(e) Applicants shall not completely clear shrubs and grasses in ~~areas designated as preserved wooded~~ natural areas in vegetation plans without the approval of Development Services ~~the town forester.~~

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~~(f) In any area where the town forester and development services staff determine that growing conditions prevent the strict application of subsection (a) above, the town forester or his/her designee or development services staff may approve a vegetation plan that varies from those requirements. Alternative plant species and number of required plantings will be determined by the town forester or his designee.~~

~~(g) Compliance with this article must be made within one year from the date of demolition of a structure. The development services staff may extend this time for a period not to exceed one year. (For example, if a house is to be demolished and no replacement structure is to be built within one year, the developer must bring the lot into compliance with this article. If building will commence within one year of the demolition of the structure, the developer may wait until the new structure is completed prior to planting any needed replacement trees on the property).~~

(Ord. of 3-10-2009; Amend. of 5-15-2012)

Sec. 32-76.1. Parking facilities landscaping for new development projects.

(a) For new development projects requiring more than ten off-street parking spaces, it is required by this chapter that a site plan and parking facility vegetation plan be submitted to the community development services staff and town forester for review and approval and for purposes of compliance with the landscaping requirements of the section.

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(b)

Minimum standards. At least eight percent of the gross area of a parking facility shall be landscaped with ~~an the exception in the interior of those lots falling under section 1(d), the parking lot.~~ For purposes of this section, ~~interior shall mean~~ the area within the parking facility curb or pavement and extensions that create a common geometric shape such as a square, rectangle, or triangle.

(1) Trees and shrubbery planted pursuant to this section shall include at least one tree with a minimum caliper at breast height of two inches at breast height and six shrubs at least 18 inches in height in at least three gallon containers at planting per 2500 square feet of parking facility. At least 50 percent of the trees planted shall be of a shade/canopy tree species as defined by the International Society of Arboriculture. (Example, in each required peninsula one tree and six shrubs minimum).

a. All plantings shall be evenly distributed throughout the parking facility or adjacent to the facility;

b. All interior plantings shall be protected by raised concrete curbing or other devices such as wheel stops;

c. Consecutive parking spaces shall incorporate landscape peninsulas no more than ten spaces apart and at least on the ends of all parking rows. Peninsulas shall contain at least 100 square feet in area and at least eight feet in width, measured from back of curb/barrier to back of curb/barrier.

d. Lots less than 15,000 square feet shall meet a landscape standard of at least six percent of the gross area of a parking facility with vegetation selected from a list maintained by Development

Services of one tree with a minimum caliper of three inches at breast height and four shrubs at least 18 inches high in at least three gallon pots per 1800 square feet of parking facility.

(c)When a parking facility is within 50 feet of the public right-of-way, a perimeter planted strip shall be installed, consisting of a low buffer incorporated into the streetyard.

(d)The development services staff may waive all or part of the requirements of this section for any facility which is limited to periodic or intermittent use for vehicular parking, such as parking lots for churches or recreational facilities, provided the parking facility is completely covered by grass or otherwise presents a landscaped effect.

(e)The development services staff may waive the requirements of this section for temporary parking lots when determined that a waiver is necessary to relieve hardship and will not violate the purposes of this section. Any such waiver shall not exceed one year.

(Ord. of 3-10-2009; Amend. of 5-15-2012)

Sec. 32-76.2. Tree and shrub preservation.

(a)A major objective of this Code is to encourage the preservation of existing vegetation wherever possible while allowing quality development to take place. To qualify for landscape, buffer and screening requirements, the following measures shall be required for preserved trees and shrubs ~~on proposed subdivisions, planned unit developments, multifamily developments, and all industrial and commercial projects.~~

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(1)Protective fencing not less than four feet high or other construction barrier shall be placed at and completely encompass the root protection zone of all preserved plants.

(2)Any tree whose root protection zone will be affected by soil removal shall have roots cut clearly by trenching at a point at least one foot outside the construction barrier installed as required above.

(3)The following shall be prohibited within the root protection zone of any preserved plant:

a.Grading and excavation which involves cutting or filling to a depth of more than three inches;

~~b.Pouring of any material onto ground which is toxic to plants;~~

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~~c.Installing, depositing, placing, storing, or maintaining any stone, brick, sand, concrete or other materials which may impede the free unobstructed growth of or passage of water, air, and fertilizer to the roots;~~

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~~d.No storing of any construction materials within the root protection zones of the preserved vegetation;~~

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~~e.Attaching any sign, poster, notice or other object, or fastening any guy wire, cable, rope, nail, screw, or other device to any preserved plant for any reason other than that of a protective nature to the plant;~~

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~~f.Causing or encouraging any fire or burning of any kind near or around any plant;~~

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~~g.Parking or operating construction or passenger vehicles of any type within the root protection zone.~~

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(b) The pouring of any material on the ground that is toxic to plants, e.g. gasoline, oil-based paints, shall be prohibited.

(Ord. of 3-10-2009; Amend. of 5-15-2012)

Sec. 32-76.3. Landscaping maintenance for projects other than single family residential.

The owner and/or their agent shall jointly and severally be responsible for the maintenance of landscape improvements and other requirements of this Code. The requirements of this Code shall be maintained according to the following:

(a) All landscaping shall be maintained in a neat and orderly manner.

(b) Preserved vegetation which dies within five years from the date of completed construction shall be replaced by approved introduced plants within 12 months of loss. Failure to do so will result in a penalty being assessed by the town council. ~~This money will be placed in the town tree preservation trust fund. The money collected from this program will be used for education and to place specimen trees on public property in town.~~

(c) Introduced plants which die within the first five years of establishment shall be replaced with plants of similar variety and size within 12 6 months of loss. Failure to do so will result in a penalty being assessed as outlined in subsection (b) above.

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(d) Although not mandatory, pruning should be done according to National Arborist Association pruning standards.

~~(e) Broken irrigation lines or heads shall be replaced promptly to ensure adequate irrigation and prevent waste of water.~~

~~(f) Fencing, permeable paving and other non-plant landscaping improvements shall be maintained in as close to installation conditions as possible.~~

(Ord. of 3-10-2009; Amend. of 5-15-2012)

Sec. 32-77. No clearing without permit.

No clearing or removal of vegetation other than bushhogging shall be permitted on any undeveloped lot or parcel or any lot or parcel to be redeveloped without a valid land use permit from the town. The following activities are exempt from this section: bona fide forestry and agricultural practices, hobby farms (such as vegetable or flower gardens and nurseries), gardening or landscape maintenance, and minor clearing of vegetation for line-of-sight surveying, footpaths, and minor clearing and/or cutting of grasses, weeds, vines and so on as required for responsible property maintenance. Vegetative material will be disposed of properly as indicated in Sec. 24-65.

(Ord. of 3-10-2009; Amend. of 5-15-2012)

Sec. 32-78. Flexible setbacks.

The allowable building area on each lot or parcel may be moved toward one side lot line and either the rear lot line or the front street line a distance of up to 25 percent of the required setback for the zoning district for the purpose of preserving natural wooded areas and/or specimen trees. This section does not

increase the maximum permitted length and width of the allowable building area. Such setback or yard modifications must be approved by the development services staff in writing prior to construction beginning. Setback adjustments must be notated in the final survey.

(Ord. of 3-10-2009; Amend. of 5-15-2012)

Sec. 32-79. Enforcement; penalties for violations of article.

Any person removing vegetation from a lot or tract in violation of the requirements of this article shall be subject to a civil penalty of \$500.00 as permitted by North Carolina General Statute 14.4. The department of community development services may stay enforcement of the civil penalty if the offender replants the disturbed area in accordance with an approved vegetation preservation plan that meets the guidelines of subsection 32-74(c) and section 32-76. Appeals of decisions of the department of development services concerning enforcement of this article may be made to the board of adjustments within ten days of the decision. Appeals to the board of adjustments shall be made in accordance with section [18-334 of this Code].

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(Ord. of 3-10-2009; Amend. of 5-15-2012)