

**FINAL**



## Town of Southern Shores

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**Planning Board Meeting**

**February 18, 2020**

**5:30 p.m., Pitts Center**

### MEETING MINUTES

#### I. **CALL TO ORDER:**

Chairperson Andy Ward called the meeting to order at 5:30 p.m. Planning Board Members Ed Lawler, David Neal, Don Sowder, Tony DiBernardo and ETJ member John Finelli were present. Also, in attendance were planning staff members Wes Haskett and Dabni Shelton.

#### II. **PLEDGE OF ALLEGIANCE:**

Chairperson Ward led the Pledge of Allegiance.

#### III. **ELECTION OF OFFICERS:**

Chairperson Ward welcomed the two newly appointed alternate Planning Board members Linda Burek and Robert McClendon. Chairperson Ward continued with the election of officers for the remainder of the fiscal year through June 30, 2020. Wes Haskett opened the floor with nominations for Chairperson. Tony DiBernardo nominated Andy Ward and John Finelli seconded the motion. There being no other nominations, the motion passed unanimously (6-0). Nomination for Vice-Chairperson – Chairperson Ward nominated Don Sowder. David Neal seconded the motion. There being no other nominations, the motion passed unanimously (6-0).

#### IV. **APPROVAL OF AGENDA:**

Ed Lawler made a motion to approve the agenda. Chairperson Ward seconded the motion. The motion passed unanimously (6-0).

#### V. **APPROVAL OF MINUTES:**

Wes Haskett stated that the Town Clerk clarified that the former Chairperson Elizabeth Morey's name would be changed to then Vice-Chairperson Andy Ward for signature since the meeting took place at that time. That would be amended on the final version. Chairperson Ward requested changes on page 3 of 5 striking "fence" and replace with "retaining wall". Don Sowder made a motion to approve the minutes with changes. Ed Lawler seconded the motion. The motion passed unanimously (6-0).

#### VI. **PUBLIC COMMENT:**

None

#### VII. **OLD BUSINESS:**

None

**VIII. NEW BUSINESS:****A. Approval of 2020 Meeting Schedule**

Wes Haskett stated that the meetings going forward are all held on the 3<sup>rd</sup> Monday of each month at 5:30pm. There was discussion from Don Sowder to consider moving the meetings to the fourth Monday of each month. Wes Haskett stated that the meeting dates were in the Town's rules and procedures to be held on the third Monday. Chairperson Ward asked for a motion to approve. Ed Lawler motioned to approve. Tony DiBernardo seconded the motion. The motion passed unanimously (6-0).

**B. Process for updating the Town's Flood Damage Prevention Ordinance and adoption of the new flood maps**

Wes Haskett gave a powerpoint presentation with a brief history and background of the current and preliminary Flood Insurance Rate Maps (FIRM's). The current flood maps for Dare County and Southern Shores became effective on September 20, 2006. The new maps were released on June 30, 2016 and they will become effective June 19, 2020. As part of the adoption of the flood maps; the Town's Flood Damage Prevention ordinance must be updated and the Planning Board serving as an advisory and recommending board will be required to make comments and recommendations prior to going to Town Council for a public hearing and adoption. Federal law requires the maps to be adopted prior to the effective date. One question that came up during a previous Town Council meeting was what will happen if the Town does not adopt prior to the effective date. Wes Haskett stated that the Town would no longer be eligible as a participating community in the Community Rating System (CRS) program and we would lose our community rating of 6.

The current maps versus the new: There are 250 structures currently in a VE flood zone and the new maps depict 122 structures in a VE flood zone. Staff feels this is a significance difference, which is a difference of 128. There are currently currently 1,035 structures in the AE flood zones and the new maps depict 237. The difference is 798. The new maps are available on-line only and may be viewed and printed on the website [www.fris.nc.gov](http://www.fris.nc.gov) and there is a link under the Flood Damage Prevention section of the Town's website [www.southernshores-nc.gov](http://www.southernshores-nc.gov). There is obvious concerns with the potential impacts with the new maps. As a result, local officials with Dare County and all the municipalities, planners and other staff within their jurisdictions have been meeting regularly as a CRS Users Group since these maps were released on June 30, 2016. The discussion that the Group has been having has been primarily on public awareness, historical flooding, property owners dropping flood insurance policies versus potential flood claims and their impacts on local, state and federal levels and responsible building practices as well as developing higher regulatory standards for construction. Mr. Haskett recalled to the Board the recent discussion where the building height was amended recently to go from the eight (8) foot measurement which ties into the higher regulatory standard that staff will be recommending being considered.

AO flood zones are now included in Southern Shores which reflect potential flooding from overtopping of the primary dunes on the oceanfront. The AO zones do not reflect shallow flooding from rainfall and most of NC Hwy 12 and the Avenues experienced significant flooding from Hermine and Matthew due to rainfall only.

Concerns to be continued, significant number of properties that are being removed from the Special Flood Hazard Area's (SFHA's) into the Shaded X or X Zones. There is a concern that property owners will cancel their flood insurance and we have been

encouraging and will continue to encourage them not to cancel their policies. They currently receive a subsidized rate on flood policies. If property owners cancel their flood policies it could result in higher rates if future maps revert back to flood zones or higher base flood elevations.

The current soundside flood zone is an AE 7 foot base flood elevation (BFE) with a local 2 foot freeboard and the new AE flood zone is going to a 4 foot base flood elevation.

As a result of all these concerns, staff is recommending the establishment of a "Local Elevation Standard" of eight (8) feet and would apply town-wide in the AE, AO, Shaded and X zones. This new standard would be applied for specific types of construction within all these zones. Requirements in the Shaded X and X zones would include elevation certificates or other documentation demonstrating compliance with the Local Elevation Standard.

With respect to the next step in the flood map adoption process, staff will provide this Board with more information at the March 16<sup>th</sup> meeting. We would also like to hold a public informational meeting with stakeholders sometime in late March. Staff will reach out to those groups to attend the meeting to have a discussion and answer questions from the public.

A Planning Board recommendation is needed and prior to the Town Council adoption of the maps and the maps becoming effective on June 19, 2020.

Don Sowder asked for a brief overview of the difference between V zones and A zones.

Wes Haskett explained that the VE flood zones are oceanfront, the AE zones are split into two locations with AE 7 foot BFE on the soundside and AE 9 foot BFE is mostly from the west side of NC Hwy 12 to semi-oceanfront.

Chairperson Ward asked about staff providing maps for the Board to review during the meeting. Permit Officer, Dabni Shelton replied and gave an overview of what staff is proposing to provide to the Board at the scheduled March 16<sup>th</sup> meeting.

Dabni Shelton informed the Board that maps for visual purposes have been developed with the help of Dare County IT Department to include: effective and preliminary flood maps, maps with properties and structures shown to be removed from SFHA's, and elevations of properties. The CRS Users Group developed a brochure last year for public awareness and have been meeting regularly with insurance agents, realtors, engineers, surveyors and the Outer Banks Homebuilders to gain their input in moving towards implementing higher regulatory standards in the local flood ordinances throughout Dare County. What will be presented to the Board will be an ordinance that has been in discussion for four years. Each municipality and Dare County will be presenting variations of higher regulatory standards in their ordinances as it pertains to their historical flooding. Our town staff has considered historical flooding, previous flood maps, input from design professionals and we recommend eight (8) feet as a good starting point elevation to consider as a Local Elevation Standard.

Dabni Shelton described the VE flood zone currently going from a 12 foot BFE to VE 11, 12, 13 and 14 foot BFE's. There will be a lot of discussion expected to take place as we consider regulating these areas. Staff hopes to have the draft Flood Damage Prevention Ordinance to this Board in a timely manner to give the Board ample time to review and compare to the current ordinance so that staff and the Board may get right into the discussion at the next meeting. She reiterated that the window to adopt is short

therefore staff encourages members of the Board to contact staff with any questions they may have during review. The informational meeting being planned will help the public and this Board to ask and answers questions as we move forward towards recommendations and adoption.

Chairperson Ward asked staff what the Boards responsibility was moving forward.

Wes Haskett answered that this was similar to a text amendment in which this Board would make a recommendation for approval to Town Council.

Dabni Shelton informed the Board that the draft Flood Damage Protection Ordinance with not have the typical strikethroughs and underlines and will have language identified as the State and Federal changes/requirements and the local recommendations. Our draft ordinance has been reviewed by the State and is in compliance with their required language. The ordinance will be color coded to easily see the different references.

Chairperson Ward summarized that the Board will essentially be comparing the staff recommendations in the draft ordinance and what is currently effective to consider changes.

Dabni Shelton stated that the Town of Southern Shores currently has a considerable number of properties within the Shaded X zones and higher regulatory standards in the Flood Damage Prevention Ordinance. The higher regulatory standards equate to points received as a participating member in the CRS program. During the town's last CRS Cycle Visit, in May 2017, we went from a 7 to a 6 classification (which is better) therefore, property owners may receive an increased discount on their flood insurance. With the removal of more properties from the SFHA's to Shaded X and X zones; we need to look at retaining those points to keep our current 6 class rating in the program which provides a 20% discount on flood policies in a SFHA and 10% within Shaded X and X zones.

Chairperson Ward stressed to the Board that he wanted the other Board members to read it and read it again, so that they may have some good conversations going forward. He also asked for examples as anecdotal examples of how properties are changing coming from a flood zone to an X zone.

Ed Lawler asked if beach nourishment or other similar changes can change the flood map information. Staff answered that it would not impact changes to the maps due to the State using scientific data, LIDAR, etc. to create the flood maps.

Dabni Shelton explained that the formal appeal process was the time to request changes to the maps and that time has passed.

David Neal asked who designed the flood maps. Staff replied that the State created the flood maps and were approved by the Federal Emergency Management Agency (FEMA). Rain events, and storms since Isabel were not included in the creation of the new maps.

Chairperson Ward reiterated the timeline which would be March 16<sup>th</sup> for Planning Board and possibly another meeting following before sending to Town Council to adopt prior to June 19, 2020. Special meetings may be called if necessary.

Dabni Shelton shared that the next CRS Users Group meeting is February 26<sup>th</sup> with local design professionals and at that time she will take the opportunity to get some dates of

availability from them to hold a public information stakeholders meeting at the end of March.

Tony DiBernardo asked why the AO flood zone language references rivers or streams. Dabni Shelton answered by saying that the AO zone is a FEMA term used broadly in different topographical locations such as rivers, streams and over topping of dunes and shallow flooding.

**IX. PUBLIC COMMENT:**

Elizabeth Morey – She asked what if any role the Department of Insurance (DOI) agency played in the creation of the maps.

Dabni Shelton answered that the North Carolina Department of Public Safety developed the maps and she was not aware of DOI's involvement.

Matt Neal – He interjected comments to Ms. Morey's question. He explained that some counties within the State received maps that better reflected historical flooding data however, Dare County was not one of them.

Chairperson Ward closed public comment.

**X. PLANNING BOARD MEMBER COMMENTS:**

Chairperson Ward asked Wes Haskett to give a brief synopsis of the Smuts appeal and where it stands now with the CAMA litigation.

Wes Haskett replied that the Town Attorney received notice earlier this month that the zoning appeal petition for 134 Ocean Blvd that was filed by Ms. Smuts to Superior Court was voluntarily withdrawn.

Chairperson Ward asked how far it went through the courts after it left the Board of Adjustments.

Wes Haskett was unsure because he was not directly involved however, it has been withdrawn. He further stated that there were two other appeals by Smuts and Tignor of issued State CAMA Permits for 98 and 134 Ocean Blvd. There was a hearing held that same week, there was a motion filed and the State Attorney General's office is responsible for handling these appeals since these are state permits. They made a motion to dismiss and it was denied so that means there will be a hearing and we do not know as of yet when that hearing date will occur. That case will be moving forward to be considered by a judge. A motion was made earlier to combine the two appeals of the state permits to be one case and that was granted by the judge.

Chairperson Ward previously asked Wes Haskett to provide for public record, the approximate Town expenditures for the Smuts appeal of the Board of Adjustments decision.

Wes Haskett stated that the total cost incurred to the Town was \$23,349.36 which included fees for the court reporter for the hearing of the Board of Adjustments, video recording of the meeting, Town Attorney fees, Board Attorney fees and printing of

materials. He expects to receive additional invoices from the Town Attorney for the recent withdrawal as he was preparing for the upcoming hearing.

Chairperson Ward asked Wes Haskett if there was any way for the Town to recoup any of that money outside of a lawsuit.

Wes Haskett responded that he was unsure however, he does not think so. That would be a question for the Town Attorney since recent legislature changes were made regarding recouping of monies on appeals.

Chairperson Ward stated that moving forward he wanted to know how the Town can protect themselves with someone having an axe to grind about something and has deep pockets or a Go Fund Me page; at which time can the Town stand up and fight back because it obviously cost the Town a lot of money.

**XI. ANNOUNCEMENTS:**

Wes Haskett stated the next meeting is March 16<sup>th</sup> and having no other applications for the agenda, the Board will continue further discussion of the Flood Maps and Flood Damage Prevention Ordinance.


**XII. ADJOURNMENT:**

Chairperson Ward adjourned the meeting at 6:23pm.

ATTEST:

  
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Andy Ward, Chairperson

RESPECTFULLY SUBMITTED:

  
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Dabni Shelton, Permit Officer  
by: WA