

Kitty Hawk Planning Board Meeting
January 16, 2020 – 6:00pm
Kitty Hawk Municipal Building

AGENDA

1. Call to Order/Attendance
2. Approval of Agenda
3. Approval of Minutes:
 - a. November 14, 2019
4. Administrative Report
 - a. Town Council Action
5. Public Comment
6. Text Amendment:
 - a. **Chapter 14. Flood Damage Prevention.**
Remove the existing Chapter 14 in its entirety and replace it with a Model Ordinance that addresses the minimum criteria of the National Flood Insurance Program (NFIP) and wording required to use the newly revised Flood Maps; included Text Amendment is the recommendation on adoption of the new FIS Study and Flood Insurance Rate Maps.
7. Comments:
 - a. Chairman Richeson
 - b. Planning Board Members
 - c. Town Attorney
 - d. Planning Director
8. Adjourn
1. **Call to Order Attendance:**
Chairman Richeson called the January 16, 2020 Kitty Hawk Planning Board to order at approximately 6:00pm.
Board Members Present:
John Richeson, Chairman; Bryan Parker, Vice-Chairman; Dusty Rhoads, Member; Jim Geraghty, Member; Chuck Heath, Member; Casey Varnell, Town Attorney; Rob Testerman, Planning Director.
Absent:
Gary Muir, Alternate, Matt Spencer, Alternate.

Kitty Hawk Planning Board
Meeting Minutes
January 16, 2020

-2-

2. **Approval of Agenda:**

Hearing no objections/changes/corrections to the January 16, 2020 Agenda, the Agenda was approved unanimously.

3. **Approval of Minutes:**

Hearing no objections/changes/corrections to the November 14, 2019 Meeting Minutes, the Minutes approved with Mr. Richeson making the motion to approve and Mr. Geraghty seconded and the Minutes were approved unanimously.

4. **Administrative Report:**

Mr. Testerman stated that there have been no current issues for the Council to consider from the Board; however, they are revisiting the Hornbeam Road rezoning.

5. **Public Comment:**

- Mr. Richeson asked if any member(s) of the audience would like to speak, and if so, to come forward and state their name/address.
- No member(s) of the audience approached to address the Board and Mr. Richeson explained that the purpose of the Board is strictly advisory and that the Board could approve an item and the Council could deny and vice versa.

6. **Text Amendment:**

- a. **Chapter 14. Flood Damage Prevention.** Remove the existing Chapter 8 in its entirety and replace it with a model ordinance that addresses the minimum criteria of the National Flood Insurance Program (NFIP) and wording required to use the newly revised flood maps; included Text Amendment is the recommendation on adoption of the new FIS Study and Flood Insurance Rate Maps.
- Mr. Testerman began his presentation on Chapter 14 – Flood Damage - He presented the current maps on the screen and explained the following: ‘yellow’ area indicates the ‘x’ zone on the west side of the bypass; ‘blue’ is the AE flood zone with a base flood elevation of 8.3 feet and the east side is the AE zone where the base flood varies between 4 and 10 feet; ‘teal’ indicates the VE zone where the base floods are between 12 and 14 feet.

Kitty Hawk Planning Board
Meeting Minutes
January 16, 2020

-3-

(ASIDE: the new maps are currently only available online)

- The 'gray' area on the preliminary map is between the highways and the 'shaded x' area is near Charlie's RV Park on the west side of the beach road. There is also an 'x' zone in Kitty Hawk Landing and the areas in the AE zone where the base flood goes from 8.3 feet to 4 feet.
- The other flood zones on the east side of the bypass are mapped into AH and AO zones. The AH zone is regulated almost consistent with the AE flood zone where the base flood elevation is between 9 and 10 feet.
- The AO flood zone is regulated differently which is for shallow flooding where the water comes in and cannot get out at. This is indicated as a depth of 2 feet and the regulation mapped level is 2 feet above the highest elevation rather than an actual elevation mark and the range from the VE zone on the ocean front and the range is from 11 to 13 feet for the base flood elevation.
- Mr. Richeson asked if the AO zone included flood water from rains or is it inundation from over wash and Mr. Testerman answered that when the new maps were done rain waters were not taken into consideration.
- The AH flood zones are areas subject to inundation at a 1% annual chance of shallow flooding which are primarily areas of ponding where the average depths are between 1 and 3 feet. The base flood elevations are derived by detailed hydraulic analyses.
- Per the current maps there are over 500 structures in the VE zone and 1,898 structures in the AE flood zone (ASIDE: the 1,898 are figures from a few years ago and could now be higher). The AE zone west of 158 where the base flood is currently 3 feet and the Ae zones between the highways range from 9 to 10 feet and the VE zone on the ocean front has a base flood range of 12 to 14 feet.
- Preliminary maps will become effective JUNE 19, 2020 and will show 278 structures in the VE zone, 979 structures in the AE zone and 389 in the AH zone and 94 in the AO zone.
- The reduction on the base flood elevation on the west side are going from 8 feet to 4 feet. The AH zones between the highways, the base flood is between 9 and 10 feet; the AO zone, with a depth of 2 feet and the VE zone base flood elevation is from 11 to 13 feet. These are based on the current maps vs the new maps, effective on June 19, 2020.

Kitty Hawk Planning Board
Meeting Minutes
January 16, 2020

-4-

- Mr. Testerman stated that when the new maps were distributed to the other Planners in Dare County, they have been meeting to discuss the base flood elevation levels coming down and the properties that would come out of the flood zones. They have a shared concern about the number of structures coming out of the various flood zones and the reduced “BFE”.
- Mr. Testerman also stated that this has been a work-in-progress for the past few years and at that time the Home Owner’s Association was brought in for their opinion and the consensus at that time was a proposal at the local elevation standard to be put into the Model Ordinance which would allow the counties in Dare to regulate the AE zones and the ‘shaded x’ zones. The AE zones have shown to flood at a higher elevation than what the maps currently indicate and with the proposed elevation standard it would be require building to a higher elevation.
- Requiring the reference level to be a good deal higher than BFE will benefit insurance premiums as well. Basically, every foot above base level, the premiums are reduced by a significant amount.
- The draft ordinance states that the State provides and sets the minimum standards that each locality has to adhere to and a variety of options that the Planning Board can propose for the ordinance; i.e., higher standards which would help in the CRS rating (Community Rating System) which is to protect the citizens as much as can be done for flood damage/risk which could improve the class rating which in turn would help to reduce future insurance premiums.

OPTIONAL LANGUAGE:

- In the definitions for the elevation standard of the draft on page 6 means a locally adopted elevation would be used as the Regulatory Flood Protection Elevation (RFPE) in the ‘shaded x’ and ‘x’ zones or used in conjunction with the BFE and freeboard standards to mitigate flood hazards in the AE, AO, VE as depicted in the FIRM for Kitty Hawk which should also include the AH zones which would lay the ground work.

REGULATORY FLOOD PROTECTION ELEVATION:

- Mr. Testerman referenced the Staff Report that indicated that this was updated on the draft ordinance but what IS listed in the Staff Report is incorrect for the proposed AO zone.

Kitty Hawk Planning Board]

Meeting Minutes

January 16, 2020

- This is where the Regulatory Flood Protection Elevation (RFPE) comes into play in the VE and AH zones where the RFPE is the Base Flood Elevation that is shown on the FIRM plus 1 feet of freeboard which is currently what is being done in both the AE and AH flood zones and the reason to maintain that standard in the AE and AH zones. The lowest base flood of 9 feet which is close to consistent to what is currently in the AE and VE zones along the ocean front.
- The AE zones proposed in the RFPE is the Base Flood Elevation as designated on the FIRM plus 3 feet of freeboard OR to an elevation of 8 feet above sea level, whichever is higher.
- Proposed in the 'shaded x' zone will not build living area below 8 feet in elevation.
- Page 7 of the Flood Damage Prevention Ordinance Summary there is a definition of a "Non-Conversion Agreement" that reads: means a document stating that the owner will not convert or alter what has been constructed and approved. Violation of the agreement is considered a violation of the ordinance and, therefore, subject to the same enforcement procedures and penalties. The agreement must be filed with the recorded deed for the property. The agreement must show the clerk's or recorder's stamps and/or notations that the filing has been completed.
- This would give the Town 30 points on the CRS PLUS this would add one additional component to the property owners' responsibility but this would not change anything in the development because you are not supposed to convert below the BFE enclosure space.
- There are also two add-ons to the Draft Ordinance where 30 more points can be gained for each one: the locality has the right to inspect the enclosures; the locality shall inspect the enclosures every year and having the requirement agreement would be beneficial.
- Also, on Page 7 there is a definition for Recreational Vehicles (RVs) and specifying that 'tiny homes/houses' and 'park models' do not meet the following items: RV means a vehicle is: 1) build on a single chassis; 2) 400 square feet or less when measured at the largest horizontal projection; 3) designed to be self-propelled or permanently towable by an light duty truck; 4) designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel or seasonal use; 5) is fully licensed and ready for highway use. This means that 'tiny houses' and park models that do not meet the listed items and are not considered Recreational Vehicles. (ASIDE: Staff has been receiving calls asking if 'tiny homes' are allowed and including the above statement would further clarify elevation regulations.)

Kitty Hawk Planning Board
Meeting Minutes
January 16, 2020

-6-

- **ARTICLE 3 – GENERAL STANDARDS – SEC. B – FLOOD PLAIN APPLICATION PERMIT AND CERTIFICATION REQUIREMENTS – SEC. 1-B-3-1**
- This would require post construction VE zone certification that the work was done to code. Currently, a V-zone Certification must accompany the plans and specifications verifying that the engineered structure and any breakaway wall designs meet the requirements.
- After the construction is complete, the Engineer would review the construction to certify the finished construction was compliant with the design, specifications and plans for the V-zone construction.
- **SECTION 3-a-1 OPTIONAL LANGUAGE:**
- When under construction an Elevation Certificate is listed as ‘optional’ and this has been the standard for Kitty Hawk and the recommendation would be to continue this which would give Kitty Hawk the option if there are any problems with any elevation issues while a building is under construction and these issues would then be discovered before any further construction would take place.
- **SECTION 3-a-4 OPTIONAL LANGUAGE:**
- The under construction EC would be waived in an ‘x’ and ‘shaded x’ zone if a survey would indicate that the gradient is at or above the RFPE of 8 feet which would be a cost saving for those properties/structures. Currently, the Town does require a Finished Construction Elevation Certificate (FEMA) in the ‘x’ zone and would continue under the local elevation standards which would be a change in practice for the builders in Kitty Hawk.
- **SECTION -4-B: OPTIONAL LANGUAGE:(strongly encouraged)**
- **ELEVATED BUILDINGS:** Shall not be temperature-controlled or conditioned. Non-temperature controlled dehumidifiers may be used in enclosed areas and shall not result in the enclosed area being determined to be conditioned space and this will be another way of ensuring that a structure would not be converted to a habitable space in the future.
- **SECTION 4-F (Page 23):OPTIONAL**
- Property owners shall be required to execute and record a non-conversion agreement prior to issuance of a building permit declaring that the area below the lowest floor shall not be improved, finished or otherwise converted to a habitable space (30 CRS Points).
- **SECTION 4G (Page 23):OPTIONAL**
- Release of restrictive covenant. If a property which is bound by a non-conversion agreement is modified to remove enclosed areas below BFE, then the owner may request release of restrictive covenant after Staff inspection and submittal of confirming documentation.
- **SECTION 5 – a – 1: OPTIONAL:**

Kitty Hawk Planning Board
Meeting Minutes
January 16, 2020

-7-

- Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure. **(NON-CONFORMING LANGUAGE)** This is currently in the Town's Ordinance and Staff would recommend keeping this requirement. (If there is a preformed structure that is 2 feet below base level elevation the addition level would need to be the same as the original level and cannot be any lower or higher.)
- **SECTION G (PAGE 29):**
- Sections 8 and 9 deal with the Conversion Agreement and Section 10 is the requirement for the finished construction for the V-zone certification.
- **SECTION H (PAGE 31): STANDARDS FOR COASTAL ZONES (ZONE CAZ)LIMWA:**
- There are no CAZ zones in Kitty Hawk and this section does not have to be included in the Ordinance.
- In the 'x' zone, the elevations are above 8 feet and these areas will probably not be affected by the proposed standard. Also, in the 'x' zone, the red structures will be in the 'x' zone once the maps become effective³ and have an elevation below 8 feet. But, there will not be a lot of structures that would be affected and comparing the elevations next to the preliminary maps do not show a lot of 'x' zones that will be affected as most are above 8 feet.
- A number of structures will not be affected and in comparing the elevations next to the preliminary maps it does not show a lot of 'x' zones affected as most are above 8 feet.
- Most of the affected properties will be in the AE zones on the west side of the bypass where the base flood elevation has been reduced to 4 feet. The other flood areas will be regulated as they currently are.
- In reviewing the revisions to the Flood Damage Ordinance, this would replace the entire Chapter 14 with the new language and the motion would include approval of the new Flood Insurance Study and by approving the Study, the approval would also include the maps.
- Mr. Testerman stated that when this is presented to Council for a Public Hearing, and if approved by Council, Kitty Hawk can start 'permitting' to the new maps BUT the insurance rates will not change on any prior structures until June 19, 2020.
- Mr. Geraghty asked if the Town had any plans in addition to the Public Hearing on the insurance plans and Mr. Testerman stated there have been a few public information meetings in conjunction with the other Towns in Dare which took place about a year ago and that flyers were distributed to all the property owners in Kitty Hawk highlighting that 'no risk' is 'low risk' and beyond the flyers being distributed, the general outreach has been to send out a General Flood Newsletter twice a year but no 'specific' meetings have been scheduled at Town Hall which may be a good idea to let the citizens know about the new flood elevation standards and to advise citizens not to drop their current flood insurance.

Kitty Hawk Planning Board
Meeting Minutes
January 16, 2020

-8-

- Mr. Testerman stated that both the Planning Board and Council agendas are advertised, flyers sent out and there is a limit to the kind of outreach that can be done and it's literally up to the citizens if they attend or not.
- Mr. Geraghty stated that in Ocracoke most of the citizens did not have flood insurance when Dorian hit.
- Mr. Testerman stated that there is one other definition that the Planners and some Building Inspectors throughout Dare discussed and that definition is on page 7 which is the **REFERENCE LEVEL** which states that "For structures within the Special Flood Hazard Areas designated as Zones AE, AH and AO, the 'reference level' is the bottom of the lowest floor or the bottom of the lowest attendant utility including ductwork, whichever is lower, with only flood resistant materials located below the reference level. For structures within the Special Flood Hazard Areas designated as Zone VE, the 'reference level' is the bottom of the lowest horizontal structural member of the lowest floor or the bottom of the lowest attendant utility including ductwork, whichever is lower. For structures within Zones Shaded X or X, the 'reference level' is the bottom of the lowest floor or the bottom of the lowest attendant utility including ductwork whichever is lower with only flood resistant materials located below the 'reference level.'
- The Town's current reference level is the top of the bottom floor and whatever the floor covering is, the proposed 'reference level' is the bottom of the lowest level.
- Mr. Geraghty stated that sometimes the ductwork runs below the joists and therefore, the bottom of the ductwork would have to be at 8 feet and if the ductwork is not running between the joists, but underneath, it could be 18" above at the top of the floor and if there are underpinnings, does that also count; if the ductwork is encased with the bottom of the encasement which is usually $\frac{1}{2}$ to $\frac{3}{4}$ " which is not a big deal but the ductwork is the big deal but people might lose a foot of elevation.
- Mr. Testerman stated that the question before the Board is, does the Board want to recommend the changes as proposed; add or edit out any specific language and Mr. Rhoads stated to take out the provision about the fill and Mr. Testerman that what was presented were the ones that were recommended and highlighted in the Staff Report but there is one optional requirement that would prohibit the fill was not being recommended by staff.
- Mr. Richeson had no further questions and asked if any Board Members had any further questions and it was decided that a motion to approve would be made and Mr. Richeson made the following: ***"I recommend approval of the proposed Text Amendment to replace the existing Chapter 14, Flood Damage Prevention Ordinance with the Staff recommended revised Chapter 14, Flood Damage Prevention Ordinance. I further recommend adoption of the revised Flood Insurance Study Number 37055CV000, effective date June 19, 2020"*** and Mr. Rhoads seconded and the measure was passed unanimously.

Kitty Hawk Planning Board
Meeting Minutes
January 16, 2020

-9-

7. **Comments:**

- a. Chairman Richeson – congratulated on the work that was done on this proposal.
- b. Planning Board Members – agreed
- c. Town Attorney – also agreed
- d. Planning Director – none

8. **Adjourn:**

Hearing no further comments Mr. Richeson adjourned the January 16, 2020 Planning Board Meeting at approximately 7:00 pm.

Respectfully submitted by Patricia Merski, Recording Secretary.