

Kitty Hawk Planning Board Meeting
July 27, 2023 - 6pm
Kitty Hawk Municipal Building

1. Call to Order/Attendance
2. Approval of Agenda
3. Approval of Minutes :June 29, 2023
4. Administrative Report:
 - a. Town Council Update, June, 2023
5. Public Comment
6. Text Amendment: 42-1; Definitions: Proposal to amend definition of 'minimum lot size' To exclude all wetlands from 'minimum lot size' calculations.
7. .Future Land Use Plan Update - Andrea Radford - Stewart, Inc., Raleigh, NC
8. Comments:
 - a. Chairman Richeson
 - b. Planning Board Members
 - c. Town Attorney
 - d. Planning Director
9. Adjourn

1) **Call to Order/Attendance**

Chairman Richeson called the Kitty Hawk Planning Board Meeting to order at approximately 6pm on Thursday, July 27, 2023

Members Present:

John Richeson, Chairman, Member; Bryan Parker, Vice-Chairman, Member; Jim Geraghty, Member; Craig Merrill, Alternate; Blair Meads, Alternate

Absent:

Matt Spencer, Member

2) **Approval of Agenda:**

Hearing no additions, deletions, etc. to the Agenda, the Agenda was approved unanimously.

3) **Minutes:**

- a. June 29, 2023 Minutes will be in Board's packets for the August, 2023 Meeting

4) **Administrative Report:**

a. Mr. Testerman stated that a Public Hearing is scheduled for the Text Amendment From a few months ago on 'temporary markets and gatherings' at the August Council Meeting.

5) **Public Comment:**

At this time, Mr. Richeson stated that the public can address the Board about any issue And emphasized the Planning Board is an 'advisory board' to the Town Council and Any of the Boards' recommendations to the Council are not binding and Council can Either deny or approve.

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- Mr. Richeson asked any audience member to approach the Board and state their name for the record.
- Katie Morgan, certified Arborist, is concerned that there are no clear regulations regarding tree removal/tree topping and tree preservation. She stated that Nags Head is moving ahead with an established written permitting process for builders, home owners and tree companies and without permits/rules, etc. Kitty Hawk will continue to see unethical tree removal which in turn affects erosion, loss of energy, wildlife habitat and a decrease in home values due to lack of character and aesthetics. Her company has contracts with the Whalehead Club and Pine Island Audubon Society in Currituck County and are also known as a member of The Historic Trees to the town of Manteo.
- Sharon Sullivan stated that she agrees with Katie's recommendation and is also concerned with the over development on her street within Kitty Hawk Village. She feels the end of her street is disjointed with developments on top of development and where a hundred year old oak tree was cut down to make room for further developments. Her property has been in her family for many years and with the further developments, feels that the neighborhood is being ruined.
- Jamie Hines stated that he and some of his neighbors discussed the various developments that are in process which in turn led to the proposed Text Amendment before the Board at this meeting. This Amendment does not seek to reduce or redefine the definition of lot area.. The proposal would address the definition of minimum lot size for newly proposed lots or subdivisions.
- Jesse Hines supports what Jamie is proposing but the big word for some of these developments is 'density' that needs to be considered.
- Mark Perry is also part of the group proposing the Amendment. He stated that a few months ago, the Supreme Court ruled on 'isolated wetlands' even though they did not rule or define what a 'wetland' is. They did rule on where the Corps of Engineers has jurisdiction but has not issued any further explanation for what that means to the ACE. He wants the Board to know that the Amendment is not 'anti-development' but 'pro-development' and if someone has a home, septic, ADU, shed and two driveways and is asking for 15ksf of wetlands, he feels is not asking for a lot, but if all of the aforementioned is on top of the lot with a bunch of wetlands underneath it would become a cesspool that would add to the current water concerns. Permits can be obtained from the Court even if not defined as 404 and if there is going to be development it should be brought to the Town with 15ksf.
- Amy Wells stated that the town is not what it used to be and that the Town is not anti-development and that the residents should work together to keep Kitty Hawk sacred for current and future generations which she feels has been disappearing.

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She would like the Town to consider adopting the oaks as the "Town Tree" and those on The perimeter could be saved. She is also concerned about the water levels and Some of the communities are starting to sink because of the rising water levels and There is a parking problem because of the increased density of some of the lots. Also, she feels that ADUs are not just structures, but 'new homes' and are increasing. She would like Kitty Hawk to maintain its current status and maybe there could be a Designated 'historic area' such as Kitty Hawk Village.

- Jay Overton's concern is about future lots in Kitty Hawk and that changing the minimum lot size is not going to solve the issues at hand and the ability to protect what is already in Kitty Hawk and not changing how the minimum lot size is determined. The definition now states CAMA wetlands & CRC are one and the same which he thinks could be better defined and feels that what this proposal is changing wetlands as defined by the Federal, and State government and local agencies in how changing the text as written and changing the text does not solve what is happening in Kitty Hawk Village. His recommendation would be for the Board to recommend to Council to deny the proposed Text Amendment and recommend an alternative that would more acceptable to solve the problem.

6. **Text Amendment 42-1 - Definitions.** Proposal to amend the definition of minimum lot size To exclude all wetlands from minimum lot size calculations.

- Mr. Testerman stated that the current definition for minimum lot size, as required by the various Zoning Districts, Marsh and Wetland areas as determined by CAMA and/or CRC regulations which are contiguous within estuarine waters, sounds and bays, areas of vegetation along the oceanfront as determined by CAMA and may not be used for the minimum lot size.
- The proposed language submitted by the Applicants would eliminate the CAMA, CRC reference and would therefore refer to any Federal, State or local agencies to define 'wetlands.' As is currently written the minimum lot size is 15,000 sf and the proposed lot of 10ksf of upland area and 5,000 sf of CAMA wetlands which would be denied based on the current definition; but, if the proposed lot has 10,000 sf of upland area and 5,000 sf of 404 federally designated wetlands instead of CAMA wetlands it could be approved based on the current definition.
- This Amendment would treat all wetlands the same and state that 15,000 sf of upland area would be required to create a new lot. He also referenced Mr. Perry's statements concerning the Supreme Court ruling and that the responsibilities of the Corps of Engineers has not been clearly defined and how their regulations would coincide with 'isolated wetlands'

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- He also stated that if the Board approves, then all the Districts listed; BR-1, BR-2, BR-3, VR-1 and VR-2 Districts would have to be changed to coincide with the minimum lot size definition and that all Districts would need to be included in the motion.
- Mr. Merrill asked how this Proposal would affect the Commercial Districts and Mr. Testerman stated that specific Commercial Districts do not have the same clarifiers for minimum lot size, but if the definition is changed in 42-1 then this would cover all the Commercial Districts as well.
- Mr. Varnell referenced the Federal, State and local agencies and feels that the intention is to capture any and all wetland type regulations whether it be through the State and the USACE which is Federal and through to the State. He also stated that the Supreme Court referenced a particular type of wetland that can no longer be considered a wetland and now they are trying to apply that when making their designations and what was 'typed' as a wetland may not be defined as a wetland going forward. When the survey is completed on that particular wetland and it no longer qualifies and the USACE and others will have to figure out how to implement the Supreme Court's ruling. He also feels that this has nothing to do with any Federal, State or local agencies that are included in the Proposal and that one of the agencies could regulate the definition of a 'wetland.'
- Mr. Richeson asked about the 404 mitigation that is permitted to bring in fill and Mr. Testerman stated that he with a permit from the USACE, filling wetlands is permissible, but is unaware of what the maximum fill area is.
- Mr. Meads stated that if 404 is allowed someone could bring in 10,000 sf of fill to bring up the lot and that waterways would be affected in bringing the lot size to 15,000 sf and Mr. Parker stated that part of the Proposal is to have consistency with a set of rules all would have to follow.
- Mr. Geraghty asked about the timeframe of the USACE and Mr. Varnell stated that the decision is up to them and doesn't recall any stipulation from the Supreme Court that this would have to be done by a given date.
- Mr. Merrill asked if people are allowed to build a building on a wetland if it is on a wetland or does that have to remain unencumbered and Mr. Testerman stated that if it's a federally regulated wetland, for anything to be developed on that wetland, a permit from the USACE which would have jurisdiction.

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- Mr. Merrill asked if these will pertain to different types of wetlands and Mr. Richeson stated that this is what the Amendment is proposing to have consistency and Mr. Varnell stated that the State enforces CAMA and the Coastal Resource Commission enforces the rules of CAMA and those will have a different set of guidelines than what the USAEC will have which are not enforced by the same agencies.
- Mr. Richeson stated that he mainly agrees with what has been discussed but is hesitant for a Federal agency to dictate our rules and would prefer that Kitty Hawk do this versus inviting one of the agencies dictate.
- Mr. Meads stated that Kitty Hawk can handle this more appropriately without any federal agency dictate but the Town would still be dictated by CRC and CAMA and that the Federal Government at some point is going to have some control that the Town would need to deal with and Mr. Varnell stated that the Town is not asking anyone to come in and regulate this issue and referenced Mr. Meads statement that fill can be permitted by applying on the Federal level.
- Mr. Testerman stated that if the Board approves the Text Amendment as written and stated as an example: if there is a tract of land that has large amounts of wetlands that are not CAMA wetlands the possibility exists that the overall density of the development would be reduced, as no wetlands, regardless of type, could count towards the 15,000 sq. ft minimum lot size.
- Mr Geraghty stated that he likes the idea of conveying a group to research all of this further and may be 'table' the Amendment until more research is done and presented to the Board.
- Mr. Richeson stated that a recommendation can be made to approve, deny or table and Mr. Varnell stated that if it's voted to table the Text Amendment, it should to be for a specific purpose and at the next Board meeting more information would be presented.
- Mr. Parker made a motion to approve the Text Amendment as presented by Staff regarding minimum lot size as well as necessary revisions to the Zoning Districts and the Planning Board has found this proposal to be consistent with the Town's Adopted Land Use Plan. Mr Richeson seconded.
- Mr. Varnell stated that if the majority is 'no' the Text Amendment fails and carries a recommendation of denial. The vote end 2 in favor (Richeson, Parker), 3 opposed (Heath, Geraghty, Meads) therefore the motion fails and will be presented to Council as recommendation 'denied'.

7. Future Land Use Plan Update; Andrea Radford, Stewart Inc., Raleigh, NC.

- Mr. Testerman stated that the Town has been working on the Land Use Plan with Stewart, Inc. and they have provided a draft document which was given to the Board Members.
- Mr. Radford to present a brief overview of the Purpose, Schedule, Vision & Goals and Draft Recommendations for the Future Land Use Plan.
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- She stated that two public meeting were held and Stewart took their responses in drafting a Land Use Plan.
- Major issues are: Trends & Community Concerns; Development & Character of Kitty Hawk, Housing Availability, Water Quality & Access, Tourism & Visitation, Resiliency & Flooding, Pedestrian Bicycle Facilities.
- Specific areas of the Town were highlighted that could be impacted were: Permanent Population Projection, Seasonal Population Projection & Human Elements, i.e. age & race, Income.
- She also spoke about the primary concerns for the future of Kitty Hawk: Affordable Housing, Public Infrastructure, Storm resiliency, Healthcare Access; Tourism Support Industry - short and long-term rentals, Stormwater & Environmental Issues and Internet Services.
- Also, the Coastal Area Management Act (CAMA) Compliance which are to include CAMA implementation steps that are identified; Land Use Topics Defined by goals & objectives; Land Use Compatability (LUC); Water Quality (WQ), Public Access (PA), Infrastructure Carrying Capacity (ICC), Natural Hazard Areas (NHA) and she refered to the map on screen in highlighted areas that pertained to the aforementioned.
- Some of the areas highlighted are: Future Use Land Plan, Invest & Improve, Maintain & Enjoy, Accommodate & Conserve and Parks & Conservation.
- One area that was a surprise is a conceptual idea for the area that surrounds Town Hall which is underutilized and there could be a possibility of implementing paved trails and a pavilion on site which would provide more recreation opportunities for the community.
- Ms. Radford ended and asked for questions and Mr. Richeson asked what the definition of 'attached housing' is and Ms. Radford stated that 'attached housing' includes, apartments, town homes and condos.
- Hearing no further questions, Mr. Richeson thanked Ms. Radford for her presentation.

8. **Comments:**

- a. Chairman Richeson - thanked all for their input
- b. Planning Board Members - none
- c. Casey Varnell - none
- d. Planning Director - Mr. Testerman referenced the public comments regarding the trees and if any type of regulation would have to be a Text Amendment Application or a Council Directive for Staff to proceed.

9. **Adjourn:**

Hearing no further comments, Mr. Richeson adjourned the July 27, 2023 Planning Board Meeting at approximately 7pm

Respectfully submitted by Patricia Merski, Recording Secretary