

Town of North Topsail Beach

Joann M. McDermon, Mayor
Mike Benson, Mayor Pro Tem

Aldermen:
Richard Grant
Connie Pletl



Alice Derian, ICMA-CM
Town Manager

Melinda Mier
Town Clerk

Nature's Tranquil Beauty

Planning Board

Program for Public Information (PPI) Committee

Regular Meeting Draft Minutes

Thursday, August 11, 2022 at 5:00 pm

2008 Loggerhead Court, North Topsail Beach, NC 28460

Present: Hanna McCloud – Chair, Paul Dorazio – Vice Chair, Fred Fontana, Lisa Brown, Susan Meyer, Stu Harness.

Present Other: Deborah Hill – Planning Director, Kate Winzler – Clerk to the Planning Board.

Absent: Gunnar Matthews, Pat Stigall, Scott Morse.

CALL TO ORDER Chair McCloud called the meeting to order at 5:03 p.m.

ADOPTION OF THE AGENDA Mr. Dorazio made a motion to adopt the agenda. Mr. Fontana seconded the motion. The motion passed unanimously, 6-0.

APPROVAL OF MINUTES

Ms. Meyer made a motion to amend and adopt the June 9, 2022 minutes by changing the sentence "The Board of Aldermen eventually voted in a split decision to allow pools in the CAMA setback again in 2017." Ms. Brown seconded the motion. The motion passed unanimously, 6-0.

Mr. Fontana made a motion to adopt the July 14, 2022 minutes. Ms. Brown seconded the motion. The motion passed unanimously, 6-0.

PUBLIC COMMENT None.

NEW BUSINESS

DUNE PROTECTION AND REMEDIATION: PROPOSED TEXT AMENDMENTS TO UDO §10.07.02

REBUILDING OF DAMAGED DUNES AND TOWN CODE ARTICLE 10 SAND DUNE PROTECTION

Planning Director Hill presented the staff report to the Planning Department. On August 3, 2022 the Board of Aldermen requested that the Planning Board review:

1. UDO plat requirements for development permits; specifically, requirements for ocean front lots with respect to the dune;
 - (a) Are surveyors/engineers providing the nature, location, dimensions, and elevations of the area of development, such as dune elevation, dune profile, topography? Have Planning Director provide Planning Board samples.

- (b) Is the landward toe of the dune established clearly by location, dimensions, and elevations of the area of development? i.e., is the dune established on the plat by metrics, or simply labeled 1st line, toe of dune, etc.
2. Further, the Board of Aldermen directs the Planning Director to draft a text amendment to UDO §10.07.02 REBUILDING OF DAMAGED DUNES to include protection measures of a 5 foot buffer from the landward toe of the dune as identified by metrics on the preliminary development plat, nonconformation status for existing encroachment into buffer and mandatory compliance if structure is damaged or destroyed greater than 50%, fines as well as restoration for the Planning Board's consideration and recommendation to the Board of Aldermen.

Planning Director Hill presented recent examples of plats of survey submitted to the Planning Department for review. The first example did not include a dune; however, it did indicate a first line of stable natural vegetation marked July 20, 1998 as well as the first line of stable natural vegetation marked April 13, 2021.

Ms. Hill reviewed the history of recent damaged dune complaints made to the Town, illustrated with pictures of significant dune destabilization on a job site where the development was not consistent with the conditions of the permit that allowed for minor dune disturbance. The five hundred dollar fine and posting a stop work order are not effective enforcement methods for preventing this issue.

Mr. Fontana noted the issue of confusion between frontal dunes and secondary dunes. Ms. Hill replied that was how the CAMA permit was issued. It spurred a review of the existing ordinance. In 2015, the Town adopted a dune protection ordinance to the Town Code but did not include this provision in the Unified Development Ordinance (UDO) process. The task at hand is to review both the existing dune protection ordinance as well as UDO §10.07.02 REBUILDING OF DAMAGED DUNES. Ms. Hill reviewed attachment 1 the existing ordinance language of § 7.04 (B) (1)(a) and § 7.04 (B) (1)(a)(i) and attachment 2 - the check list for: site plan, elevation certificate, V Zone certification, foundation plan, and engineered plans. She then introduced attachment 3 - AN ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE OF THE TOWN OF NORTH TOPSAIL BEACH, NORTH CAROLINA TO PROVIDE DUNE PROTECTION MEASURES, MANDATORY REMEDIATION FOR DAMAGED DUNES AND SET FINES. § 10.07.02 (A) REBUILDING OF DAMAGED DUNES.

Mr. Fontana said that a fine of five thousand dollars is not enough. Ms. Hill stated that Pine Knoll Shores issued and upheld a ten thousand dollar fine on a dune disturbance within the last few years. Mr. Harness asked what happens if the dune is not restored within seven days. Ms. Hill replied that each day beyond seven should be a separate violation; day eight is a five thousand dollar fine, day nine a five thousand dollar fine, and so on. Mr. Harness asked if that needed to be spelled out. Ms. Hill responded yes and reviewed: § 10.07.02 (B) (C).

Mr. Fontana asked about the ten-day allowance to repair damaged dunes in Town Code section § 10-50 REPAIRING DAMAGE CAUSED BY VIOLATIONS. Ms. Hill replied that code § 10-50 is enforced by the Town Manager and is applicable to someone playing on the dunes, not applicable to development on the dunes. Mr. Fontana suggested adding clarification for distinction between the two ordinances. Mr. Dorazio pointed out the signs posted on the dunes warn of a five hundred dollar fine for walking on the dunes. Ms. Hill suggested that walking on

the dunes is not a permit violation. Ms. Brown noted that someone could argue § 10.49(b) Destroying or Removing being applicable to construction damage. Mr. Fontana asked if that remedy period should be changed to seven days and keep the remaining language the same. Ms. Brown disagreed. Ms. McCloud explained the language within § 10-50 contradicts itself by saying "shall be immediately repaired in accordance with requirements of the Coastal Area Management Act. Failure to repair damage to the dunes and vegetation shall constitute a separate violation for each ten days that such failure continues after written notification by the Town Manager or designee." There was discussion regarding the length of repair time and civil penalty of five hundred dollars. Ms. Hill asked if the Board wanted to make this ordinance consistent with the seven-day repair period granted in § 10.07.02. Ms. Brown suggested § 10.49 specifying that it was unrelated to construction activity. Ms. McCloud suggested removing the terms "firm or corporation" from § 10-51 and § 10-52 to illustrate that this violation does not apply to development, but rather to individuals. There was further discussion regarding the criminal penalty versus the civil penalty. Ms. Hill asked how the Planning Board wanted to formulate their recommendation, and if there were any edits. Mr. Fontana stated that he would like to see some consensus on § 10.07.02 whether to leave the penalty at five thousand or be more stringent. Mr. Fontana proposed a ten thousand dollar fine and restoration within seven days and asked Clerk Winzler to poll the Board. Ms. Brown, Mr. Dorazio, Ms. McCloud, Mr. Harness, and Ms. Meyer all supported the proposition of Mr. Fontana. The Board discussed that each day of violation after seven days constitutes a separate violation with a separate ten thousand dollar fine. Ms. Hill asked the Board if they wanted to revise § 10-49 and § 10-50. Mr. Harness stated that those sections have been on the books for some time, and there doesn't seem to be an issue with the wording. Ms. Hill agreed the issue is with enforcement. Complaint calls are received, but by the time an officer arrives, the violators are no longer on the dune. She suggested for § 10-48 ENFORCEMENT deleting the reference to Building Inspector and Inspections Department, and replacing them with Town Manager, as well as deleting the references to development. For revision in § 10-50 delete the obsolete reference to CAMA officer, and in § 10-51 and § 10-52 she recognized the Board's suggestion of deleting the references to firm or corporation. Ms. Hill reviewed § 10.07.02 (D) (E) - the five-foot buffer from the toe of the dune with the Board, including decks and gazebos. There was discussion.

Ms. Brown made a motion that the Planning Board recommend that the Board of Aldermen conduct a public hearing on September 7, 2022 at 11:00 am to receive input on the proposed amendment to North Topsail Beach Town Code Article IV Sand Dune Protection and the North Topsail Beach Unified Development Ordinance Article 10 Enforcement § 10.07.02 Dune Protection and Remediation; and that the Board of Aldermen adopt the proposed text amendments to UDO § 10.07.02 Rebuilding of Damaged Dunes (as indicated and edited in attachment 3) and Town Code Article 10 Sand Dune protection (attachment 4). Mr. Fontana seconded. Clerk Winzler called the role, and the motion passed unanimously, 6-0.

DISCUSSION

Planning Director Hill shared the American Institute of Certified Planners Code of Ethics and Professional Conduct with the Planning Board and invited them to review it and make suggestions for the Planning Board's Rules and Procedures at the next meeting.

ADJOURNMENT Vice Chair Dorazio made a motion to adjourn. Mr. Harness seconded the motion. The motion passed unanimously, 6-0.

The Planning Board meeting adjourned at 6:47 p.m.

APPROVED

This 10th day of November 2022



Hanna McCloud
Chair

CERTIFIED

This 10th day of November 2022



Kate Winzler
Clerk