

**Town of Atlantic Beach
December 4, 2007
Planning Board Minutes
APPROVED**

MEMBERS PRESENT

Ray Langley, Chairman
Karen Koenig, Vice Chair
Larry Burke
Pierce Latimer
Rebecca Marks
Vada Palma

STAFF PRESENT

Nina Erwin, Secretary
Jessica Fiester, Planner
Landin Holland, Consultant

OTHERS PRESENT

Eddie Briley, Council-Elect
Trace Cooper, Mayor Elect
Ron Cullipher, Project Engineer
Ken Ide, Council-Elect

ABSENT

Norman Livengood

CALL TO ORDER

The meeting was called to order at 6:00 pm by Chairman Ray Langley. Chairman Langley welcomed Council-Elect members and Mayor-Elect Trace Cooper to the meeting.

A motion was made by Chairman Langley to excuse Norman Livengood who was out of town. The vote was seconded by Vada Palma and passed unanimously.

APPROVAL OF MINUTES

Planner Jessica Fiester said the November 8, 2007 minutes were in the process of being finished and will be discussed along with December's minutes in January 2008.

Ms. Fiester welcomed Nina Erwin who is the new Administrative Assistant to the Planning & Inspections Department.

REVIEW OF TOWN STORMWATER REGULATIONS

Last month at the Planning Board Meeting, staff was directed to look into the issue of condotels having a requirement of 40% impervious surface maximum coverage. The Board was given a thorough report that Planner Jessica Fiester put together on the background of impervious surface issues, lot sizes, and condotels.

Ms. Fiester said the State of North Carolina requires that when an amendment is made to a zoning ordinance, an approval or disapproval recommendation report must go to the Council to be voted on. The particular issue being debated was a statement that says **on lots over one (1) acre, State stormwater rules shall govern (Town Zoning Ordinance, Article VII)**. She stated that Derek Taylor, Town Attorney, said that if it was not challenged within a ninety (90) day period it would stand, but the Planning Board could always go back to clarify it and send it to the Council to have it changed.

Ms. Fiester said what went into the ordinance is standing; however, where it was placed in the ordinance does not make sense to apply to the condotel project. She opened this up to the board for discussion.

Chairman Ray Langley said that due to the magnitude of the issue, when talking of impervious surface, everyone is aware that we have drainage problems and coastal rules. Before discussing the Beach Hut project, the Board needs to look at the permeable surfaces issue. Chairman Langley had

not seen some of the figures as to the percentages of usage that one can apply (pervious vs. impervious surface). He said we need to control the stormwater and leave it in the ground versus running off into the surrounding waters.

Ms. Fiester said that the developers have brought a plan that is working towards making the lot meet the 40% standard. Permeable pavement is used to help minimize the effects of stormwater. Forty percent (40%) is the standard that we should be using and that is what we need to take care of first.

Consultant Landin Holland explained there is documentation of an individual who was allowed to install a driveway utilizing pervious paving material in order to meet the 40% rule. There are two cases that we know of where pervious paving material was used. The first is a driveway on one side of a duplex, and a driveway on a single-family home. This is before the Department of Environment & Natural Resources had officially adopted permeable pavement systems as a viable BMP (Best Management Practice) to address stormwater retainage and treatment issues.

In talking with Mr. Brady about the project, he asked if a 1 to 1 credit would be acceptable. Mr. Holland said that he can propose that on the plan and bring it to the Planning Board. There is no written standard that the Town has in place at this time. We are trying to determine how to keep this project at the 40% threshold.

Karen Koenig asked if the proposal could be presented before discussions began regarding the permeable concrete. Ron Cullipher, Project Engineer updated the plan for the Board. Added to the drawing was a patterning that would represent the parking spaces and parking isles being a permeable pavement product. The 40% rule would allow 85,465 square feet of impervious surfaces. The buildings occupy 48,300 square feet of that. The proposed impervious pavement is the balance of what is not proposed as pervious and is 36,643 square feet bringing it to 38.82%. That is assuming the 1 to 1 credit for the pervious technology.

Mr. Cullipher said if the 40% coverage is a stormwater issue, there are some other things that this project is incorporating other than just the 40% rule from the trend standpoint for the Town of Atlantic Beach. We discussed at the last meeting impervious surfaces that were previously here is at 114,000 square feet. There is a significant reduction in the amount of coverage whether it is permeable or impermeable from what used to be there. The amount of runoff is less.

Mr. Cullipher stated that if the Town took the entire parking lot area and created a permeable pavement product, you would have the 30% credit. The BMP manual states that a 60% credit is the highest and if you drained SA waters, DWQ (Department of Water Quality) cuts that in half, so it would be a 30% credit which is our worst case scenario. This plan would be 45.7% impervious. Since the Town does not have a written ordinance, but they want to acknowledge the BMP manual from DWQ, perhaps the Board should allow the 60% credit knowing that we still have to comply with the State's stormwater rules otherwise. If the Town were using the 60% credit, our site, if it were all in impermeable technology, would be 35.8%. There is a swing of 10% in the total numbers. Mr. Cullipher thinks that the Town can accommodate the ultimate goal even if the final answer is not a 1 to 1. It is more costly. If the Town increases the amount of permeable pavement technology, then that is something we are willing to pursue.

Mr. Cullipher said that if it is entirely permeable pavement and you are taking only a 30% credit, it is 45.6%. But, if the Town is taking the DWQ-BMP manual's 60% credit, and is converting it all to permeable pavement, it is 35.8%.

Larry Burke asked for clarification on State rules and how they would apply. Mr. Cullipher explained that the issue with this particular piece of property is that it will be reviewed as redevelopment from the DWQ perspective. DWQ will look at the impervious surfaces that the Town had, and the Town

will redevelop that property with a small amount of impervious surface which has been reduced by 37,000 square feet. The Division will ask us to design it to the current rules of the maximum extent practicable. We are anticipating that we will have to put infiltration in our parking lots, and we could use the credits for the impervious pavement at their reduced rates. With the Town rules, they don't have a mechanism to give credit for infiltration. The Division has an impervious surface regulation which is 40%. The total project will consist of following State and Town rules.

Mr. Cullipher said that if the Town made the parking lot permeable pavement, we would not have to do any infiltration in the parking lots. The Town would get our original 30,000 square feet reduction and approximately another 30,000 square feet of credit. DWQ would permit that. The Town could in theory, do away with the infiltration basins under the parking lot. With DWQ, under the redevelopment, it would not have to be retained. If the Town looked at the BMP manual and the credits, then it could be decided whether it will be 30-60 or 20-40. There are two different ratios depending if it is within one-half mile of SA waters.

Larry Burke said that under the best case scenario, you said that you could get the 35%. What is the issue? Mr. Cullipher responded by saying that 35% using the 60% credit in the BMP manual and not doing the one-half mile reduction.

Jessica Fiester stated that the one-half mile reduction has to be done to meet the State's standards. The State has a redevelopment permit that would allow them up to 53%. The Town is the one requiring 40%. If the permeable pavement is put within one-half mile of the water, it will be 30-70. It is more complicated when the Town is dealing with this because we are dealing with State rules, our rules and redevelopment.

Landin Holland said that the property was initially zoned for commercial allowing for 85% coverage, and it was rezoned RA-3 which only allows 40% coverage. There are a couple of questions that have come from the Planning Board members. One question is the travel on the permeable pavement, and the volume of cars traveling on these surfaces as well as heavier loads such as waste management trucks. Another question is whether permeable pavement can be installed on top of retainage pods.

Ron Cullipher explained that yes, the Town can install permeable pavement technology over an infiltration basin, but you still have to be at the criteria. The current BMP guidelines state that you want to limit it to areas that have less than 100 vehicles per day. Structurally, we do not have a lot of experience with this technology. The people who make the concrete say it will meet the traffic loads.

Jessica Fiester asked how arduous is the maintenance connected with this project. Mr. Cullipher said that it does have to be vacuumed and what product is used or which type it is will depend on how often it is done. In the DWQ permit, there will be a maintenance requirement for that. There are currently limited inspections and it is one of their top priorities. The material is porous concrete.

Ron Langley asked Mr. Cullipher which thickness of gravel was going to be used in this plan. Mr. Cullipher replied that to get the 30% credit, the thickest pavement must be used. Seven inches of gravel must be used. Four to six inches permeable concrete will be used.

Karen Koenig requested that Mr. Cullipher review the Fire Department's concern about access at the rear of Building 4. Mr. Cullipher said that two parking stalls were removed and made what use to be a 26 foot drive isle into 49 feet. Ms. Fiester said the Fire Department was satisfied with the revision. Mr. Cullipher said the other change was to put plantings at their proper spacing and location with a description of how they complied with the Atlantic Beach Zoning Ordinance and indicated that also with some interior island landscaping.

Concerning the drawings, Ms Koenig asked about the stormwater filtration pods and whether it will be regular asphalt instead of permeable pavement. Mr. Cullipher stated that was stormwater piping underneath the parking lot for storage. Both asphalt and permeable pavement can be used. Credit is given for impermeable surface but you have to be at the water table separations.

Vada Palma asked what assurances the Joyners and the Floyd's are going to have concerning the property directly north of Jungle Drive. That area is very prone to flooding. Mr. Cullipher said drainage is primarily going Northeast on this piece of property. It goes to that same drain which is the head of Hoop Hole Creek. The amount of water leaving this site is being reduced dramatically from Jungland when it was developed. This is being accomplished in two ways: (1) There is not so much impervious surface and (2) There will be some impermeable pavement technology. Also, we still have the 1 ½ inch infiltration requirement. Combined, we are taking 2 to 2 ½ inches of rainfall runoff away from that drainage basin by going through this plan. Whatever may have been happening to any of those properties will be reduced based on this proposal. A lot of these sites are still difficult sites and there are environmental issues to work through such as the wastewater. The site will be raised similar to Crystal View. Crystal View was raised to accommodate the infiltration piping. It is raised exactly to what DWQ says on the Water Table versus the consultant. The elevation can be as good as 48 inches and some as weak as 18 inches.

Karen Koenig said that she spoke with an engineer who said there are studies that show some of the permeable concrete products are easier to maintain than others. The two worst things concerning maintenance were blowing sand and sand that washes on to the surface. The engineer also said that the parking spots with permeable concrete or when permeable is put over driveways, it raises issues. Mr. Cullipher said that it is a slope issue. As far as inspections, the engineer said they do not inspect. Their company has a notarized copy of a maintenance agreement on their website. The Homeowner's Association signs for maintenance. He said the best practice, if the Town decided to go that way, would be under Town jurisdiction which would mean more cost and more for the Town to enforce. This is a consideration.

Ron Cullipher requested the Planning Board to consider allowing the credit under the BMP manual of 60%, knowing that we still have to get the State Stormwater Permit to be able to construct the project. That gets the numbers down to a little less than 36%. Otherwise, if you hold to the SA ½ mile rules from a Town perspective, it will make a significant impact on our project because we are at slightly less than 46% if we change it all to permeable pavement.

Chairman Ray Langley said that the first issue we need to address is what we are going to use as a guideline in our ordinances for the pervious/impervious paved areas. His suggestion, after having reviewed and studied the DWQ manual, is that we should not require any less. We should follow the DWQ guidelines in our ordinance. We are getting ready, on this particular project, to set a precedent. We should at least adopt their minimum standard and prepare an ordinance amendment not only with this project but anything in the future.

Karen Koenig said the DWQ document dated July 20, 2006 was not going to be changed as far as what proposals that would not affect us. The percentages need to be looked at along with the enforcement of the maintenance and how the Town is going to achieve this. Ms. Koenig said that there are going to be people who will maintain the surface in a very timely manner and some won't and that in her opinion, this is not a Homeowner's Association issue.

Rebecca Marks said it has too much impact on the rest of the neighborhood to leave it up to the Homeowner's Association. Chairman Langley said that the biggest concern was the perpetual maintenance. Landin Holland said language can be adopted which dictates that a maintenance agreement has to be established with POA (Property Owners Association) or with the developer until the POA is in place. It will be a responsibility of the Public Services Director to make sure there is an

inspection or documentation on an annual basis stating that maintenance is being performed on the property. Ms. Fiester said it would be the responsibility of the Town to check because the State will not check. The Inspector or Zoning Officer would inspect the pavement, or we would have to train someone to perform the inspection. Mr. Holland said we need someone certified to maintain the pavement and submit documentation on annual basis stating they have done an annual inspection and maintenance process on this permeable pavement system. That should be adequate. He said he thinks there is a concern that Mr. Cullipher and the people involved in this project are being held to very strict stormwater standard systems and improvements. They are falling subject to these different criteria regulations (State rules and Town rules) and it is putting them in a worst case scenario.

Council Member-Elect, Ed Briley said that he has installed pervious and impervious asphalt in this Town. There were a lot of experts here when it was installed. He said the main thing about the pervious concrete is that you need a detail of what it is going to be put on from the base up (stone, sand). The second thing is how long it will last. Once the developer sells the property, it becomes a problem of the Homeowner's Association and ultimately it becomes your problem if it is not functioning properly. You do have to maintain it and keep the sand out of it. You can test it from a perk standpoint when it is cleaned. Also a soils and materials engineering firm can be hired to provide criteria for the maintenance of it. The main thing is that you want it maintained where it perks 20 years from now just like the day it was put in. Larry Burke asked how you would keep the sand from passing all the way through the pervious material. Mr. Briley said to power-vacuum on a schedule. There has to be criteria from whoever installs it of what the perk rate is going to be from the first day to what it may be in the future. Karen Koenig asked what the life of pervious paving material is and when does it need to be replaced. Mr. Briley said that will depend on how it is designed and the load-bearings.

Landin Holland stated that we need to provide the project team with some direction as to what the Board is thinking in terms of a credit system (30 or 60); assuming maintenance is handled through Ordinance Amendments. Ms. Koenig said the attorney should be contacted concerning language of the Ordinance, and deed restriction. Ms. Fiester said that she would contact Derek Taylor, Town Attorney.

Ron Cullipher said that from what the directors are saying, they feel the BMP procedure within ½ mile of SA waters would be the direction you would like to go. If that is the case, the project would not meet those criteria. Ms. Koenig said that the rulings would be applicable to every project and not just this one. Mr. Cullipher said that if you have that strict rule, you will not potentially have some of the other things that would have additional benefit above and beyond the 40%. You could have something that is 25% or 30% even though the ground cover is larger.

Larry Burke said what everybody is concerned about is the final result. It is the amount of water that is going into the Sound and what it is going to do to the neighbors. Mr. Burke asked Mr. Cullipher if he had a way to calculate what has gone on and what will go on if we allow him to do what he would really like to do. Mr. Cullipher said yes there is a way to calculate how much water will leave the site, where is it going and how is it going to affect everybody. He said that is an engineering problem to solve and that he can come back and give the board the answer.

Mr. Holland asked if he was proposing retainage on the site of 1 ½ inches and that is based on the Town requirements and not the State requirements. Mr. Cullipher said this was correct. Mr. Holland asked if he was using the 40% requirement based on the Town and not the State. Is the State only requiring you to make your best effort in retainage on-site based on pre-development conditions? Mr. Cullipher said yes, and on this particular piece of property, we are going to be held to a standard of probably 250% to 300% of what the State rules are. Karen Koenig said that if he was not going under the Redevelopment clause, it would be a different thing. Mr. Cullipher said that it would be. He said

that the Town would be dealing strictly with the 1 ½ inch and not the coverage. Here you are dealing with the 1 ½ inch and the coverage.

Chairman Ray Langley stated that the Board has to see the big picture for the entire town. We need one strict rule. Mr. Cullipher said that the Town rules have slightly different angles from the DWQ rules. Chairman Langley asked if the Board prepared an Ordinance Amendment following the DWQ manuals. He also asked what is the conflict that you would have between that and the Town Ordinances. Mr. Cullipher said that he would just infiltrate the 1 ½ inches and move on. The amount of coverage would no longer be the issue. Mr. Holland said the solution would be to look at credit for retainage and permeable paving systems and then look at the project overall. Ms. Koenig asked what if it was not a new development and you were following State standards, what would it be. Mr. Cullipher said that it would be on the largest 1 acre site and 1 ½ inch infiltration or 25% impervious coverage (one or the other).

Mr. Holland said we should try to put a Stormwater Ordinance in place versus the random statements made in the Zoning Ordinance. Chairman Langley suggested that this project be studied more and tabled until the meeting in January 2008.

Ms. Fiester said we need to take two separate issues of rules. What do we want to do with pieces of land over one acre? The next issue is coming up with some kind of rules that give consideration for the different types of things to control stormwater and not just consider the coverage. Another issue is the pervious pavement. People are starting to ask about this technology.

Chairman Langley said that he and the other board members will compile their questions and present them to Planner Jessica Fiester and she can in turn give them to Mr. Cullipher. Chairman Langley also said that the board would take no action tonight. He said we will move forward in January, 2008 for a vote and Mr. Cullipher will be back in February 2008.

REGULATION OF ICE VENDING MACHINES

Planner Jessica Fiester collected responses from towns dealing with the Manufactured Ice Machines. They either use standards they had or did not do much of anything; however, Morehead City had their information together. We can take what they have, go through it point by point and discuss each one, work it so that it fits our needs and write it up. If we take this direction and make the recommendation to the Council, the question becomes whether we should grandfather in the two that already exist or set a date when they would have to comply with the new regulations. Ms. Fiester opened this subject up to discussion.

Rebecca Marks asked what we currently do concerning ATM machines. Ms. Fiester said that she has not dealt with these machines. Chairman Ray Langley asked what the ATM's comply with in order to get placed where they are. Ms. Fiester responded by saying that in the General Business zone, these machines met the requirements of the Building Inspector and that is how they are in their present location.

Vada Palma said that she could see why there is an ice vending machine on Atlantic Beach Causeway, but not the reason for having one on Fort Macon Road. She believes it to be totally out of context. Ms. Fiester said that both machines are on leased property and both are zoned for General Business. Chairman Ray Langley said these ice machines are not attractive and are an eyesore. Ms. Fiester said she received calls from people who want to install more ice machines in Atlantic Beach. Ms. Palma said these machines do not fit in at all, and the signage and everything about them is hideous and very industrial. Landin Holland said that one of the goals in our regulations should be to buffer with landscaping and shield the mechanical equipment from view.

Ms. Fiester led a discussion on each point of the Town of Morehead City's Ordinance Amendment in reference to Ice Vending Machines as it compares to the Town's Ordinance on General Business:

1. **Zoning** - Ms. Fiester does not think this needs to be changed.
2. **Location** - Where they are permitted.
3. **Must meet minimum setback requirements** - Ms. Fiester said we already require this.
4. **Parking, loading areas, or buffers - Shall not be permitted in any required parking areas, loading areas, or buffers.** Ms. Fiester said we could place something similar in the amendment. She said the machine that was placed in the parking lot is not interfering with the required parking.
5. **Minimum separation between units shall be one (1) mile** - Ms. Fiester said that the two ice machines that we have are separated by ½ mile and we would not be able to now require a separation of 1 mile. Chairman Langley agreed.
6. **Roof structure to screen mechanical equipment** - Chairman Langley said that a facade can be put on it to hide the mechanical equipment.
7. **Buffering with landscaping** - Ms. Fiester said plants are not going to shield it enough so that you can not see it. Chairman Langley said that landscaping is more for aesthetics than it is for screening. Rebecca Marks asked how this was different from what is required for other businesses. Ms. Fiester responded by saying that until we get into big projects, our landscaping requirements are not well defined.

Ms. Fiester said the major complaints from people who call in are the ugliness of the machines. Rebecca Marks stated we really need to deal with the bigger issue of landscaping in all of General Business. Ms. Fiester asked whether or not the Board wanted to work on landscaping recommendations for new business development. Ms. Palma said evidently Morehead City thought there was an issue with this, because they prepared their amendment in December.

Chairman Ray Langley asked whether or not the Town of Morehead has passed the ordinance amendment. Ms. Fiester said that she believed it was going to the Council this week. She said the citizens are concerned about the machines. We can address the landscaping in the amendment. There are many bits and pieces of Zoning going on in General Business that we hope to clean up as we go through this process. Landin Holland said that if you are adjacent to a zoned residential area, there are some buffering standards in place. Rebecca Marks said that whatever we do, it has to be done across the board. She did not think it was right to apply this only to the ice vending machines. Ms. Palma said there is nothing which has been presented that is not already required for a business.

8. **Signage** - Ms. Fiester said that the machine on Fort Macon Road has no permit for its sign and the signs on the machine on the Causeway are not in compliance and has to be fixed.
9. **Parking spaces plus one (1) handicapped space** - Ms. Fiester said there were no extra parking spaces added on. We can change that in our amendment
10. **Safety barriers shall be covered with wood or brick façade** - Chairman Langley asked about the meaning of #10 "Safety barriers shall be covered with wood or brick facade." Consultant Holland said they were iron posts that come out of the ground at each corner.

Council Member-Elect, Ken Ide stated that he agreed with Vada Palma and that the ice vending machine is a monstrosity and it just does not fit in with anything right there. Rebecca Marks said if we are going to address this down the road, it seems like the moratorium is the best way to go about it right now. Mr. Holland stated that generally you are placing an undue burden on a wide variety of individuals if you impose a moratorium. I don't see people lining up to put these things in over the next two or three months. The moratorium would not have an immediate financial impact on any given individual. You are just saying that we do not want any more until we sort this issue out.

Mr. Holland recommended that the moratorium be drafted and be placed on the agenda for the December Council meeting. Ms. Fiester said that when someone sees that moratorium and they are thinking of installing an ice vending machine, they will be in the office with their paperwork.

Dr. Scott Rice said that it looks hideous as well. He said his concerns are that by passing some regulations that government is, once again, going to be imposing restrictions on people rather than enhancing their freedom. Trying to not create unintended consequences which have been voiced; if you pass it for one person, you are going to do it for others. By creating this regulation, if something else that we like or that the public likes and wants it to come in, we have already restricted them from being able to come in. Perhaps a delay moratorium mechanism will not restrict freedom.

Harry Archer requested that Ms. Fiester email the Coastal Community Coalition members and ask them what impact or approaches that they are taking in their resort towns. He said they will be more than happy to respond to you on any ordinances that they have established or what actions they have taken. Ms. Fiester said she did send an email out to the Zoning and Planning Listsen where she received a lot of her responses and she will send an email to the coalition members. According to the responses, many were treating them like ATM's. We will collect as many responses as we can.

Chairman Ray Langley asked for a motion on the moratorium for six (6) months. Larry Burke moved that it be suggested to the Council that a six-month moratorium be created on any new bulk manufactured ice machines. Pierce Latimer seconded the motion and passed unanimously.

STAFF REPORT

Ms. Fiester said that at the upcoming Council meeting we are hoping to set up the meeting between the Council and Planning Board about the UDO (Unified Development Ordinance) and the Land Use Plan. We will have our November minutes at the January 2008 meeting. She said it has come to her attention that after putting together this last report, there are Planning Board minutes missing from 2004 and 2005. Some of the 2004 and 2005 minutes were put in along with Town Council minutes that went out in packets and some of them were not. I have been asking some people if they have a copy at home that I can have. They are not in the office and we have looked everywhere.

Ms. Fiester said we will be seeing some reappointments and possible new appointments coming up in the December and January timeframe. All of our recommendations of rezoning got through at the last Council meeting. The County is performing our inspections right now, on a temporary basis. Ms. Fiester asked if there was any old business to discuss.

OLD BUSINESS

Chairman Ray Langley said he has been going into the Planning Department since last February, and saw the way it was and has seen the way it is now. Everything looks organized. Everything's in place and it looks like you could find something in there now. You folks have done a hell of a job. It looks like the difference between day and night in that office. I applaud you on your efforts. Ms. Fiester said we have it under control and that we will be keeping it that way.

Chairman asked if there was any other old business. There was no other old business to discuss.

ADJOURNMENT

Chairman Ray Langley made a motion to adjourn. The motion was seconded by Karen Koenig and passed unanimously. The meeting was adjourned at 7:53pm.

Respectfully submitted,

Nina M. Erwin, Secretary

Approved,

Ray Langley, chairman