

# **Planning Board Meeting – November 21, 2016 Minutes**

**Members Present:** Ashley Anderson, Errol Briggerman, Victoria Curtis, Gilda Wall, Ruth Van der Grinten, Lloyd Lancaster, Kathe Schaecher, Allen Swaim

**Members Absent:** Herold Broadwell

**Staff Present:** Planning Director David Bergmark, Planner Allison Rice

**Guests Present:**

## **1. Meeting Called to Order**

Ms. Anderson called the meeting to order.

## **2. Welcome and Recognition of Guests**

Ms. Anderson welcomed the public, including Mr. Curt Phipps.

## **3. Chairman and Board Members' Comments**

None

## **4. Adjustment and Approval of Agenda.**

Kathe Schaecher made a motion to accept the agenda. Ruth Van der Grinten seconded the motion. The motion passed.

## **5. Public Comments**

No citizens had signed in to make a comment at that time.

## **6. Approval of Minutes**

A motion was made by Gilda Wall to approve the October 17, 2016 minutes with the amendment. Ms. Schaecher seconded the motion. The motion passed.

## **7. Discussion, Consideration, and Action on the Following Items:**

### **Item 7A – Discussion and Action on proposed minor adjustments to Chapter 6 of the UDO as it relates to stormwater requirements.**

Mr. Bergmark presented his report to the Planning Board, as shown below in italics.

*In 2006, representatives from Wake County and each municipality in the county formed a task force to address stormwater issues. The task force met seventeen times over twenty months and produced a report that includes nine major recommendations and a five-year implementation plan. Part of these recommendations included the creation of a collaborative stormwater ordinance for interested towns.*

*The stormwater task force asked that the draft stormwater ordinance include: 1) water quality requirements that at least meet the minimum requirements for the municipal NPDES Phase II*

requirements; 2) water quality requirements that include control of the 10-year, 24 hour storm; and 3) encouragement of Low Impact Design (LID) standards.

*Members of the Stormwater Implementation Team included: Wendell Commissioner Sid Baynes, Zebulon Mayor Bob Matheny, Zebulon Planner Mark Hetrick, Rolesville Planner Bryan Hicks and Wendell Planning Director Teresa Piner.*

*Members of the team who served as resources were: Knightdale Engineer Keith Gifford, Wendell resident Betsy Rountree, NCDENR-DWQ representative Bill Diuguid, Wake County Environmental Services Director Tommy Esqueda, Knightdale Planner Stephen Morgan, Home Builder Association representative Suzanne Harris, AMEC Earth and Environmental Engineer Keith Readling, Wake Forest Engineer Scott Mills, Neuse River Keeper Dean Naujoks, AMEC Earth and Environmental Engineer Henrietta Locklear, Danny Bowden with the City of Raleigh, Wake County Planning Board Member Mike Golder, Wake County Environmental Service Representative Britt Stoddard, CORPUD representative Robert Massengill, and Wake County representative Hunter Freeman.*

*The stormwater implementation team's discussion of the draft stormwater ordinance was completed in November of 2008, and these recommendations were incorporated into Wendell's Unified Development Ordinance in 2009.*

*As part of the Town's stormwater regulations, no development or redevelopment shall contribute a nitrogen export load exceeding 3.6 pounds per acre per year unless they achieve classification as a Low Impact Development (LID), as described in Section 6.N.2.5 of the UDO. Under the original language created as part of the stormwater ordinance, developments had the option to buy down their nitrogen export load by paying monies to the North Carolina Riparian Buffer Restoration Fund. However, when the first developments were submitted which would be subject to these regulations, the Town learned that this fund could not legally accept monies from the Town. As a result, this buy down option had to be removed from the UDO. However, the LID requirement remained for those developments which did not meet the 3.6 pounds per acre limit.*

*Since its original adoption, staff has had ongoing discussions with the Town's Stormwater Administrator (Wake County) and other industry professionals and has come to the conclusion that minor adjustments to Chapter 6 may be warranted. Staff has now had the opportunity to see how stormwater regulations have been implemented in a variety of residential and commercial projects and has determined that the Town and the development community would benefit from two modifications to Chapter 6.*

**Proposed Amendments:**

*The first modification staff is proposing relates to small residential infill projects. As the Town continues to grow, the Town will likely see increasing numbers of small undeveloped properties proposed between existing subdivisions. These smaller parcels represent areas that are ideal for service and development from a municipal standpoint, but which will have greater difficulty absorbing the cost and land requirements needed to satisfy the Town's current stormwater regulations, especially as it relates to Low Impact Development (LID) standards. As a result,*

staff is proposing that Chapter 6 be modified to include an exception to the nitrogen export requirement for smaller residential infill development which meet specific criteria. Incorporating such language would be in line with a similar exemption included in the recently adopted water allocation policy. These regulations are designed to accommodate small infill development which does not have the potential to be part of a larger development, while preventing developers from circumventing the Town's stormwater regulations by submitting the first phase of their development independently as a subdivision of less than 20 acres.

Amendment 1:

*“Residential infill developments which meet the following criteria shall not be subject to the requirement to limit nitrogen export load to 3.6 pounds per acre per year:*

- 1. Are located within the primary corporate limits or adjacent to the primary corporate limits, AND*
- 2. Are less than 20 acres in size, AND*
- 3. Have no vacant or underdeveloped land of 10 acres or more in size adjacent to the project which could be feasibly added to the development to create a larger subdivision.”*

*The second modification staff is proposing relates to the criteria for qualifying as a Low Impact Development (LID). Sections 6.5N5c through 6.5N5e list the current techniques which must be used to achieve LID classification. In the course of staff's review, staff has noticed consistent difficulty in development projects meeting section 6.5N5e below, which requires two additional LID techniques to be incorporated into the project. Some of the options listed in this section are not feasible for a typical residential or commercial project. For example, most commercial property would not be able to retain 50 percent of the project area as vegetated space. Similarly, many commercial projects do not have any stream buffers on their property to expand.*

*Finally, while staff supports the use of vegetated roofs and reclaimed water systems, these techniques are expensive and are rarely applied, even in larger municipalities. The most common technique which has been chosen by developers has been the installation of rain cisterns.*

Current language of Section 6.5N5c through 6.5N5e

- c. The following techniques must be used to achieve LID classification:*
  - i. natural site design in consultation with the Town;*
  - ii. site buildings, roads, and other disturbance in the least environmentally sensitive areas, pursuing steep slopes, naturally well draining soils, and other hydrologically valuable features undisturbed.*
- d. In addition, one of the following two techniques must be used to achieve LID classifications:*
  - i. bio-retention systems;*
  - ii. on-site infiltration;*

- e. *In additions, at least two of the following techniques must be used to achieve LID*
  - i. *retention of 50 percent of vegetated area, including open space, landscaping, or forests:*
  - ii. *use of Permeable pavement for all private driveways, private roads, sidewalks, and parking areas in accordance with the North Carolina Stormwater Best Management Practices Design Manual;*
  - iii. *installation of one rain cistern per lot or three rain barrels per lot;*
  - iv. *installation of vegetated roofs;*
  - v. *increasing all buffers in the Riparian Buffer Zone of the Flood Protection Zone, whichever is greater, by 50 feet, in accordance with Section M.1 for Low-Density Development and Ultra Low Density projects and Section M.4 for High-Density Projects*
  - vi. *use of reclaimed water for all buildings in accordance with State and local laws.*
  - vii. *use of innovative LID techniques subject to the approval of the Town.*

*Staff proposes that Section 6.5N5e be amended to only require ‘one’ additional LID technique and to reduce the number of rain barrels required per lot to two rain barrels, which must remain in place for at least 2 years. This would require builders to install rain barrels and would give homeowners the opportunity to explore the benefits of rain barrel use. Water from rain barrels should not be used for drinking, but it is ideal for watering garden or lawns, washing cars or pets, and can even be used for flushing toilets. If the homeowner finds no use for them, the rain barrels may be removed after two years, eliminating long term enforcement requirements by the town or the stormwater administrator.*

*Amendment 2:*

*Amend Section 6.5.N.5.e. to read as follows:*

- e. *In additions, at least **one** of the following techniques must be used to achieve LID*
  - i. *retention of 50 percent of vegetated area, including open space, landscaping, or forests:*

- ii. *use of Permeable pavement for all private driveways, private roads, sidewalks, and parking areas in accordance with the North Carolina Stormwater Best Management Practices Design Manual;*
- iii. *installation of one rain cistern per lot or two rain barrels per lot (rain barrels may only be used for residential projects and must be retained on site for a minimum of 2 years);*
- iv. *installation of vegetated roofs;*
- v. *increasing all buffers in the Riparian Buffer Zone of the Flood Protection Zone, whichever is greater, by 50 feet, in accordance with Section M.1 for Low-Density Development and Ultra Low Density projects and Section M.4 for High-Density Projects*
- vi. *use of reclaimed water for all buildings in accordance with State and local laws.*
- vii. *use of innovative LID techniques subject to the approval of the Town.*

**Staff Recommendation:**

*Staff recommends approval of the proposed text amendments.*

**Statement of Plan Consistency and Reasonableness**

- *Any recommended change, if deemed necessary, should be accompanied by a statement explaining how the change is consistent with the comprehensive plan, and is reasonable in nature.*
- *Such statements could refer to the general principles of the Comprehensive Plan, including but not limited to:*
  - *Principle Number 9: “Protect and preserve Wendell’s natural resources and amenities, including its streams, lakes, wetlands, and hardwood forests while balancing private property rights.”*

Mr. Bergmark read through the above report. He explained the intent of the original ordinance and how the ordinance worked. He said that staff was trying to lighten some of the requirements after working with developers.

Lloyd Lancaster entered at 7:08.

Mr. Bergmark addressed some of the concerns mentioned at the last meeting, beginning with changes to Amendment 2.

Mr. Briggerman said Family Dollar had a bmp that allowed for infiltration, and then the water flowed back into the wetlands. He said water was filtered through the bmp before going back into the natural areas.

Mr. Lancaster asked why we were going above State water standards, especially if Rolesville and Zebulon got rid of their requirements. Ms. Anderson agreed that they didn't want to run developers off, but they still wanted to attract good development. She said she wanted more research. She said she didn't know that State water standards were all that stringent.

Mr. Swaim asked if these standards would be kicked in if someone wanted to pave their parking lot. Mr. Bergmark said the standards would be kicked in if the parking lot had large enough acreage. Mr. Swaim asked where the 3.6 nitrogen load came from. Mr. Bergmark said that number came from a State report. Mr. Swaim asked how the nitrogen was measured. Mr. Bergmark said that it was calculated up front and then measured from samples.

The Board continued to discuss how water samples were taken and by whom.

Mr. Briggerman asked if staff was trying to lessen the current standard. Mr. Bergmark said yes. He said that the next phases of Groves of Deerfield and Edgemont Landing were the only developments that had applied these standards. He said that the rain barrels were an option from a list that developers could choose from, and that it was the cheapest option for builders.

Ms. Curtis said that this was something that developers chose for the homeowners. Homeowners didn't choose this for themselves. She asked why it was important to have rain barrels in a subdivision for 2 years. If it made a difference in water quality for 2 years, shouldn't it be implemented for longer. Rain barrels either made a difference or they didn't. Mr. Bergmark said many of these water quality measures were subjective. He said staff was proposing 2 years of enforcement to make sure developers didn't take them away right away and move the barrels to another house about to be inspected. Ms. Curtis said we were snubbing our nose at the environment if we allowed rain barrels to be taken away after 2 years.

Mr. Lancaster said that private property rights was the most important issue for him. Mr. Bergmark said there were lots of things that towns require of property owners – trees, sidewalks, easements, etc.

Mr. Lancaster said he worked in pest control, and that industry suggested getting rid of rain barrels.

Ms. Anderson said that the 2 year requirement was the biggest issue for her. She said that the rain barrel requirement itself wasn't a problem. She said they should be innovative.

Mr. Bergmark said that the Planning Board could opt to remove the rain barrel requirement from the list but that would make it more difficult on developers.

Mr. Lancaster suggested that a French drain was more effective and attracted fewer pests than rain barrels.

Ms. Schaecher asked about removing the LID requirement for developers.

Mr. Bergmark said that there were other options that developers could take.

Ms. Curtis said she would rather have a developer meet the burden of the 3.6 requirements, not the homeowner. She said she would like to hear about other options that don't burden homeowners. Mr. Bergmark said all other options were in a lot by lot basis, such as rain gardens.

Ms. Anderson asked if French drains were covered under option 7, innovative LID. She said in her opinion removing the rain barrel option would make it harder on developers. Mr. Bergmark said that option 7 allowed for new techniques that were developed after the UDO was adopted.

Ms. Schaecher asked if rain barrels could be included under option 7 if the Board decided to remove them from the list. Mr. Bergmark said they would, but that wouldn't solve the issue at hand.

Mr. Lancaster made a motion to add to the December agenda to remove the 3.6 LID requirement in its entirety. He said that the Town should be aligned with Rolesville and Zebulon. He said we were in a competitive market and that the developers would go elsewhere with less strict water standards. The motion did not receive a second.

Mr. Bergmark said that the Planning Board could vote to remove section E if that was how they were leaning.

Mr. Lancaster said that most builders were being green and ecofriendly because that was what the market was asking for. He said we didn't need the iron fist of government. He said the Board should take away the 3.6 LID requirement for residential but keep it for commercial. He said Wendell was the only town in East Wake County that required this aside from Knightdale, and Knightdale was far more advanced than Wendell.

Mr. Briggerman asked why they shouldn't require cisterns for each lot. He agreed that he didn't want to put the burden on the homeowner and preferred requiring something permanent like a French drain be installed by each builder. Mr. Bergmark said that staff was trying to avoid regulating something on a lot by lot basis.

Ms. Anderson said there were lots of studies out about what attracts people to a place. She said now people are attracted to towns that have environmental protections even over schools. She said that was what they were trying to do here. She was not comfortable with scrapping the entire requirement. She asked if the open space requirement percentage be altered to make it cheaper for the builder.

Mr. Lancaster said that this should be market driven to solve the problems that government causes. He moved to Amendment 1, and said that as he read that all three points were required. He said if someone came in with 19 acres, the Town will say that they can't develop the property without also developing the 10 undeveloped acres next door. Mr. Bergmark said no. He showed the Planning Board a map to illustrate that this would apply to smaller infill sections of undeveloped land, to make sure that developers didn't come back at a later date to add on to the subdivision but still maintain lower water quality standards.

Mr. Lancaster said that this section required the developer to do extra work even though there wasn't a market to build more lots. Mr. Bergmark said that section said the developer wouldn't get the exception if there was undeveloped land next door. He said every developer was required to do this unless they meet these specific conditions. Mr. Lancaster asked if there was any exception if a builder came in and said there was no market. Mr. Bergmark said no, there was no such exception.

Mr. Swaim made a motion to accept both amendments as recommended by staff. Mr. Briggerman seconded the motion. The motion passed 4-3.

Voted in favor: Errol Briggerman, Kathe Schaecher, Ashley Anderson, Allen Swaim, Gilda Wall  
Voted against: Ruth Van der Grint, Victoria Curtis, Lloyd Lancaster

Mr. Lancaster asked the Chair to add time in the Devember agenda to scrap the 3.6 requirement in its entirety. Mr. Bergmark said these requests could only come from the Town Board.

**8. Adjourn to Next Regularly Scheduled Meeting**

Mr. Lancaster made a motion to adjourn the meeting. Ms. Van der Grinten seconded the motion. The motion passed unanimously.