

**Planning Board Meeting
May 21, 2018
Minutes**

Members Present: Ashley Anderson, Errol Briggerman, Lloyd Lancaster, Jonathan A. Olson , and Terry “Allen” Swaim

Members Absent: Victoria Curtis, Gilda Wall, Kathe Schaecher, and Michael Clark

Staff Present: Planning Director David Bergmark

Guests Present: Grace Walter, John Oglesby

1. Meeting Called to Order

Chairwoman Ashley Anderson called the meeting to order at 7:00 pm and recognized that a quorum was present.

2. Welcome and Recognition of Guests

Chairwoman Anderson welcomed Grace Walter.

3. Chairman and Board Members’ Comments

There were no comments.

4. Adjustment and Approval of Agenda.

Chairwoman Anderson asked if there were any adjustments to the agenda; as there were none, she then asked for a motion to approve. Lloyd Lancaster made a motion to approve the agenda; Jonathan Olson seconded the motion. The motion passed unanimously.

5. Public Comments

Chairwoman Anderson asked if anyone signed up for public comments; there were no public comments.

6. Approval of Minutes

Chairwoman Anderson asked if there were any adjustments to the minutes or a motion to approve the minutes. Allen Swaim made a motion to approve the minutes of the previous (March 19, 2018) meeting as submitted by staff. Jonathan Olson seconded the motion. The motion passed unanimously.

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

- A. **ZTA18-03 – Discussion and Action on a proposed text amendment to Chapter 6 of the UDO as it relates to nitrogen export requirements.**

Mr. Bergmark, Planning Director, introduced this case and presented the following staff report and background information shown in *italics* below.

Item Title:

Discussion and Action on a proposed text amendment to Chapter 6 of the UDO as it relates to nitrogen export requirements.

Planning Board Meetings:

*Monday, May 21, 2018
Monday, November 21, 2016
Monday, October 17, 2016*

Specific Action Requested:

- *The Planning Board is asked to discuss and make a recommendation on a proposed text amendment to Chapter 6 of the UDO as it relates to nitrogen export requirements.*

Applicant:

Town of Wendell

May 14, 2018 Update:

At their April 23, 2018 meeting, the Town Board asked staff to provide the Town’s current stormwater regulations to the Board for review, with an evaluation of how these regulations compare to neighboring jurisdictions. A comparison chart to other neighboring jurisdictions is included as Attachment A.

For comparison purposes, Wendell’s stormwater regulations were evaluated against those of Zebulon, Knightdale, Rolesville, Wake County, Garner, and Apex. As can be seen in Attachment A, the primary difference in stormwater standards relates to limiting the nitrogen export rate. Of those reviewed, only Wake County, Garner, and Wendell regulate nitrogen export. Wendell is the only one of those three jurisdictions not currently required to do so by the State (though all but one Wake County municipality will be subject to nitrogen export limits in approximately 1 year). Once mandated by the State, nitrogen export requirements will be more restrictive than Wendell’s current stormwater ordinance.

At their May 14, 2018 meeting, the Town Board asked staff to take an amendment to remove nitrogen requirements from Chapter 6 of the UDO to the Planning Board for review and recommendation.

January 9, 2017 Changes:

At their January 9, 2017 meeting, the Wendell Board of Commissioners adopted two changes to the Town's stormwater rules to reduce regulatory standards. The first change created an exception to the Town's nitrogen requirement for small residential infill development.

"Residential Infill Development" was defined as residential development which is 1) located within the primary corporate limits or adjacent to the primary corporate limits, and 2) Less than 20 acres in size, and 3) Has 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 change adopted was to amend Section 6.5N5e to only require 'one' additional LID technique (rather than two) when the Town's nitrogen threshold was not met by development (for those not considered 'residential infill development'), and to increase the number of LID alternatives available to choose from.

Proposed Amendments:

Per the Town Board's instructions, staff has prepared amendments to Section 6.5M1d, 6.5M4c, and 6.5E (Definitions) to remove any language related to nitrogen export load requirements. The following sections detail the specific language to be removed. With the removal of nitrogen export load standards, there would no longer be a need for a 'Residential Infill Development' category, as the only different standard which applied to residential infill development was that it was not subject to nitrogen export requirements.

Amendment 1:

- *To delete section 6.5M1d, which states a requirement for development within Ultra-Low and Low-Density projects to not exceed a nitrogen export load of 3.6 pounds per acre per year. The deletion is shown with red strike-through below.*

M. Standards Based on Project Density.

1. *Development Standards for Ultra-Low and Low-Density Projects: Ultra-Low and Low-Density projects shall comply with each of the following standards, in addition to the general standards found in Section B in this Section:*
 - a. *Stormwater runoff from the development shall be transported from the development by vegetated conveyances to the maximum extent practicable.*
 - b. *All Development and Redevelopment shall be located outside the Riparian Buffer Zone and Flood Protection Zone.*
 - c. *The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.*
 - d. ~~*With the exception of Residential Infill Development, no Development or Redevelopment shall contribute a nitrogen export load exceeding 3.6 pounds per acre per year, unless it achieves classification as an LID Project in accordance with Section N.2.5. In calculating the nitrogen export, the applicant must use the known footprint method.*~~

- e. For Ultra Low-Density Projects only, pervious portions of the site must be utilized to the maximum extent practicable to convey and control stormwater runoff.
- f. For Low-Density Projects only, Structural and Non-Structural BMPs shall control and treat the difference in the stormwater runoff peak discharge rate leaving the project site between the pre- and post-development conditions for, at a minimum, the one-year, 24-hour storm. Runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours.
- g. General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c), as explained in the Design Manual.
- h. Developers must manage residential runoff so that after Development the site will not exceed the Target Curve Numbers in the table in Section M.2.
- i. Ultra-Low Density Projects and Low-Density Projects may be eligible for target curve number credits, as described found in Section M.3, below.

Amendment 2:

- To delete section 6.5M4c, which states a requirement for development within High-Density projects to not exceed a nitrogen export load of 3.6 pounds per acre per year. The deletion is shown with red strike-through below.
4. Development Standards for High-Density Projects: High-density projects shall implement stormwater control measures that comply with each of the following standards, in addition to the general standards found in subsection N of this chapter.
 - a. The measures shall control and treat runoff from the first inch of rain. Runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours.
 - b. All structural stormwater treatment systems used to meet the requirements of the program shall be designed to have a minimum of 85 percent average annual removal for Total Suspended Solids (TSS).
 - ~~c. With the exception of Residential Infill Development, no Development or Redevelopment shall contribute a nitrogen export load exceeding 3.6 pounds per acre per year, unless it achieves classification as an LID Project in accordance with Section N.2.5. In calculating the nitrogen export, the applicant must use the know footprint method.~~
 - d. Structural and Non-Structural BMPs shall be used to ensure there is no net increase in peak flow leaving the site from the pre- and post-development conditions for the one-year, 24-hour storm. Runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours.
 - e. General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c), as explained in the Design Manual.
 - f. All development and redevelopment shall be located outside the Riparian Buffer and Flood Protection Zone. These zones shall be in accordance with the following provisions:
 - i. Except where other applicable buffer standards are more restrictive, the Riparian Buffer Zone shall extend a minimum of 50 feet landward of all Perennial and Intermittent Surface Waters. The most restrictive standards shall apply.

- ii. The Riparian Buffer Zone shall remain undisturbed unless otherwise permitted by this section.
- iii. The Flood Protection Zone shall extend throughout the FEMA 100-year floodplain as identified on the current Flood Insurance Rate Map (FIRM) published by FEMA. The Flood Protection Zone shall remain undisturbed unless otherwise permitted by this section.
- iv. No Development or Redevelopment is permitted within the Riparian Buffer Zone or the Flood Protection Zone except for stream bank or shoreline restoration or stabilization, water dependent structures, and public or private projects such as road crossings and installations, utility crossings and installations, and greenways, where no practical alternatives exist.
- v. Permitted activities within the Riparian Buffer Zone and the Flood Protection Zone shall minimize impervious coverage, direct runoff away from surface waters to achieve diffuse flow, and maximize the utilization of Non-Structural BMPs.
- vi. Where the Riparian Buffer Zone and the Flood Protection Zone both are present adjacent to surface waters, the more restrictive shall apply.
- g. The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as recorded deed restrictions or protective covenants, to ensure that future Development and Redevelopment maintains the site consistent with the approved project plans. Buffer widths and locations shall be clearly delineated on all plans, final plat, and as-builts.

Amendment 3:

- To delete the definition within Section 6.5E for ‘Residential Infill Development’

~~Residential infill development means residential development which is 1) located within the primary corporate limits or adjacent to the primary corporate limits, and 2) less than 20 acres in size, and 3) has no vacant or underdeveloped land of ten acres or more in size adjacent to the project which could be feasibly added to the development to create a larger subdivision.~~

Staff Recommendation:

The proposed amendments will place the Town in-line with other Wake County communities which are not required by the State to regulate nitrogen export loads. The Department of Environmental Quality (DEQ) is considering amendments which could make all Wake County jurisdictions (with the exception of Zebulon) subject to nitrogen limits within the next 12-18 months. If this should occur, this item would be brought back up to the Board for action at that time.

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.”*

Attachments:

A. Stormwater Standards comparison chart

At the conclusion of his presentation, Mr. Bergmark answered questions and received comments from the Board, as follows:

Errol Briggerman asked for clarification on who is subject to the State’s Neuse River Nitrogen regulations. David Bergmark said of those municipalities reviewed, only the City of Garner and unincorporated Wake County are subject to the nitrogen regulations requirement.

Mr. Bergmark said if the State made us subject to the Neuse nitrogen rules, we would have to, at a minimum, meet their standards.

Errol Briggerman asked when the Town of Wendell began regulating nitrogen. Mr. Bergmark said the Town began regulating nitrogen around 2010.

Mr. Swaim said nitrogen was naturally occurring. He asked if we were really discussing Nitrate rather than Nitrogen.

Jonathan Olson said at the Town Board meeting it was suggested that the Town’s current nitrogen rules put the Town at a competitive disadvantage. He asked how the current standards put us at a disadvantage. Mr. Bergmark said if a development’s nitrogen export exceeded 3.6 pounds per acre, then it would need to either modify one of its stormwater bmps to reduce the amount of nitrogen, or add an additional stormwater BMP for the same purpose. Mr. Bergmark said either approach would cost more money than if no nitrogen standard existed.

Lloyd Lancaster asked why the Town would leave language about LID stormwater techniques in Chapter 6 of the UDO if there was no longer any requirement to achieve LID status (if nitrogen standards were removed). David Bergmark said we could remove the LID language as well. He said if the nitrogen language was taken out, nobody would be required achieve LID status, so it wouldn’t harm anyone. David said the advantage of leaving it there would be in case nitrogen requirements came back later.

Errol Briggerman said there were a number of larger communities on the list of municipalities reviewed that were not regulating nitrogen, so Wendell shouldn’t be the one to push the envelope.

Lloyd Lancaster made a motion to accept the amendments proposed by staff, and additionally to remove all LID language from Chapter 6 of the UDO. He said he would include the suggested statement of plan

consistency as part of his motion. Jonathan Olson seconded the motion. The motion passed unanimously 5-0 in favor.

Voting in Favor: Errol Briggerman, Ashley Anderson, Lloyd Lancaster, Jonathan Olson, and Allen Swaim.

Voting Against: none

8. Adjourn to Next Regularly Scheduled Meeting

Chairwoman Ashley Anderson thanked everyone for attending the meeting and then asked for a motion to adjourn.

Allen Swaim asked if this would be Ashley's last meeting. He said if there was no June meeting, he would host a Planning Board party on the June Planning board meeting date at his law office.

Lloyd Lancaster made a motion to adjourn the meeting; Errol Briggerman seconded the motion. The motion passed unanimously and the meeting adjourned at approximately 7:24 p.m.