

**Town of Navassa
Environmental & Stormwater Advisory
Committee Minutes
September 13, 2010
5:30 PM**

IN ATTENDENCE:

Committee Members Present: John Klein, Ella Beatty

Committee Members Absent: Eulis Willis, Gregory Westfield, Dorsey Jones Jr.

Staff: Travis Barnes, Town Planner

Other Attendees: Larry Sneed with Coastal Carolina Resource Group and Cameron Moore with BASE

NO QUORUM:

The meeting was canceled at 5:45 PM because no quorum was present.

Minutes prepared by Travis Barnes, September 15, 2010.

The committee members present decided to have an informal workshop on the Stormwater Ordinance, seeing that staff had arranged for stakeholders to attend the meeting and provide comments to the committee. Staff stated that he would take minutes of the informal workshop for the rest of the committee members to review, however no decisions could be made at the informal meeting, because there was no quorum of the formal committee.

**Informal Workshop on Stormwater Ordinance
Minutes of September 13, 2010
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DISCUSSION OF OUTSTANDING STORMWATER ISSUES:

Everyone present at the workshop introduced themselves to one another. Mr. Moore said that he is the Governmental Affairs Director for BASE, which is the Business Alliance for a Sound Economy. Mr. Moore said that he represents the Wilmington Cape Fear Home Builders Association, the Brunswick County Home Builders Association, the Brunswick County Land Owners Association, the Topsail Island Association of Realtors and numerous other business and professionals in the land development field. Mr. Moore said that in a nutshell he is a lobbyist on land development issues. Mr. Klein said that BASE is more of a voice for the developers, but that there is a balance. Mr. Sneed said that he works mostly with the Home Owners Associations in maintaining and repairing their stormwater BMPs and that he does not represent the developers or the homeowners, but that he has years of experience in seeing the different types of maintenance issues that arise in subdivisions and the problems that HOAs have in resolving these issues. Mr. Barnes explained that at the previous committee meetings the main outstanding issues with the draft Stormwater Ordinance pertain to:

1. Determining who is responsible for funding the ongoing maintenance of stormwater BMPs in the event

that a BMP needs substantial repair.

2. Whether or not an escrow account will be required in order to set aside a fund for future repairs of BMPs.
3. If an escrow account will be required: Who will fund the account and at what percentage of the total construction costs?
4. Determining when the stormwater permit will be transferred from the developer to the HOAs.

Mr. Klein said that in his opinion the biggest issue that needs to be resolved first is whether or not the town is going to require an escrow account and how much money needs to be placed into the escrow account if we are going to require it. Mr. Klein asked Mr. Sneed and Mr. Moore what their opinion was on the escrow account. Mr. Moore stated that it is the position of BASE that an escrow account is not needed. Mr. Klein said that the Division of Water Quality has been putting pressure on the town to require the escrow account. Mr. Moore said that the state model ordinance for Phase II was written by people at UNC and that the model ordinance is the origin of the escrow account idea. Mr. Klein said he does not feel that the state model ordinance is that workable and that there are problems with it. Mr. Moore said that he agreed that there are significant problems with the model ordinance and that he feels that the town's draft is moving in the right direction in order to fix these issues. Mr. Moore said that he appreciated that the town's staff has been willing to bring in himself and Mr. Sneed as stakeholders to provide comments and feedback on the town's draft ordinance.

Mr. Klein asked if Leland adopted the state model ordinance and Mr. Barnes said that they adopted it almost word for word with a few minor changes. Ms. Beatty asked if Leland has established an escrow account. Mr. Barnes said that to his knowledge Leland has not issued a stormwater permit yet under their new ordinance so they have not actually had to set up an escrow account yet, although it is required in their ordinance. Mr. Barnes said that he felt that Leland was going to run into problems with their ordinance down the road. Mr. Sneed said in all of his experience in dealing with the state and how they administer stormwater permits, they have never required escrow accounts. Mr. Sneed said he felt that over the long run having the town administer escrow accounts would be a nightmare, because the town would be administering accounts with HOAs for decades and it would become more and more work overtime as new developments get into the system. Mr. Klein said it seems like the real need for an escrow account would be in a situation where a HOA has been maintaining a stormwater pond for years and then a hurricane comes along and blows out a forebay and the escrow account would be a way to ensure that the HOA has enough money to completely repair the stormwater pond. Mr. Barnes said that at previous committee meetings we had discussed how much work it would be for the town staff to administer escrow accounts and the committee had agreed that if escrow accounts are to be required that they will be administered by the HOAs.

Mr. Sneed said that most HOAs are run by outside property management firms that take care of collecting dues and administering the responsibilities of the HOA. He said that the majority of these property management organizations already advise the HOAs to not only put aside money for the monthly maintenance of landscaping, common facilities, and the stormwater BMPs, but they also request that the HOAs put aside reserve funds for capital improvements and major repairs down the road. Mr. Sneed said the town's goal should be to encourage this behavior among the HOAs so that when major repairs are needed years down the road, then they will have ample reserve funds to cover the cost of repair. Mr. Sneed said that the town should "trust but verify" in that the stormwater ordinance should require the HOAs to have some sort of reserve fund and that the town could require financial statements from the HOA to prove that they are setting aside money for long term maintenance and repair of the BMPs. He said that this reserve fund did not have to be set up as an escrow account as currently described in the draft ordinance though.

Mr. Barnes asked everyone what are the town's alternatives to requiring an escrow account. Mr. Barnes said that one of the alternatives that has been discussed is the town's authority to leverage special assessments against the HOA in the event that their BMPs are failing. Mr. Barnes said that the town already has the statutory authority to leverage special assessments. Mr. Moore said that BASE agrees that the town should leverage special assessments in the event that the stormwater BMPs are failing because that already provides the town with an approved means of forcing the HOA to correct the water quality issue. Mr. Moore said that unfortunately he feels that Leland rushed to adopt the state model ordinance with very little stakeholder input and it is going to be an ordinance that is going to have real problems when the first development comes into the town to get permitted. Mr. Moore said the stormwater permit requires the developer to set up an HOA and it requires the developer to fund the HOA so that it can operate and function properly. He said another key issue is determining when the permit and the associated

responsibility will be transferred from the developer to the HOA and the new home owners that live in the community. Mr. Moore said that in regards to the ability of the town to leverage special assessments it would work as follows; if the town runs into a situation where the developer is out of the development and the HOA is up and running and we have a storm event that comes in and the storm takes out a BMP and there is not enough money in the HOA account to cover the cost to repair it, then the home owners are going to come to the Navassa Town Council and ask them what they can do. The Town Council then has the authority to leverage a special assessment against each home owner in the affected subdivision and then each home would have to pay their equal share of the cost to repair the BMP. In this way the town the HOA and the developer do not have to worry about administering an escrow account and the town will still have the authority and power to correct major failures of the stormwater BMPs in subdivisions.

In regards to transferring the permit there are a number of issues that we have to think about. Mr. Moore said that he has been dealing with a subdivision in Brunswick County, in which the HOA is refusing to take over the stormwater permit and the control and responsibility that comes with it and the Division of Water Quality is stating that they can't force the HOA to accept the permit. Mr. Klein said he has also worked with a subdivision that refused to take over a stormwater permit. Mr. Sneed said that in his experience it is much better to transfer the permit over to the HOA as soon as possible because there are a number of things that can happen in a development as homes start to be built in which the developer has little or no control and if the HOA has the responsibility to maintain the BMPs from an early stage then they have more of an incentive to try to protect their facilities. Mr. Sneed said that once the developer has constructed the BMPs to the required standards and there has been an inspection that verifies that the facilities were constructed properly and are functioning properly then the developer should be able to sign off and transfer the stormwater permit and the responsibility of maintenance to the HOA. He said he has seen general contractors in developments illegally fill in swales and ditches, place unplanned pipes that drain into BMPs, cause erosion that puts a lot of sediment into BMPs, and countless other things that people do once they start building homes and then the homeowners themselves also do these things, all of which is not the fault of the original developer. If the HOA is administering the stormwater permit from an early stage then they have the knowledge of how the BMPs are supposed to function and they also have a better maintenance ethic and policies designed to prevent homeowners from causing problems with BMPs.

Dorsey Jones came into the meeting a little after 7:00 PM, however the meeting had already been cancelled so Mr. Barnes said that the meeting will remain an informal workshop in which no formal decisions or actions can be taken by the committee members. Mr. Barnes gave Mr. Jones a brief overview of what has been discussed thus far. Mr. Klein said that we really need to figure out whether or not the ordinance is going to require an escrow account before we start getting into other issues like when the permit is transferred. Mr. Sneed said that he does not think the town should administer escrow accounts. Mr. Klein asked if any other towns locally have required escrow accounts. Mr. Moore said that Leland is the only town to his knowledge and that the City of Wilmington took out the escrow requirement. Mr. Moore said that he and Mr. Sneed each met with Mr. Barnes in order to review the current draft of the stormwater ordinance and to provide comments and suggested changes. Mr. Moore then started to review these suggestions with the committee. Mr. Moore said that one way to get around the transfer issue with the permit would be to have the developer and the HOA sign the permit jointly and then when the as built drawings are certified then the HOA is fully responsible. Mr. Klein said maybe we can have the permit be transferred to the HOA as soon as the as-built drawings are certified. Mr. Barnes said that the DWQ had negative comments about transferring the permit to the HOA too early, but that he would contact them to see if the town would be allowed to do this.

Mr. Klein said that it seems like the committee was in agreement that the developer and the HOA should have some form of reserve fund on hand in case of a catastrophic failure of a BMP. Mr. Klein said that the committee had discussed that the developer would have to put in 50% of the cost of the BMP construction into an escrow account over the period of five years. Mr. Barnes said that we had discussed this but that he still has to take this decision and put it into written language in the ordinance. Mr. Barnes said we also have to consider how we will enforce and monitor the escrow account that is being held by the HOA and one way we had discussed this would be to require financial reports of the account to be submitted with the annual maintenance report. Mr. Jones said that he is thinking that it might be best not to worry about the escrow accounts at all. Mr. Sneed said that he feels that it would be better to have a reserve fund requirement but not have it set up as the escrow account described in the model ordinance. Mr. Sneed said that if the reserve fund is paid for by requiring each property owner of a lot according to their percentage of ownership of the property then it starts out that the developer is paying the majority

of the fund and then as more homeowners come in they start taking on more of the cost of funding the reserve fund until it reaches the desired amount specified by the ordinance. Mr. Sneed said if you do it this way, then every lot owner has a stake in funding the reserve fund so they also have a stake in making sure that the BMPs are properly maintained and functioning as they are intended. On the other hand if you have a reserve fund that is being paid for entirely by the developer then the contractors and homeowners have no incentive to properly care for their lots in a way that will ensure the adequate maintenance of the BMPs. Instead they will fill in swales and ditches and get the contractor to pipe things where they are not supposed to be, etc. In this situation when it comes time to transfer over the permit from the developer to the HOA all of these issues have to be resolved and who should be responsible for it? The developer is going to say that he built it as it was designed and he has the as built drawing certification to prove it so he shouldn't have to pay for it, or the developer might have been an LLC that is long gone by then. In this situation the HOA doesn't want to take the permit and then have to pay for all of the things that need to be fixed right away, so it really becomes a bad situation and Mr. Sneed says he deals with it all the time. Therefore it is best to get the permit to the HOA as soon as possible.

- Staff will write language requiring the permit to be transferred to the HOA after the as-built drawings are certified. Staff will discuss this issue with Mike Randall with the DWQ.
- Staff will write language setting up the "reserve fund" for ongoing BMP repairs and replacement. Each member of the HOA will pay their proportionate share of the cost.
- We need to have an attorney review the final draft to make sure that we are on solid legal ground.