

**TOWN OF DUCK  
PLANNING BOARD  
REGULAR MEETING  
October 11, 2017**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, October 11, 2017.

Present were: Chair Joe Blakaitis, Vice Chair Marc Murray, Tim McKeithan, James Cofield, and Sandy Whitman.

Absent: None.

Also present were: Director of Community Development Joe Heard and Permit Coordinator Sandy Cross.

Others Present: Steve Romine, Colleen Hall, Richard Dunn, and Melissa Harreld.

Others Absent: Council Liaison Chuck Burdick.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for October 11, 2017 at 6:33 p.m.

**PUBLIC COMMENTS**

None.

**OLD BUSINESS**

None.

**NEW BUSINESS**

**Text Amendment Ordinance 17-13: Proposal to Amend Section 156.058 of the Zoning Ordinance by Clarifying the Approval Process for Stealth Wireless Telecommunication Antennas**

Director Heard stated that at the Board's August 9, 2017 meeting, he showed the Board some photographs that were examples of what the Board was discussing – stealth communication antennas. He stated that he had the photographs available if anyone wished to view them as part of their consideration on the text amendment. Member Cofield stated that he would like to view the photographs again.

Director Heard stated that the Board had in front of them a draft ordinance for consideration of two items in Section 156.058. He explained that one was a table that listed different varieties of wireless telecommunication facilities and the approval process for each of them. He pointed out that the table lists stealth antenna as a conditional use in all zoning districts. He noted that in the

next subsection, it lists stealth antenna as an administrative review process. He commented that questions that have come up recently where staff noticed this discrepancy. Town Council asked that the Planning Board review it and make a recommendation as to the appropriate process for approval of those types of stealth antennas.

Director Heard stated that staff, in putting together Ordinance 17-13, noted that, by definition, stealth antennas seem to meet a lot of the Town's interests as far as being low key, if done properly. He stated that staff is recommending that it be considered as an administrative approval process. He went on to show the Board and audience the photographs of stealth antennas and towers that were presented at the Planning Board's August 9, 2017 meeting. He stated that he is asking the Board to consider which is the more appropriate approval process and make the recommendation to Town Council.

Chair Blakaitis asked why some are conditional uses and others are through an administrative process. Director Heard stated that the only thing being changed is the column that lists stealth antenna. He added that the standards in all of the other columns are existing. He stated that the process could be changed to an administrative process, consistent with the wording of the subsequent section. Chair Blakaitis clarified that the other topics are variations of antenna installations. Director Heard stated he was correct. Chair Blakaitis asked what makes an antenna a stealth antenna. Director Heard stated that it is defined in the ordinance and pointed out the definition. Chair Blakaitis asked if it is because the components are hidden. Director Heard stated that he is correct, adding that these types on antennas do not have the same visual impact as a tower or something that can be more readily seen. Chair Blakaitis clarified that it would be the preferred adoption of an antenna. Director Heard thought that most communities prefer stealth features. Chair Blakaitis asked if the table is designed to comply with the new State law that was passed some time ago. Director Heard stated that this ordinance is not intended to address the State law, but the next item on the agenda will. He added that Ordinance 17-13 is intended to fix a discrepancy in the existing ordinance.

Vice Chair Murray thought it would be odd to administratively permit a water tower in a place where an actual water tower would not be permitted. He asked if there is any way to word it so that an administrative review could be used provided that the item the antenna is being disguised as is allowed in that area. Director Heard stated that it can be looked at that way, adding that another way to look at it would be the possibility of a height limitation for the structure if there is a concern that it will be something more substantial. Vice Chair Murray pointed out that the antenna in the Town of Southern Shores was intended to look like a flag pole. He asked if it qualified as a stealth antenna. Director Heard stated that it depends on each community's definition. He stated that it may be a reason to look at the height. Vice Chair Murray thought the height will be tough to regulate as he doesn't want to specify a height that would be a detriment to the industry. He reiterated that whatever a stealth antenna is disguised as, if that requires a Conditional Use Permit, then the stealth antenna should require one as well. He noted that lampposts and steeples are allowed through administrative review. However, he isn't sure how to word it for the ordinance and isn't sure if the rest of the Board feels the same way.

Member McKeithan thought it may already be covered under *Administration* in that the clause that reads: "Requires administrative approval if applicable standards are met." Vice Chair Murray pointed out that it meant the requirements are approved if they met the criteria. Chair

Blakaitis asked where the applicable standards are located. Director Heard stated that it would include the basic zoning district and other applicable development standards.

Chair Blakaitis stated that he was confused. He asked where the applicable standards would come from. Director Heard stated that it could be anything in the ordinance. Chair Blakaitis pointed out that the ordinance does not contain anything. Director Heard replied that there are all kinds of basic zoning district standards – setbacks, lot coverage, etc. Chair Blakaitis clarified that Director Heard is referring to normal, Town zoning requirements. Director Heard stated he is correct, adding that if it is on a soundfront property, there could be floodplain or CAMA standards that come into play. He added that the general statement is meant to encompass all of those things.

Chair Blakaitis asked Vice Chair Murray if that is what he meant with his comments. Vice Chair Murray assumed that in other areas of the ordinance, one will find things that are allowed or not allowed by zoning district. He noted that someone will have to go to the rest of the zoning ordinance to find out. He wondered if Director Heard would want to be tasked with administratively approving something like the flagpole in the Town of Southern Shores. Director Heard read the definition of stealth antenna to the Board and audience: “Wireless telecommunication antenna and related equipment designed to blend into surrounding environment or integrated into the physical structure to which it is attached.” He noted that the blending into the surrounding environment aspect would give some leeway as far as looking at it as something that was out of place and did not fit in with the surroundings. He thought that the rationale for looking at it as administrative is that the Town wants companies to use stealth technology. He added that if the Town wants them to do it, the easier approval process will make it more likely they pursue that option as opposed to a stand-alone tower with a more complicated approval process.

Vice Chair Murray agreed in relation to the stealth cactus and the lamppost blending into their environments, but doesn’t think the water tower or fire lookout tower are attractive options. Chair Blakaitis asked why someone would want to build one in Duck. He further asked if it is to hide the antenna. Vice Chair Murray assumed that the stealth design is dictated by the needs of the antenna. He added that they are getting less bandwidth out of a lamppost antenna than a fire lookout structure.

Member McKeithan thought it can be interpreted that if a water tower is not allowed in a certain zoning district, then a stealth tower cannot be erected to look like a water tower in that district. Vice Chair Murray agreed. Member McKeithan stated that it would not be an applicable standard. Director Heard stated that the Board can add a clarification to that effect if they wish. Vice Chair Murray stated that the reason he brought it up is because of the antenna in Southern Shores. He explained that flagpoles are allowed in most zoning districts. He added that those type of antennas are disguised as flagpoles. Member Cofield stated that a structure that high cannot be erected as a stealth antenna. Member McKeithan agreed. Director Heard stated that the height would put it into the definition of a tower, not a stealth antenna, if it was a certain height.

Chair Blakaitis asked Director Heard if he would be happy with the following language: “...requires administrative approval if all applicable Town standards are met...” He added that

Director Heard cannot reasonably lay out all of the standards that it would apply. Vice Chair Murray stated that Director Heard doesn't need to, he could just put that it is administratively approved if the stealth functions are allowed in the district. He thought the wording will have to go elsewhere in the ordinance, such as where stealth antennas are defined.

Director Heard stated that if the antenna is a freestanding tower and not attached to another type of facility, whether it is designed as a water tower or something else, it still falls under the definition of freestanding tower. He added that if a company is building a substantial tower structure, it would still require a conditional use permit and could only be permitted in the commercial districts. He stated that whether or not it incorporates some stealth elements to it, the stealth was still the antenna and the tower itself is a separate, freestanding structure, which has a different definition and standards. He explained that if a company is building a whole, separate tower structure, that would still fall under a conditional use or not even be allowed in the residential districts.

Vice Chair Murray asked if someone in the RS-1 district wanted to build their own firehouse or lookout tower and it was less than 64 square feet, it would be limited to the 35-foot height limit. He thought that administrative approval could bring scrutiny and criticism to Town staff if it is the only standard.

Chair Blakaitis pointed out if one looks at the chart in the draft ordinance, a stealth antenna is administered by staff, but is also listed as not allowed if it is an existing wireless facility substantial modification, freestanding telecommunications tower, or antenna attached to a building or structure. He thought it answered some of Vice Chair Murray's questions. Vice Chair Murray disagreed, stating that he felt that stealth is a vague definition disguised to look like something else.

Member Cofield moved to approve Ordinance 17-13 as presented. Chair Blakaitis seconded.

Motion carried 4-1 with Vice Chair Murray dissenting.

**Text Amendment Ordinance 17-14: Proposal to Amend Section 156.058 of the Zoning Ordinance by Updating Standards for Small Cell Wireless Facilities Consistent with Recently Adopted State Legislation**

Director Heard stated that on July 21, 2017, the NC State Legislature adopted Session Law 2017-159 – “An Act to Reform Collocation of Small Wireless Communications Infrastructure to Aid in Deployment of New Technologies”. He noted that the law is already in force and many communities are in the process of updating their standards for wireless telecommunications to comply with the new law. He explained that the proposed ordinance adds standards and an administrative approval process for small wireless facilities consistent with the new State law.

Director Heard stated that in order to accommodate new trends in the wireless communications industry, the State law accomplished the following:

- Adds several new definitions, including a definition for “Micro Wireless Facilities” and “Small Wireless Facilities” that are less than six cubic feet, have less than 28 cubic feet of ground equipment, and are on poles 50 feet or less in height.
- Sets a specific administrative approval process for small wireless facilities in a public right-of-way or property that is not zoned single-family residential. (staff was proposing a conditional use permit process for small wireless facilities in other locations.)
- Exempts micro wireless facilities from permitting.
- Allows up to 25 locations to be submitted in a single application.
- Limits fees for review.
- Limits criteria under which a permit application can be denied.

Director Heard noted that small wireless facilities do not have a wide range and do not have to be very tall. He added that they are typically in the range of 30-40 feet in height. He stated that the proposal in the ordinance deals with the approval process for a small wireless facility and the proposal is consistent with State law. He pointed out that it would be an administrative review in the commercial districts as well as all districts that are not single family residential. He stated that staff is proposing small wireless facilities as a conditional use in the single-family districts. In these situations, a company would have the opportunity to present a design for something that would be appropriate for the neighborhood.

Director Heard explained that the reason that he chose to make the recommendation for the conditional use, as opposed to one that would not be allowed in the single-family residential districts at all, is that companies seeking to put in small wireless facilities would need to locate smaller facilities here and there throughout Town. He added that there will likely be areas where they will be needed in residential districts. The only commercial zoning district is in Duck Village, with a few other places sprinkled to the north. He stated that without allowing the opportunity in single-family districts, there may be service gaps in what the companies are trying to achieve. He explained that by making it a conditional use permit, staff felt that it will help the Town by allowing the Planning Board and Town Council to take a look at the specific proposal, be sure it fits the character of the district, and addresses any special needs.

Director Heard stated that the other changes are intended to make the ordinance consistent with the State law. He added that prior to the meeting, an attorney representing Verizon talked with him about a couple of suggestions he has to improve the draft. He stated it was noticed that there are a couple of instances where some of the wording is duplicated. He asked the Board that if they found an instance or two where there is duplication, that it be removed before it goes on to Town Council. He noted that it would not change the content for the standards.

Verizon Wireless Attorney Steve Romine was recognized to speak. Mr. Romine gave a short presentation to the Planning Board and audience, giving statistics on small wireless facilities and the data they put out and explaining wireless antennas and micro cell towers. He noted that wireless facilities prepare people for future technology, open up new business opportunities, and offer a public benefit by improving emergency services. He stated they use existing infrastructure without having to create new holes in the landscape. He showed examples of stealth antennas that Verizon has installed in various areas and showed how they blend in with their surroundings.

Director Heard noted that there are potential sites in Duck that will be proposed for antennas – one near the Bias Shores subdivision, one near the Tuckahoe subdivision and one on the border with the Town of Southern Shores. He added that there may be a fourth one, but isn't sure where it would be located.

Chair Blakaitis asked how the proposed sites are chosen. Director Heard stated that it is based on coverage. Chair Blakaitis stated that if the reason is to improve coverage at times, most of the people will be traveling around the Village Commercial area. He asked what would make Verizon pick the Tuckahoe or Bias Shores subdivisions for a site. He added that the northern subdivisions in Duck have just as many houses and people as the southern subdivisions. Colleen Hall from Verizon was recognized to speak. Ms. Hall stated that the needs are determined by their RF managers. She stated that the macro sites have three or four antennas on three sides and what drives the process is windows except for when an antenna of a macro is overburdened. She added that it will be filled in with others. She pointed out that this group of sites is the first round of nodes on the Outer Banks. She thought Verizon is the first carrier in the area to have them. She stated that it is the beginning, but certainly not the end, and Verizon will have more sites to fill the gaps when they come in. She reiterated that all sites are determined by Verizon's operations and RF engineers.

Member Whitman asked if Verizon has some antennas on poles and other companies could have antennas on separate poles. Colleen Hall stated that he is correct. Member Whitman clarified that could result in three or four times the number of antennas. Ms. Hall stated he is correct.

Member Cofield asked if there is a way to share towers. Colleen Hall stated that a shared system wouldn't provide the capacity that carriers are looking for. She added that there also isn't enough room on a utility pole to put several carriers on one pole. She stated that a small cell will handle one carrier.

Chair Blakaitis asked what Verizon does with a town that does not have many utility poles. Colleen Hall stated that they will develop another option such as a stealth structure on an existing building.

Vice Chair Murray asked if Verizon leases space from Dominion Power. Colleen Hall stated that they have agreements with Dominion Power. Vice Chair Murray asked what the terms of the agreement are if the power pole is damaged in a storm and Dominion has to replace it. He further asked if it is a term lease. Ms. Hall stated that their agreement with Dominion Power is that if the pole falls, Dominion will fix it and Verizon's antenna will be placed on the new pole. She added that if wires are put underground, Verizon has to abide by Dominion's decision. Chair Blakaitis asked where the antenna would go. Colleen Paul stated that Verizon would have to take their facility down.

Steve Romine noted that Verizon has a different approach and solution for utilities that are located underground. He explained that the antennas are mainly co-located on existing facilities so that was why they are well hidden and unobtrusive.

Member Whitman asked how Verizon installs their equipment on the primary power lines when most of the poles in Duck are dead-end poles. Colleen Hall stated that Dominion will place a

pole and in most cases, they place the pole and extend it between five and ten feet so that there is appropriate clearance above the power lines.

Vice Chair Murray clarified that Verizon does not use existing poles, but uses existing pole locations. Steve Romine stated that he is technically correct. He stated that there are different ways to use an existing pole. He added that most of the time it is easier to use an existing pole.

Chair Blakaitis asked what the height must be for a pole to have an antenna on it. Steve Romine noted that Duck's ordinance proposes regulations regarding height limits. Director Heard noted that State law states that if it is taller than 50 feet, it will not qualify as a small cell antenna.

Member Whitman pointed out that most poles are 45 feet and if the antenna is added, it will exceed the height limit. Steve Romine stated that it can be addressed in the Town's ordinance if it was the greater of 50 feet or 10 feet over the tallest pole. Director Heard pointed out that it is defined in the new State law.

Chair Blakaitis stated that in the nodes that Verizon selected, there are no structures that the antennas can be put on. Director Heard stated he is correct. He added that they would also have to submit a Conditional Use Permit because they are residential zones and the State law covers everything except single-family residential. He added that the administrative review process applies everywhere except residential. In the single family residential districts, staff is proposing a Conditional Use Permit process. He added that Verizon can look at alternatives in those cases. He noted that the only places they would be allowed by right with an administrative process would be the commercial properties or other non-single family residential areas. He reiterated that this is consistent with State law.

Vice Chair Murray asked how it will work if the power poles are in an RS-1 district and in the right-of-way. Director Heard stated that the way the State law is written, it focuses to a great degree on utility poles, but has other allowances and is not as restrictive. He stated that the law was shaped for communities that have their own utilities. He noted that Duck does not have many utility poles in the public rights-of-way as a lot are on private property. He added that in those cases, a Conditional Use Permit would have to be granted to erect an antenna. Vice Chair Murray clarified that it will need a permit if it is going on a structure that Dominion Power had an existing easement. Director Heard stated that if it is in a residential district, they are not given that same benefit.

Member Whitman asked what type of boxes are at the power poles. Colleen Hall stated that Dominion Power has standards that if the box is hanging over a sidewalk or road, it has to be 11 feet over the road. She added that if it is parallel of the right-of-way, it has to be mounted eight feet in height. Member Whitman noted that most of the poles Ms. Paul is referencing are readily set. Colleen Paul stated that there is one pole they identified in Duck on Scarborough Lane, which was a drop pole next to a shopping center, which could accommodate a small wireless antenna. Director Heard noted that for other options, Verizon will have to pursue a Conditional Use process so the Planning Board can be assured that they are comfortable with the proposal.

Vice Chair Murray asked about the micro wireless facilities. Director Heard stated that micro wireless facilities are exempt completely. Vice Chair Murray clarified that Verizon is discussing

micro facilities. Director Heard disagreed. Steve Romine clarified that they are small wireless facilities.

Chair Blakaitis asked where a micro wireless facility would be erected. Colleen Hall stated that they do not know and have not seen the equipment, but have heard it's about the size of a notebook. She added that they can potentially go anywhere. Chair Blakaitis asked if they are installed by Verizon or by the local homeowners. Ms. Hall stated that they would be installed through Verizon. Chair Blakaitis clarified that it will cover a small area. Ms. Hall stated he is correct. Director Heard reiterated that micro facilities are completely exempt from permitting under the State law and can go anywhere.

Vice Chair Murray stated that it seems like it would be consistent with the State law as the ordinance is written. Director Heard agreed, adding that is the intent.

Steve Romine noted that the draft ordinance language regarding the height limitation read as follows: "...height of a new or modified utility pole installed to support small cell. Each new or modified utility pole installed in the right of way shall not exceed the greater of (i) ten feet above the tallest pole in place as of the effective date within 500 feet of the new pole in the same right of way; or (ii) fifty feet above ground. In the single-family residential..." He added that it is repeated later in the ordinance where it reads: "...new small cell facilities in the right of way may not extend more than ten feet above an existing pole..." He wanted to point out to the Planning Board that there may be a little bit of clarification in that the two sections are not inconsistent but the first one allows the greater of, up to 50 feet and the second allows up to 10 feet above an existing pole. He suggested that it will be helpful to delete the first section.

Steve Romine pointed out that Section 2 is repeated in the draft ordinance with regard to signage and color. He suggested coordinating and synthesizing the two sections.

Member Cofield asked if Steve Romine is suggesting striking (I)(1)(b) from the draft ordinance. Mr. Romia stated that he was suggesting striking (I)(1)(f). Member Cofield asked Mr. Romia if he is suggesting striking (I)(1)(f). Steve Romia stated he is correct. He also suggested striking (I)(1)(g) since it is covered in (I)(1)(i).

Chair Blakaitis asked why the sections should be stricken. Steve Romine stated that it is redundant and he is just pointing it out.

Vice Chair Murray clarified that on the chart, under stealth antenna, it would be changed to Administrative review. Director Heard stated he is correct. He noted that he wanted to keep the two issues separate for this meeting because he wanted the Board to understand each issue. He added that they will be lumped together for the final draft.

Member Cofield asked if there is a problem with striking the redundant language. Director Heard stated that, with regard to the one related to color, there is a statement in (I)(2)(f) that reads "...otherwise concealed to the extent practicable..." He noted that is not covered by the first statement. He stated that it means that the applicant has to make every attempt to try to conceal the antenna. He added that it is not part of the statement under Color. Director Heard

stated that, with regard to the other sections, he doesn't have a problem with the section related to signage. He agreed that the two sections were substantially similar and one could be removed.

Chair Blakaitis asked how the sections could be re-worded. Director Heard stated that (I)(2)(g) could simply be stricken from the draft ordinance.

Chair Blakaitis pointed out that Verizon will be coming to various towns and asking for the nodes and new wireless substations throughout the country. He added that the State went ahead and passed a law to make it easy for Verizon to do so. Director Heard stated he is correct. Steve Romine stated that the State wanted to streamline the process, because there are so many coming and the high demand. He added that there is a lot of cost involved as there are jurisdictions that were charging an exorbitant amount of fees to do things in the rights-of way. He noted that the Virginia Department of Transportation was charging \$14,000 per year to access a pole in the right-of-way. He added that it is now \$100. He stated that there are costs, permits and administrative regulations that had to be overcome on some level.

Member Cofield moved to approve the proposal with the changes made. Member McKeithan seconded.

Member Whitman inquired if the antennas will have to go on Dominion Power poles. Director Heard stated that they will not have to go only on the Dominion poles. They could go on buildings or have a legitimate or faux light pole where one is not already in place.

Motion carried 5-0.

## **APPROVAL OF MINUTES**

### **Minutes from the August 9, 2017, Regular Meeting**

Member Cofield moved to approve the August 9, 2017 minutes as presented. Member McKeithan seconded.

Motion carried 5-0.

## **OTHER BUSINESS**

None.

## **STAFF COMMENTS**

### **Summary of October 4, 2017 Town Council Meeting**

Director Heard gave an update on the October 4, 2017 Council meeting to the Board and audience.

## **Project Updates**

Director Heard updated the Board and audience about several Town projects.

**BOARD COMMENTS**

None.

**ADJOURNMENT**

Member Cofield moved to adjourn the meeting. Chair Blakaitis seconded.

There was no vote.

The time was 7:58 p.m.

Approved: \_\_\_\_\_  
                  /s/ Joe Blakaitis, Chairman