

**TOWN OF DUCK
PLANNING BOARD
REGULAR MEETING
October 10, 2018**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, October 10, 2018.

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 Council Liaison Jon Britt.

Absent: Permit Coordinator Sandy Cross.

Others Present: Victor White of Landmark Engineering.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for October 10, 2018 at 6:38 p.m.

PUBLIC COMMENTS

None.

OLD BUSINESS

Text Amendment Ordinance 18-06: Proposal to Amend Section 156.126 of the Zoning Ordinance by Establishing Standards for the Scale of Single-Family Residential Development

Director Heard stated that the Board had a comprehensive discussion at their September 19, 2018 meeting regarding several key issues and developed some concepts that they asked to have incorporated into a draft ordinance for further or final consideration at this meeting. He stated that the draft includes the following:

- Continued use of a tiered system based on the size of lots.
- Limit the septic field capacity within each tier.
- Limit the maximum size of residences within each tier.
- Create an incentive-based allowance to construct large residences with a greater maximum size if certain development criteria are met.
- Add greater minimum setback requirements for large residences per the recommendation of Fire Chief Donna Black.

Director Heard stated that he included a section in the staff report outlining Fire Chief Black's comments and recommendations. He noted that one of the ideas that came out of that conversation is to provide an option for an owner to install a residential sprinkler system throughout the house. This would provide flexibility for homeowners in cases where the setback constraints become difficult. With the point being to prevent buyers from spreading from one building to another, Fire Chief Black sees no need to require greater setbacks if a sprinkler system is installed. He stated that the sprinkler system alternative would be a greater cost during construction but gives the homeowner a choice they wouldn't have otherwise.

Director Heard stated that in the draft ordinance, he addressed the five items requested by the Board. He stated that the changes made per the recommendations at the Board's last meeting are on the two different tables, one of which shows the maximum lot size. The other information in the draft ordinance has not changed. He explained that the maximum house size for large houses on the upper tier has been increased to allow a house of up to 8,500 square feet, whereas the earlier ordinance had the overall cap at 7,000 square feet. He added that more appropriate caps have been added to the two tiers below it. He reminded the Board that they are not proposing to allow larger houses on the non-conforming lots that are under 15,000 square feet, which would still be capped at the standard maximum size. He stated that the septic capacity gallons per day has been incorporated as a new column in the lot size table. Section D(2) shows the standards regarding the setback increases for large residences. He noted that over 90% of the existing houses in Town, will comply with the proposed maximum size standards. He stated that if a homeowner wants to build a large house, they will have to meet the larger building setbacks.

Director Heard stated that the next tier of 20,000-24,999 square feet can have a house of up to 7,000 square feet. He noted that there is a small increase in the proposed front and rear yard setbacks and a larger side yard setback for large houses. He stated that lots of 25,000 square feet or greater will allow houses up to 8,500 square feet with front and rear yards five feet larger than the standard and a side yard of 20 feet, which is double the typical standard. He noted that Fire Chief Black was involved in developing the proposed figures in terms of thinking about houses of that size in close proximity to adjoining properties. He stated that the alternative for the residential sprinkler system is also offered to address fire safety concerns.

Director Heard stated that those are the changes that the Board members asked to be incorporated into the draft ordinance. He understood that the Board wants to consider how the standards will work and hoped the Board members had a chance to do so.

Member McKeithan asked for an example of the landscaping canopy coverage and how it differs for the large houses. He wasn't sure what it is increasing. Director Heard stated that on residential properties, there is a lot coverage canopy requirement of 15%. He stated that it is being bumped up to 20% and requires the homeowner to either keep a greater amount of existing vegetation or to install additional plantings. He noted that part of the thought behind this requirement is that a larger residence has a larger mass to it and landscaping is a way to help break up the appearance. He added that the Town is not requiring that it be near the house but no matter where it is, unless it is totally in the rear of the property, it will have a positive visual impact from the front of the property. He stated that, where applicable, a homeowner will have to maintain 10% of the existing natural vegetation. Member McKeithan asked what that requirement is currently on a regular sized lot. Director Heard stated that there isn't any

requirement. He added that the Town encourages it since existing vegetation is already established and staff knows that those plants will do well, whereas anything that is planted, could thrive or die off.

Chair Blakaitis stated that the two paragraphs regarding landscaping/canopy coverage were confusing and almost in opposition to one another. He wondered if they can be easily understood. He pointed out that the first paragraph states that an empty lot has to have a certain amount of vegetation after it is prepared for the house. Director Heard stated that it does not apply only to an empty lot, but that would be the typical scenario that staff sees. He added that it can be applied to a residence being enlarged.

Chair Blakaitis noted that the second paragraph talks about the total area minus the footprint of the building must have 20% coverage. He stated that he is confused about which standard applies. Vice Chair Murray thought it is both. Director Heard agreed, explaining that the first paragraph only deals with the preservation of the existing vegetation on a property, which is 10%. He added that the second paragraph has an overall vegetation requirement of 20%. Chair Blakaitis asked if the first one will have to come up to 15%. Director Heard stated that it does not as the Town does not require that someone needs to maintain the existing vegetation. He stated that the reason for it is to try to get something that is mature and has a more immediate impact as opposed to trees that may not grow to a significant size for five or 10 years.

Council Liaison Britt stated that it isn't confusing to him. He thought the idea is to keep a homeowner from stripping their lot of all vegetation. Chair Blakaitis pointed out that the Town's ordinance already prevents the clearing of a lot. Vice Chair Murray and Council Liaison Britt disagreed. Council Liaison Britt noted that it tries to discourage it but doesn't prevent it.

Vice Chair Murray stated that he realizes the reasoning for maintaining existing vegetation but isn't sure about not being able to move it around the lot by planting it as part of the development. He wondered if the Board can do an either/or in the ordinance where if the homeowner does not maintain the vegetation, they will have to plant more than they would have had to maintain. He stated that he can think of a lot of scenarios where the vegetation that the Town may be requiring the homeowner to keep is in the area that they are already limited to by the larger setback. He noted that, theoretically, it would be around the perimeter and the homeowner would leave that. He realized that there is a paragraph in the draft ordinance for Director Heard's discretion, but he isn't sure about the best approach.

Member Cofield stated that he likes Vice Chair Murray's suggestion that if the homeowner removes existing vegetation from the property, they will have to replant somewhere else on the property. He suggested that if the homeowner removes what was currently on the property, the Town should require an additional 10% canopy coverage.

Vice Chair Murray stated that Member Cofield's suggestion can be accomplished. He stated that he is uncomfortable with the Town's tree ordinance. He pointed out that the Town Hall has historic aerial photographs in the stairwell that show that there isn't any vegetation except in certain areas. He added that it was a healthier erosion environment. He thought that for large buildings, it will not be necessary to put that fine of a point on it.

Member Cofield stated that he likes the tiers and it doesn't bother him to increase the criteria addressing design elements including landscaping for larger homes. He stated that he does not like the cap at 8,500 square feet since the Board had previously discussed it being either at 10,000 square feet or no cap at all. He asked why it was capped at 8,500 square feet. Director Heard stated that figure was what the Board had offered at their last meeting. He added that there was conversation about allowing larger square footages over the last few months, but the majority of the Board gave him direction to use 8,500 square feet as the cap. Member Cofield stated that he did not hear that.

Member McKeithan stated that he is not comfortable going above 7,000 square feet. He felt that the Board increasing the cap to 8,500 square feet is more than what he favors. He noted that the Board had this discussion at prior meetings and decided on 7,000 square feet. This proposal increases the development standards to allow an owner to exceed 7,000 square feet. He stated that the Town seems to be going in the opposite direction of many of the other towns and thinks there needs to be a cap on it somewhere.

Director Heard stated that the cap for the largest properties has been raised from 7,000 square feet to 8,500 square feet from the last version of the ordinance. Member Cofield stated that it may have been raised, but there wasn't consensus on it. Chair Blakaitis noted that the consensus was to have Director Heard prepare the draft ordinance this way. Vice Chair Murray agreed.

Member Whitman thought that there should be sprinklers in homes of 6,000 square feet and higher without changing any of the setbacks. Director Heard noted that Fire Chief Black would likely be in favor of that concept but she understands that everyone may not feel that way. Member Whitman stated that he is worried about the 8,500 square foot house with 25 people in it if catches on fire. Council Liaison Britt stated that he wishes the State Code required sprinklers in homes over a certain size. Director Heard stated that it is a good point that he would have to research because the State has adopted laws about communities' ability to adopt requirements higher than the building code. He added that there are certain instances where Duck may not be able to do that. Chair Blakaitis wasn't sure what it would be. Director Heard stated that if it is something that the Board feels strongly about, he can check any legal restrictions. Chair Blakaitis noted that Fire Chief Black thinks it can be done. Council Liaison Britt noted that she suggested it as an alternative and doesn't think she was promoting it as a requirement. Chair Blakaitis stated that it isn't a requirement, just that she is fine with it.

Vice Chair Murray stated that if the Town requires something that is a commercial building code requirement, it would be a tacit admission that rental houses are commercial properties. He added that Duck is a single-family residential, quaint community and does not technically have commercial rental homes. Member McKeithan thought it should be put it in a different category. He added that the Board is stating that certain additional development standards will allow an owner to build a bigger house. He stated that an owner can build a sizable house but if they want to construct a bigger one, Town requirements can include increased setbacks and a sprinkler system. He stated that if the Board doesn't like that, then the ordinance can keep the maximum size standards. Vice Chair Murray pointed out that it is not a development standard. He added that mandating sprinklers is a building code standard and different than a zoning standard.

Vice Chair Murray thought the Town is giving people the ability to build bigger houses. Member McKeithan agreed. Vice Chair Murray stated that the problem he is having is that the homeowner bought the property and the Town is limiting their rights. He doesn't think the Town can change the building code. Member McKeithan pointed out that if the homeowner lives in Nags Head, they would only be allowed to have a 5,000 square foot house. Vice Chair Murray disagreed, noting that it isn't correct if the homeowner followed the large building standard requirement. Member McKeithan disagreed. He stated that Nags Head's standard is 3,500 square feet and the building standard allowed a maximum of 5,000 square feet except for one zoning district that has about five homes in it. Vice Chair Murray stated that it is not how he read their ordinance. Member McKeithan stated that he is positive that is how it read.

Member McKeithan thought the Board can have restrictions on the size of the house. Vice Chair Murray agreed, but doesn't think the Board can adjust the building code to require sprinklers. He thought the Board can adjust the zoning requirements and development standards. He noted that the building code is different and standardized by the State. Council Liaison Britt pointed out that there is no requirement in the Town's building code for commercial structures with regard to sprinklers, but the State code kicks in and takes care of it.

Director Heard clarified that the difference is requirement versus incentive. He explained that, even though it is technically a building standard, sprinkler requirements could be put in as an incentive in exchange for allowing a larger house. He stated that the draft ordinance proposes it as an alternative for property owners. He stated that the ordinance could be rewritten to include a requirement for all large houses to have sprinkler systems as an incentive. Council Liaison Britt thought all that can be done is to make it a bigger carrot. Chair Blakaitis pointed out that it is a building code issue. He asked if it is similar to the two-foot elevation rule that was discussed a few years back. Director Heard stated that that was related to the Town's flood damage prevention ordinance. Council Liaison Britt asked if homeowner put in sprinklers, could they go back to the conventional side yard setbacks. Director Heard stated he is correct.

Member McKeithan asked for confirmation that a homeowner can build an 8,500 square foot house on a 25,000 square foot lot and only have a 10-foot side yard setback if they put in a sprinkler system. He further clarified that it would be reduced from 20 feet to 10 feet. Council Liaison Britt stated that it is a good carrot approach, but no one will likely put in a sprinkler system. Member Cofield commented that he had stated at previous meetings that every large house is not a rental house. He stated that of the two houses in Duck that are above 10,000 square feet, only one is a rental home. Director Heard stated he is correct. Member Cofield stated that increasing the requirements of the design, development and the construction on larger houses is appropriate, whether it is setback requirements or plantings. He stated that he was bothered by the maximum size house and there should not be a cap. He stated that he can go along with a 10,000 square foot house limitation.

Member McKeithan pointed out that Member Cofield is assuming that the large house is not going to be a rental home. He added that the Board cannot control that. Once the homeowner receives permission to build a house, the Town cannot tell them that they cannot rent it. He stated that it is the fallacy of allowing bigger homes. He stated that even if it is not the initial owner, the next owner can decide to make it a rental home. He thought a lot of people in Town will not like that.

Member Cofield stated that he is sensitive to Member McKeithan's comments. He pointed out that Member McKeithan's comments were also stated at the Board's last meeting. He stated that he is not trying to increase the size of a house so that the homeowner can get more rental income. Member Cofield stated that there are two houses over 10,000 square feet in Duck, but only one is a rental property. He thought the Board and the Town are denying the opportunity for a homeowner to move to Duck and build a good size house, even on a large lot. He stated that an indoor pool can be put in an 8,000 square foot house, but it can't be done in Duck because the maximum size of a house would prohibit it. He stated that he built himself a house that was over 10,000 square feet in Cape Cod and the town where he built the house was happy with it and had no issues. He added that to this day, anyone can build a large house in that town. He stated that he cannot come to Duck today and do what he wants to do like he did in Cape Cod, which bothers him.

Member Whitman pointed out that it is two different locations. He explained that Cape Cod has a large population with homes that are mainly built for people that spend their weekends there. He agreed that many are using the homes as single-family homes. He added that in Duck there are people that can drive from Virginia and back for work. Member Cofield agreed adding that some are permanent residents. Member Whitman pointed out that Duck is a vacation community and not a permanent resident community. Member Cofield noted that Cape Cod has a lot of rental properties and is not that much different from Duck. He stated that there are a number of people that commute from Boston and use their house in Cape Cod as a second home.

Member McKeithan pointed out that Member Cofield stated that it bothered him that he cannot come to Duck and build a house the size he wants. He noted that it cannot be done in most communities on the Outer Banks. He wondered why the Board members are trying to convince themselves that Duck needs to be in an outlier category, only to potentially get into the same problem that the Town of Kill Devil Hills has with the 15 to 20 bedroom rental properties. He stated that he is concerned about the Board going in that direction and challenged the Board members to ask themselves if it is consistent with the Duck 2027 Vision. Member Cofield thought it is. Member McKeithan didn't think it is. He noted that the Vision states that Duck wants to maintain a small-town atmosphere and he doesn't see how having large houses fits into that category. He added that he knows Member Cofield doesn't agree with that, but he doesn't think it is the intent of the 2027 Vision.

Chair Blakaitis stated that the Board had a consensus that the chart will be constructed the way it is and now the Board is discussing about increasing it to 10,000 square feet again. He noted that the Board had the same conversation at their last meeting. He stated that to progress, he would like to have the issue settled immediately. He asked if the Board is going to continue to discuss the 10,000 square feet or if there is another number the Board favors. He asked if the Board can settle at 7,000 or 8,500 square feet and then move on with other items in the chart.

Vice Chair Murray stated that he agrees with Member Cofield and doesn't understand the motivation for limiting house sizes. He noted that Council wants the Board to look at the ordinance as they weren't happy with what the Board came up with the first time. He stated that he does not understand the motivation as Duck is nothing like the Town of Kill Devil Hills. He agreed with Member Cofield on the square footage, but from a pragmatic standpoint, he feels he

will vote in favor just to stop the discussion because he feels that the more the Board discusses it, the more limiting it will be. He stated that he does not want the discussion to go on. He stated that he is hearing a lot of hypothetical situations that just haven't happened in the absence of an ordinance. He agreed with the gallons per day and the existing ordinance as he thought it is effective in regulating density. He pointed out that the Board has been discussing for three months about regulating house square footage, which doesn't regulate density in any way and limits people that may want to build in Duck. He doesn't feel that he and Member Cofield are winning their arguments and feels that if they don't vote in favor of the proposed ordinance, it could be even worse. He stated that he has not seen a 15-bedroom house that is 30 feet wide and 120 feet long in Town. Director Heard stated that it is likely because Duck regulated bedrooms for over 10 years. Vice Chair Murray disagreed. He thought the Town of Kill Devil Hills had other incentives that Duck does not have.

Member McKeithan pointed out that when the discussion came about, it was to figure out how the Town is regulating and controlling it at eight bedrooms or 16 occupants. Now the Board is potentially opening it up to greater density. Vice Chair Murray suggested that the Board figure out the occupancy issue. He thought it cannot be done. Member McKeithan thought it can be done through the septic capacity. Vice Chair Murray agreed, adding that it is the only part of the ordinance that needs to be addressed. Chair Blakaitis stated that it can be done partially through that, but judging from the conversations at this meeting, the Board is not going to get anywhere if they increase the size to 10,000 square feet. He added that it will not pass. He thought the Board needs to analyze the ordinance for what is there. He stated that Vice Chair Murray has an interesting point. He stated that the only reason the Board is discussing the issue is because one house had a problem and the Health Department did not stand behind what the Town thought it would. He added that other than that, there was never any problem from the day the ordinance passed. Director Heard agreed that the issue arose because of that single situation.

Chair Blakaitis noted that the Town has a problem in an area that is unlike the rest of Duck, it stands out and continues to stand out. Now it is influencing the Board and the rest of the Town because after it happened, the idea was that the Town needs to come up with something that it can control and not depend on the Health Department. Vice Chair Murray thought the question is if the gallons per day requirement will solve the problem. Director Heard reminded the Board that Town Attorney Robert Hobbs is not as comfortable with that approach and was not previously comfortable with it when the Town was told it can no longer control bedrooms several years ago. He stated that staff recommended regulating size and occupancy based on the Health Department permit. He added that the Board discussed it and decided that they preferred to go with occupancy as they thought it is more closely tied, a smaller change, and more consistent with what the Town had been doing with regulating bedrooms. He stated that Council considered the Board's recommendation and voted to approve it. He noted that the current ordinance regulates that now, but the advice then as well as now from Town Attorney Hobbs is that he does not feel it is as enforceable, that it will stand up to a legal challenge as well as maximum size standards; which the Town has very clear authority to regulate under the State statute. He stated that there is a concern that, should the Town be challenged – if all it had was the septic capacity – that there could be a decision in a court that will throw it out.

Chair Blakaitis pointed out that the Town has never been challenged. Vice Chair Murray agreed, adding that Director Heard deals with the permitting of the house at issue. He asked Director

Heard if he had the gallons per day capacity as a tool in his toolkit at that time, that he could have prevented the house from being built. Director Heard stated that he would have denied the permit and it would have likely resulted in a lawsuit that would have to be defended. Vice Chair Murray asked what the mechanism would have been. He pointed out that Director Heard would have seen the Health Department permit with the gallons per day. Director Heard stated that in looking at the septic capacity, the homeowner would have only been able to put in a septic system up to that point. He added that what the Health Department approved was a septic system for the equivalent of a 12-bedroom house with 28 occupants. He stated that that was what was on the Health Department permit. The only difference was bedrooms in that the Health Department approved the installation of a much larger system that was clearly intended to accommodate a greater amount of occupancy than was being stated in the building plans based on the bedrooms.

Vice Chair Murray clarified that the number of bedrooms was a labelling issue on the plans. He asked if the Town's position had been that they were going to deny the building permit because the septic permit was greater than 1,080 gallons a day, what stopped the applicant from going back to the Health Department, getting a permit for 1,080 gallons a day, having the Town issue the permit and then going back to the Health Department unbeknownst to the Town, applying for a permit for a 14-bedroom sleeping 28 house, install that system, and have the Health Department send a sign-off at the end of construction. He asked if there is a permit number match up that is completed at the end of construction. Director Heard stated that should this type of ordinance be adopted with Town standards, staff will provide and notify the Health Department that these are the Town's standards, which is something that will trigger that in their review. He added that the Town is creating hurdles for someone to jump through and if someone wanted to lie, cheat, steal or twist things, they can still do that. He stated that the Town is trying to set reasonable, effective standards. He stated that it may not work in every instance, as the current ordinance has been in place for 3.5 years, which covers about 35 houses and worked 34 times. He noted that it doesn't mean that other people won't become aware of the loophole and attempt to do the same things now that the precedent has been set.

Chair Blakaitis asked how the Town can enforce septic capacity in the chart as it is written in the draft ordinance. Director Heard stated that the septic permit would show the capacity of what the owner is building. Chair Blakaitis asked if it will be automatic from the Health Department or will staff have to tell them. Director Heard stated that the Town is letting the Health Department know what the requirements are, but they will issue a permit based on whatever the applicant requests. Chair Blakaitis pointed out that it is the same thing that the Town had been doing. Vice Chair Murray agreed, adding that there is no point in having it in the ordinance.

Council Liaison Britt clarified that the Health Department knew that the Town had an occupant level in its previous ordinance. He added that they then issued the permit regardless of that. Director Heard explained that it is based on the Health Department's permit and the Town had no role in it. Chair Blakaitis stated that it was based on what the people told the Health Department as far as bedrooms. Director Heard stated that he had explained it to the Health Department before the permit was issued as well as how it would impact Duck's ordinance. Council Liaison Britt stated that he has a hard time seeing how the approaches are different because a homeowner can go in and apply for more and if the Health Department wants to allow it, they will. Director Heard stated that the homeowner can obtain a higher health department

permit from the Health Department, but the Town would not honor it because of the Town's standard, which is the difference.

Chair Blakaitis stated that all he is saying, except for everything else in the staff report, that the septic capacity chart is exactly what the Town had before, and it didn't work in one case. Director Heard noted that the difference is that it would now be the Town's standard. Before it was tied specifically to the Health Department's permit. Chair Blakaitis suggested making it the Town's standard and put the capacities in it. He added that then the Town is pretty much where it was before, except it is now Duck's standard. Vice Chair Murray noted that Town Attorney Hobbs will have an issue. Chair Blakaitis understood what Town Attorney Hobbs would say, but he saw a previous Planning Board do the same thing and it worked out fine. He added that the Board didn't know what would happen in the future but took the risk twice and it has worked.

Member Cofield stated that he is in favor of implementing it to try to get at the occupancy issue. He felt it should be a Town standard and regulated based on the septic capacity. Chair Blakaitis asked Member Cofield what he wants implemented. Member Cofield stated that it is what Chair Blakaitis had stated and using it as a way for the Town to regulate occupancy.

Chair Blakaitis stated that when he sat in at the Council Retreat, there was sentiment and comments made about keeping the ordinance simple and maybe the Town didn't need to change what is in place. He stated that it is his opinion that the Board can get more complicated at times than they need to be. He isn't sure if what was said about sprinklers is true and wants to double check it. He felt that anyone that wants to build an 8,000 square foot house can afford sprinklers. He thought the Board needs to lean in the direction of the Fire Department regarding public safety. He added that in discussing the issue with Fire Chief Black, by giving the setbacks to homeowners that the Town allows, if the Board goes back to the original setbacks and the homeowner decides to install sprinklers, the only time when it won't be acceptable will be if it is an external fire. He noted that the sprinklers will not do as much good if it is an external fire. He stated that, according to Fire Chief Black, it wouldn't be a wise decision to put the setbacks back to where they originally were.

Member Cofield agreed with Chair Blakaitis' comments regarding building large residences and the homeowner affording a sprinkler system in that if a homeowner can afford to build a large residence, they should be able to afford the sprinkler system. He added that if an owner wants to build a 10,000 or 8,500 square foot house, the Town should not let the requirement of a sprinkler system stop an owner from doing it. He stated that the setbacks are more than just a fire issue. He noted that they also address issues with noise and privacy. Chair Blakaitis and Member McKeithan agreed. Member Cofield stated that he is suggesting higher standards for someone who wants a large house and then address the occupancy through septic standards. Chair Blakaitis pointed out that the Board is saying that if a homeowner wants to build a bigger house, the Town will give an incentive and in turn the homeowner will give the Town a better product. He added that the setbacks should not be changed. Member McKeithan wondered what the homeowner will be giving to the Town in exchange for the right to build a larger house as he doesn't think it is much.

Vice Chair Murray thought Member Cofield is in favor of greater setbacks. Member McKeithan pointed out that Member Cofield is in favor of more setbacks and sprinkler systems. Vice Chair

Murray stated that if it is a very large house, the setback should be greater. Member McKeithan stated that it is more than just the fire issue. Member Cofield agreed.

Chair Blakaitis stated that he cannot support residential construction that goes to 10,000 square feet. He added that he would love to require sprinkler systems for any house over a certain size but isn't sure if it could be done. He suggested erasing everything in the draft ordinance except for the septic capacity and go back to what the Town had under its control and see what happens. Vice Chair Murray stated that he is fine with just septic capacity. Member McKeithan clarified that septic capacity would be the only criteria. Vice Chair Murray stated that it can be categorized by lot square footage as the chart in the draft ordinance reads. Chair Blakaitis agreed.

Vice Chair Murray asked if the Board can go with the septic capacity now and express to Council that the Board feels they may need to revisit it but want to change it in an incremental way, so it will stay as close to the original ordinance which worked for 15 years. Chair Blakaitis corrected Vice Chair Murray that it isn't the original ordinance but the last one that was adopted. Vice Chair Murray pointed out that it is as close to the original ordinance as the Town could get. He added that simply because the Board is struggling in the absence of clear or more expressed guidance from Council, the Board is not seeing how square footage is regulating density. Chair Blakaitis thought the Board received good guidance from Council, the problem is that the Board cannot work things out.

Member Whitman clarified that Vice Chair Murray wants to remove sprinklers from the ordinance. Chair Blakaitis stated he is correct. Vice Chair Murray stated that it would remove the sprinklers and square footage requirements. Chair Blakaitis noted that the Board is going back to what it has except it is the Board's septic capacity standard this time, which may be more effective than it was before. Director Heard stated that it was previously tied to the Health Department permit. Chair Blakaitis stated that this time, the Board can tell them what should be allowed. Director Heard stated that the Health Department can issue whatever they want, but the Town will not accept it and issue a building permit unless it complies with the Town standard. Chair Blakaitis thought if something happens with building permit applications in the future, then the Board will need to revisit the issue. He clarified that the Town has received approximately 30 applications without any issues. Vice Chair Murray stated he is correct, adding that he would like to add that the septic capacity tank size be something that the Town could potentially inspect. He noted that it was harder to change than on paper. He stated that if the Board wants to add that to the gallons per day tiers, it will give Building Inspector Steve McMurray or the Zoning Department more power.

Member McKeithan asked if there are septic tanks that are 600 and 720 sizes. Vice Chair Murray stated that it is the gallons per day, but by design, for each of those gallons per day, there is a tiered tank size requirement. He added that there is a maximum tank size for the nine-bedroom limit, so all the Town has to do is tell the homeowner they cannot install a tank over whatever the tank size is. Chair Blakaitis pointed out it is done with the 1,080 gallons per day rule. Vice Chair Murray disagreed, noting that it is gallons per day. Member Whitman noted that that is where members of the Board are saying it makes sense.

Member McKeithan stated that he isn't aware that there are that many unique septic tanks that can be ordered. He asked if someone is trying to meet the gallons per day rule, what size tank

will need to be installed. Vice Chair Murray stated that he isn't sure. Director Heard stated that he will have to pull some permits, but all staff has to do is contact the Health Department.

Victor White of Landmark Engineering was recognized to speak. Mr. White stated that septic tank size for a six-bedroom house was tiered and the house had to have a minimum sized tank and when it gets to 600 gallons per day, it is a formula. He added that for 720 gallons per day, it would probably be a 1,500-gallon tank. He cautioned the Board that if they want to limit something that the building inspector can look at, he suggested that the Board look at drain tile instead of the tank. He added that with a basic septic system, the Town should want to encourage a larger tank as it will give more time, have better treatment and cause less pollution.

Vice Chair Murray asked what the maximum tank size will be for a 1,080 gallon per day system. Victor White thought it will be approximately 2,500 gallons. He noted that it is for a standard gravity system. He cautioned the Board that with some of the larger homes, they can put in a 2,500-gallon septic tank and they can put in a 1,500-gallon recirculating tank.

Chair Blakaitis clarified that Victor White is suggesting that the Board look at the septic field. Victor White stated that, except for some areas along the sound, there are a lot of sandy soils and would have the highest application that is allowed. Chair Blakaitis clarified that if he is building a house and Director Heard told the septic company that it is for a 720 gallon per day flow, that will define the field length. Victor White stated he is correct. Vice Chair Murray stated that it is only for conventional systems. Chair Blakaitis thought that for whatever kind of system that would be put in, the Health Department will know how it would be defined. Vice Chair Murray agreed. Chair Blakaitis clarified that the Town checks it by going out to the property and looking at the field before it is covered. Director Heard stated that the Health Department will do that for compliance with the permit. Vice Chair Murray suggested going with gallons per day in the draft ordinance. Council Liaison Britt agreed.

Chair Blakaitis pointed out that it looked like the Board will not be discussing the 10,000 square foot houses as he doesn't think it will go anywhere at this meeting. He noted that the Board is on a new route, which sounds good to all members. He stated that if that happens, then one of the columns and a other requirements in the draft ordinance can be stricken. Vice Chair Murray thought the new table will be inserted into the existing ordinance. Director Heard stated that it is all that will be needed, but there may be some minor wording differences.

Council Liaison Britt stated that Fire Chief Black is not certain about requiring the installation of sprinkler systems and thought it should be researched. Director Heard stated that it can be done as an incentive, but the question is if the Town can require it. Chair Blakaitis stated that it would be nice to know for the future. Council Liaison Britt stated that wording can be put in the draft ordinance if the building is above a certain amount that a sprinkler system will be required.

Director Heard stated that the table on Page 2 shows potential septic capacity standards. He added that the Board will be taking that column and instead of 10, 12, 14, 16, and 18 occupants, it will be changed to 600, 720, 840, 960 and 1,080 gallons per day. He noted that the Board is substituting the gallons per day capacity standard for the number of occupants. Member McKeithan clarified that the existing ordinance does not have all of the tables in it. Director

Heard stated that it does not. He added that if the Board decides to keep it simple, they will be substituting the one column of figures for the existing column.

Council Liaison Britt noted that Town Attorney Hobbs will have a problem with the draft ordinance. Chair Blakaitis didn't think he will because he already gave Council his comments. Council Liaison Britt stated that if Council is fine with the comments and willing to take that chance, then so be it. Chair Blakaitis didn't think Town Attorney Hobbs has a huge problem with it, but thought he is just repeating what he thought about it. Director Heard stated that Town Attorney Hobbs seemed more comfortable with the septic capacity concept as secondary component with the square footage as the primary standard.

Chair Blakaitis stated that it looks like the Board is onto something regarding an ordinance with standards for septic capacity. He asked if the Board should wait until their December meeting to do it. Vice Chair Murray thought if the Board can do it now and it was the consensus, he is comfortable with moving ahead. Member Cofield stated that he is in favor of the tiers and the requirements.

Chair Blakaitis suggested that if all the Board members still have an issue with the sprinkler system requirement, they can have Director Heard research the sprinkler system and craft something to bring back to the Board at their November 14, 2018 meeting. Vice Chair Murray clarified that it will be sprinkler systems over a certain square footage size. Chair Blakaitis stated he is correct. Council Liaison Britt suggested that Council be asked if they want the Planning Board to look further into it. Chair Blakaitis agreed.

Victor White stated that he understands the intent of the ordinance and doesn't think it is much of an issue. He thought it has become a concern with density and the character of Duck. He thought with the septic capacity approach is closer to what has served the Town well for a long time. He noted that one of his clients owns a home in the Palmers Island subdivision. He stated that there are a lot of homeowners who are not happy with what happened there. He stated that his client's main concern is that he has a large house and is looking to put some additions on it once the new flood maps become effective. He added that an ordinance establishing maximum sizes would have prohibited him from doing what he may want to do.

Vice Chair Murray moved that the current ordinance 156.126 be amended as follows: "Section A: Residential density and in addition to other requirements set forth in this chapter, the Town of Duck shall regulate density by limiting septic capacity based on the table." Member McKeithan seconded.

Chair Blakaitis stated that he wishes there is a way to add the sprinkler regulation. Council Liaison Britt stated that he will be sure to bring it up at the Council meeting.

Member Cofield stated that he likes the tiers and the additional language, but his continuing objection is with limiting the square footage to 8,500 square feet. Director Heard noted that the Board's amended proposal does not limit square footage. Vice Chair Murray noted that all that is being limited is gallons per day for septic systems. Director Heard pointed out that the changes appear to have addressed Member Cofield's concern.

Motion 5-0.

NEW BUSINESS

None.

APPROVAL OF MINUTES

Minutes from the September 19, 2018, Regular Meeting

Member McKeithan moved to approve the September 19, 2018 minutes as presented. Member Whitman seconded.

Motion carried 5-0.

OTHER BUSINESS

None.

STAFF COMMENTS

Summary of October 3, 2018, Town Council Meeting

Director Heard updated the Board on the October 3, 2018 Council meeting.

Project Updates

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

BOARD COMMENTS

None.

ADJOURNMENT

Member McKeithan moved to adjourn the meeting. Member Cofield seconded. There was no vote.

The time was 8:18 p.m.

Approved: _____
/s/ Joe Blakaitis, Chairman