

**TOWN OF DUCK
TOWN COUNCIL
RETREAT
February 21 & 22, 2018**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 8:45 a.m. on Wednesday, February 21, 2018.

COUNCIL MEMBERS PRESENT: Mayor Don Kingston, Mayor Pro Tempore Monica Thibodeau; Councilor Nancy Caviness; Councilor Chuck Burdick; and Councilor Jon Britt.

PLANNING BOARD MEMBERS PRESENT: Chair Joe Blakaitis; Vice Chair Marc Murray; Tim McKeithan; James Cofield; and Sandy Whitman.

OTHERS PRESENT: Town Manager Christopher Layton, Director of Community Development Joe Heard; Fire Chief Donna Black; Deputy Fire Chief William Walker; Police Chief John Cueto; Police Lieutenant Jeffrey Ackerman; Director of Marketing and Information Christian Legner; Public Relations Assistant Betsy Trimble; Town Attorney Robert Hobbs; Permit Coordinator Sandy Cross; and Town Clerk Lori Ackerman.

ABSENT: None.

Mayor Kingston called the meeting to order at 9:00 a.m. He welcomed everyone to the Retreat.

Discussion of Memorandum from the Duck Planning Board regarding Standards Regulating the Maximum Size/Occupancy of Residences

Mayor Kingston stated that Council will be holding a joint session with the Planning Board, with the objective being for Council to provide additional direction to the Planning Board with respect to the issue of maximum size/occupancy of residences. He noted that it is not a public hearing and will be a discussion between staff, Council and the Planning Board.

Planning Board Chair Joe Blakaitis was recognized to speak. Chair Blakaitis opened the joint meeting between the Planning Board and Town Council at 10:03 a.m.

Director Heard stated that on December 1, 2004, Council adopted Ordinance 04-29, which established standards for maximum number of bedrooms in a residence, based on the size of the lot on which the residence was located. He stated that on June 19, 2015, the NC General Assembly passed legislation that stated in part: “Any zoning and development regulation ordinance relating to building design elements...may not be applied to any structures subject to regulation under the North Carolina Residential Code for one and two-family dwellings.”

Director Heard stated that the law also stated the following: “the phrase ‘building design elements’ means exterior building color; type or style of exterior cladding material; style or materials of roof structures or porches; exterior nonstructural architectural ornamentation; location or architectural styling of windows and doors, including garage doors; the number and

types of rooms; and the interior layout of rooms.” He stated that after consulting with Town Attorney Hobbs, the UNC School of Government and APA-NC Legislative Committee, it was determined that the State’s restriction on regulating “the number and types of rooms” negated the Town’s authority to establish a maximum number of bedrooms for single-family residences based on lot size.

Director Heard stated that on September 2, 2015, Council voted unanimously to adopt revisions to Section 156.126, Standards for Residential Density Based on Lot Size, consistent with the recently adopted State standards eliminating the Town’s ability to regulate the number of bedrooms in a residence. He noted that the adopted ordinance was recommended by the Planning Board. He added that the ordinance replaced the Town’s previous limitations on the maximum number of bedrooms in a residence with standards that establish a maximum number of occupants for residences based on the size of the lot. He stated that the determination of residential density is based on the maximum occupancy permitted by the septic permit issued by the Dare County Health Department.

Director Heard stated that earlier in the year, staff received an application to construct a 12-bedroom, 28 occupant residence in the Palmer’s Island subdivision. He stated that, based on the standards referenced, the permit was denied and staff provided the applicant with the maximum density parameters. He added that several weeks later, the applicant submitted revised building plans featuring a nearly identical floor plan with three of the former bedrooms labeled as a library, billiard room and workout room. He noted that even after being contacted by him about the discrepancies, the Health Department issued a revised septic permit for a 9-bedroom, 18-occupant residence at the request of the applicant. He added that because the allowable density was based on this permit, the Town had no choice but to issue the building permit for the residence, and construction is now nearing completion.

Director Heard stated that Town Attorney Hobbs expressed concerns about the Town’s ability to defend the occupancy standards based on bedrooms. He added that it was Town Attorney Hobbs’ opinion that the Health Department septic permit is at least partially, if not substantially, based on the number of bedrooms and felt it is a little tricky in terms of defending that. He pointed out that staff discovered that the Health Department does not use consistent reasoning in determining the number of bedrooms and how many occupants when reviewing a permit, which effectively undermines the Town’s ordinance.

Director Heard stated that Town Attorney Hobbs feels the Town may be better served by adopting standards that are set and enforced by the Town. He stated that there is a high risk approach, which would be in direct conflict with State law that would limit the number of bedrooms. He added that the medium risk approach is similar to the one that is currently in place and would include adopting standards based on anything that is indirectly tied to bedrooms. He stated that the low risk approaches are things that the General Statutes clearly allow the Town to do and will be safe from a legal standpoint. He explained that these include concepts such as limiting the size of residences, limiting the scale of development through different development standards, limiting density by counting occupancy standards not tied it to the septic permit, and limiting parking based on lot size.

Director Heard outlined the following options for consideration:

- Overall maximum size of single-family dwellings: Single-family dwellings shall not exceed 6,000 square feet of enclosed living space
- Regulating maximum size based on a tiered system
- Establishing a maximum size for residences in tiers based on floor area ratio

Mayor Kingston asked if the maximum size for residences in tiers based on floor area ratio would include heated and unheated space. Director Heard stated that the Town can regulate both or either, but generally most communities regulate heated space. He reiterated that it can be done either way.

- Establish a maximum size standard with allowances to construct a larger residence if certain design criteria or development standards are met

Mayor Pro Tempore Thibodeau questioned if the limitations would work together with the existing zoning standards that were currently in place. Director Heard stated she was correct. He stated that Council has the option to offer greater flexibility with regard to the size of the house if an owner is going above and beyond the basic standards.

- Limiting size through development standards

Mayor Pro Tempore Thibodeau asked why this approach would not work. She thought most of the lots in Duck are 15,000-20,000 square feet. Director Heard stated that it wouldn't work well be for a substantially larger lot, but works in other communities with smaller lots, such as a 7,500-square foot lot that is only 50 feet wide.

- Limiting density by Town-adopted occupancy standards

Vice Chair Marc Murray was recognized to speak. Vice Chair Murray asked why enforcement would be more difficult than the ordinance that the Town replaced previously. Director Heard explained that enforcement would involve an ongoing effort to monitor occupancy. He added that it was easy to track versus looking at the vehicles in a driveway and seeing if they were exceeding the occupancy requirement. Vice Chair Murray asked how the permit would be enforced. He noted that owners can put as many people in a house as they want and have been able to do it. Director Heard stated that it would not be tied to the Health Department permit, but through a Town standard for maximum occupancy.

Councilor Caviness asked if Director Heard is suggesting that this kind of standard would have to involve ongoing inspections. Director Heard stated that it would have to be. He noted that at the time of development, reviewing the Health Department permit may be the only way for staff to determine initial compliance. However, it would involve ongoing enforcement.

Member Cofield understood Vice Chair Murray's question. He thought it would be impossible to enforce that kind of permit. He added that subjective judgments could be made. He thought what the Board wants to do is to make sure that the regulatory enforcement is done at the point

of permitting and not after the fact. He reiterated that Vice Chair Murray's point is valid. He reiterated that it is a subjective judgment and a tougher standard. Director Heard agreed. He added that he is simply presenting concepts that have come up and options that have been identified, not suggesting that any of them are the best approach.

- Limiting parking based on lot size

Mayor Pro Tempore Thibodeau stated that she does not understand limiting parking based on lot size. Councilor Caviness stated that she did and feels it is backwards. Mayor Pro Tempore Thibodeau asked for clarification. Councilor Caviness explained that there are setbacks, lot coverage and designated parking areas. Whatever remains can be developed. Mayor Pro Tempore Thibodeau disagreed, adding that if there are eight cars, it will bring in 16 people. Town Manager Layton stated that it is the concept. Mayor Kingston pointed out that the number of people in a car could vary.

Director Heard stated that at its meeting on December 13, 2017, the Planning Board began its reconsideration of maximum standards for size and/or density of single-family residences. The Board reviewed the information about the current ordinance, legal concerns, and standards for maximum size (square footage) of residences and discussed concerns about the potential impacts of limiting the maximum size of residences. He added that the conversation led the Board to discuss the intent of the limitations on residential construction.

Councilor Burdick thought Director Heard asked a good question in that he wants to know what Council's objectives are. He thought that is what Council needs to figure out so that the Planning Board can then decide on the best options to meet the objective as opposed to it just being nebulous. He noted that in previous discussions, there was always a discussion on housing density. He believes that it is for maintaining reasonably size houses on reasonably sized properties. He explained that the height restriction is in place so that there are not any six-floor mansions and lot restrictions so that only so much of a lot can be built on. He stated that Council and the Planning Board are getting caught up with the problem of large lots. He added that to keep the density down, the Town was limiting bedrooms to a maximum of eight. He pointed out that now the question is how the Town can control density and what other standards are needed beside lot coverage and building height, since those are basically the two limitations in place to achieve a reasonable density standard.

Town Manager Layton pointed out that one of the very first actions that the first Council took after incorporation was to impose a moratorium on large houses while they developed the bedroom standards. He stated that it was a value to the Town from the beginning and the Town Vision also talks about the importance of scale. He mentioned that was the reason Council and the Planning Board are now discussing this serious issue.

Mayor Pro Tempore Thibodeau thanked Town Manager Layton for bringing up the history. She added that the Town has been at this for a while and in 2003-2004, there was a lot more building going on in Duck. She challenged anyone to look at homes to see the difference between a six and eight-bedroom home, but there was a fear that things could get out of control. She added that, looking at the overview Director Heard presented, Council and the Planning Board have seen that Duck is building about 10 homes a year. For the last two years, the Town has been

under the new State regulation whereby the Town cannot limit the number of bedrooms. She added that Council talked about it and decided to let the Health Department regulations take care of things, because the Health Department's rule is that there has to be a certain amount of land in order to build a certain sized home, adding that the Town also had lot coverage regulations. She stated that this was what Duck decided to do when the State imposed the new rule.

Mayor Pro Tempore Thibodeau pointed out that, after two years, there has been one home that's created an issue. She stated that she wants to de-emphasize the fear factor on the scalability of it. She noted that 10 homes were built in a year and people are improving their homes. She cautioned Council and the Planning Board against a lot of regulation that will take away a lot of the value. She stated that people have been very pleased with where the Town has come over the last 15 years. She stated that Council and the Planning Board need to be careful about trying to take people's personal property rights and making them fit into some kind of box.

Chair Blakaitis agreed with Mayor Pro Tempore Thibodeau's comments as well as Town Manager Layton's and Councilor Burdick's. He added that these comments are exactly what the Planning Board is looking for. He stated that the Board has time to discuss the different alternatives and feels that the purpose of this meeting is to get more direction from Council so the Board can come up with something fitting the Town's interests.

Councilor Burdick agreed with Mayor Pro Tempore Thibodeau's comments with an exception – he thought the discussion has been to try to stay away from “mini hotels”. Mayor Pro Tempore Thibodeau stated that she took exception with Councilor Burdick's use of the term “mini hotels”. She pointed out that they are rental homes and isn't sure what a mini hotel is unless Councilor Burdick is referencing places in Kill Devil Hills with 18-22 bedrooms. Councilor Burdick stated that that is what he was referencing. Mayor Pro Tempore Thibodeau stated that cannot be done in Duck. Councilor Burdick stated that he does not know what someone can do on a two-acre lot, adding that there are a couple in Town. Mayor Pro Tempore Thibodeau agreed that there are two large lots in Town. Councilor Burdick disagreed, adding that he isn't sure how many are in Town. He thought that the biggest problem area is Palmer's Island. Mayor Pro Tempore Thibodeau agreed, adding that Duck has some big lots. Councilor Burdick stated that the second issue is that Palmer's Island has a different height restriction. So, it is already set up within the Town's ordinance that people in Palmer's Island can build larger homes. Mayor Pro Tempore Thibodeau agreed, adding that it is a very small percentage of the community. She questioned the necessity of regulations to take care of a street with 11 homes on it that are mostly already built.

Councilor Britt pointed out that the lots in Palmer's Island are big, so it is not like a big house could potentially be built next to a small house. He stated that the house in question did not look out of place. He thought the Town needed to protect the rights of people that own larger lots. He agreed with Mayor Pro Tempore Thibodeau in that he does not like the term “mini hotel”. He thought the Town needs to be careful not to over-regulate and react to a collection of large homes that are under a different set of restrictions and so isolated so they don't really affect the neighboring properties. He reiterated that Council and the Planning Board need to be careful.

Councilor Burdick noted that he isn't disagreeing, but is reflecting that a lot of discussion was held over the fact that Council did not want huge houses. He agreed that the largest lots are

isolated to one area in Town. He thought the overriding issue was that the Town has a regulation in place based on Dare County Health Department permits that is now useless to Duck. He added that if Dare County would do what the Town thought they would do, there would not be an issue. He asked if there is some substitute that would be reasonable and enforceable, but not by using the septic system.

Vice Chair Murray pointed out that Dare County Health Department's regulation is only useless on extremely large lots like the house in question, as there has to be room for the septic to be permitted. He added that this particular issue is only limited to Palmer's Island. He stated that there may be a few outlying oceanfront lots that may be larger, but they are not to the same extreme, because of the Health Department's requirement for space for the septic system.

Councilor Burdick stated that with regard to the septic systems, it also has changed things in Town. Vice Chair Murray explained that the Health Department's requirements presently accommodate the new septic systems as well as to repair them. He added that the Health Department is subject to different but recent State regulations that are causing them to require more space to be used, even in the case of engineered septic systems. Mayor Pro Tempore Thibodeau pointed out that the State has clamped down on the Health Department. Councilor Britt agreed.

Member Cofield thought that the Town is trying to encourage owner-occupancy. Mayor Pro Tempore Thibodeau disagreed. Member Cofield asked if the Town is not trying to encourage having year-round residents. Mayor Pro Tempore Thibodeau explained that the Town cannot tell people what to do with their homes. She added that they will rent them, have people stay in the homes and use them as well. She didn't think the Town should encourage and legislate owner-occupied homes. Member Cofield stated that he liked the Town of Nags Head's approach, without over-regulating, of which the planning and design elements are tied to the house. He stated that with that approach, a large house can be built on a large lot as well as doing other things to compensate for a large house on a large lot. He thought that is the approach Duck should be taking as a lot of things could be done that would not make larger houses detrimental to the community.

Councilor Caviness stated that she found interesting the point that Mayor Pro Tempore Thibodeau had made when she said it was hard to look at a house and figure out if it was a four or six-bedroom house. She stated that she was less concerned with the number of bedrooms in a house, adding that if there was a 4,000-square foot house that someone was building or renovating as a permanent residence, that maybe they only wanted to have three bedrooms. She stated that if they want it as a vacation home, they will be interested in the maximum number of bedrooms since there would be a lot of visitors. She stated that if the number of bedrooms is going to be dictated by the septic capacity, then it should be done. She thought, as a community, people find objectionable houses that are too close together or too many cars at a house. She thought people are less concerned about the number of bedrooms, provided that there will be enough parking, trash cans and other negative, secondary impacts. She stated that she would rather see the setbacks and height being defined and whatever a homeowner wants to do on the inside of their home, they can do.

Mayor Pro Tempore Thibodeau agreed with Councilor Caviness and stated that homeowners should be able to do what they want on the outside of their homes as well. She added that someone may like a contemporary look and those design elements become subjective. She thought it is about personal property rights. She noted that the lot size will dictate house size with the restrictions in place. She pointed out that there have been 10 houses built in Duck each year and doesn't think anyone had a problem with it except for the one being discussed because it happens to be on a large lot. She isn't sure Duck has a big problem. She added that Duck is popular and there has been a lot done to make it popular. She stated that people want to build in Duck; the value of the lots are higher than the average in all of Dare County; and that is because it is a nice place to live. She stated that people will put a lot of money into their homes and build something they think is beautiful.

Chair Blakaitis stated that he is hearing that Council and the Planning Board need to be careful and not to let exceptions rule what might be done at the Planning Board level. Councilor Britt agreed.

Mayor Kingston pointed out that, historically, the Town wanted to control density, occupancy and coverage by bedrooms. Due to the new state law, that concept will no longer work. He agreed with Councilor Burdick that the Town intended that the Dare County Health Department septic permit would control it. Now, he thought the Town needs to control it. He further thought the Planning Board needs to look at the middle set of options and give Council what they originally had, but at the same time giving flexibility to the person building their home. He thought there are a lot of standards in place and agreed that he doesn't care how many bedrooms are in a house, as long as the other standards are met.

Chair Blakaitis stated that the Planning Board has a lot of options in front of them and can probably take from some of them and create something that is good for Duck.

Councilor Burdick believed that Council and the Planning Board want to maintain the character of Duck in the basic density. He thought things like setbacks are important. He further thought having a lot of cars parked all over a property is not something that the Town wants. He stated that Council and the Planning Board need to find regulations that are reasonable and allow them. He stated that he doesn't care about the size of the house, as long as it is not out of proportion with the houses around it.

Chair Blakaitis asked Councilor Burdick if he is suggesting that the Board look at setbacks. He noted that the setbacks in Town are pretty good currently. Councilor Burdick suggested that the Board look at it and ask if it is reasonable for what was trying to be maintained. Mayor Pro Tempore Thibodeau added that the Board should look at if there has been a problem other than this one house.

Mayor Kingston didn't think the Planning Board needs to take a step back and look at setbacks and height as those are already in place. Councilor Burdick agreed. Mayor Kingston thought the control needs to be brought back to the Town versus Dare County and thought there is something that can replace what the Town had originally. He added that Council thought they had it with the septic systems through Dare County, but it didn't work. He stated that there are a lot of

options that can be explored that would give the Town back what it needs and at the same time giving people flexibility with what they build.

Chair Blakaitis pointed out that no one knows if the Town can keep what is in place or whether it will work for the Town in the future. Mayor Pro Tempore Thibodeau agreed. Vice Chair Murray stated that if the Town set an occupancy limit based on lot size that is consistent with the ordinance as it currently read, it may be difficult to enforce but is not impossible to enforce on a complaint-driven basis, the way the Town enforces most of its ordinances. He stated that if a problem develops, a letter can be sent, along with a notice of violation. Then, the Town could start fining the homeowner. He asked if that is something that Council would be in favor of. Mayor Kingston, Councilor Britt and Councilor Burdick did not see a need. Councilor Britt stated that he is not a fan of that as it would make staff have to worry about how many people are in a house and the amount of complaints coming in from that could be overwhelming.

Vice Chair Murray thought it can be tied to parking since parking is something visible. He stated that he asks the question because he is hearing that the Planning Board should not do something but also do something, which was hard for the Board to interpret. Councilor Britt stated that 10 houses built a year and the exception being a 50,000-square foot lot in Palmer's Island, makes him a fan of Option E – limiting size through development standards. He added that he does not want to see a square footage limit put on houses as he thinks it will limit architectural creativity and take away options for people that want to build a large house with four bedrooms. He pointed out that the Town's bread and butter is rental homes and that was why there are buildings such as the one being discussed. He reiterated that he is not a fan of the square footage regulations and doesn't think the Town has enough issues to go down that road.

Chair Blakaitis thought the Town encouraged people to both live and build in Duck. Mayor Kingston thought there are options that the Planning Board can look at, such as the one about square footage of area. He thought it gave a lot of flexibility to people building homes and doesn't limit them on bedrooms. He thought there are some things that the Planning Board can look at to see if the Town can control. He reminded Council and the Planning Board that there are also subdivision covenants that control a lot of things.

Mayor Pro Tempore Thibodeau pointed out that the Town does have controls, setback requirements, parking requirements and septic permitting. She stated that it is very simple and the Town's zoning should just be limited to parking, lot coverage and what the Health Department regulates. She thought the Town has them in place. Mayor Kingston asked why the number of bedrooms was in the ordinance initially if there wasn't a need for additional controls. Councilor Britt pointed out that it was 13-14 years ago. Mayor Kingston disagreed. Councilor Britt stated that it was a different time. Mayor Pro Tempore Thibodeau agreed, adding that people were afraid. She added that the Town originally started with nine bedrooms and the next Council changed it to eight bedrooms. Chair Blakaitis thought the simple answer was that the Town had it because it could. Mayor Kingston agreed, adding that it went away only a few years ago to maintain control of density.

Councilor Caviness stated that she isn't sure that some of the other restrictions are as tight. She stated that she does not remember what the setbacks were as well as the lot coverage. Chair Blakaitis stated that setbacks and lot coverage were some of the first things that Council passed.

He thought there was very little modification to it. Councilor Britt reminded Council and the Planning Board that the year before incorporation, there was a rash of applications to get ahead of things which created a knee jerk reaction by the first Council. Mayor Pro Tempore Thibodeau pointed out that there was also the issue of nonconformities that the Council was concerned about.

Councilor Caviness stated that if one drives onto those streets and sees the big cluster of homes that tried to beat the system, many are on Scarborough Lane. She added that it was those houses that have too many cars and not enough parking for the size of the house. She stated that they are the ones that create the most trouble because they are so large and don't fit. She added that as time went on and things changed, the scale of houses on that street looked fine, but the ones built after that had better allowances for all of the secondary issues.

Councilor Britt pointed out that it isn't necessarily that the houses are huge, they just didn't have the same rules for setbacks and parking at the time they were built. Councilor Caviness noted that the houses are huge and don't have the other rules so they look twice as big. Mayor Kingston noted that Council would not be having this discussion if the same rules were in place at the General Assembly – not changing the number the bedrooms – which was the rule Duck had. He stated that it forced Council's hand to come up with an alternative, which is now letting the County control the size of houses. Councilor Britt stated that Duck is not letting the County control what is done – setbacks, parking and lot coverage are things that Duck controls. Mayor Pro Tempore Thibodeau agreed. Councilor Britt stated that when the regulation changed two years ago, Council said they would allow the Health Department to regulate things, but all of the other rules in Duck are still in place.

Mayor Kingston stated that Council and the Planning Board are having the discussion because of it. Mayor Pro Tempore Thibodeau stated that it is because of an anomaly. Mayor Kingston isn't sure it is an exception. Councilor Burdick stated that he doesn't see it as an anomaly. He added that there are big and small lots and thought the Town's objective has always been to maintain things in proportion to lot size. He stated that he would like to see the Town do just that – maintain things in proportion to lot size. He added that it should be simple. He pointed out that it used to be simple but the Town lost the right to regulate bedrooms and what is currently in place sounded simple but is ineffective. Mayor Pro Tempore Thibodeau stated that it is ineffective for this one lot. She thought people will drive by it and not see anything unusual. Councilor Britt pointed out that there have been no other examples of where it's been ineffective except for that lot.

Mayor Pro Tempore Thibodeau reiterated that 10 homes are built each year. Councilor Burdick thought there is more going on than building 10 houses a year - there are people who are upgrading and expanding homes from four bedrooms to six bedrooms or adding a pool. He stated that it is testing what the Town has in place for limits. He noted that he doesn't see anything wrong with finding something reasonable that will replace the number of bedrooms rule.

Councilor Caviness explained that with the redevelopment, homeowners are still constrained by setbacks, lot coverage, height and parking. Chair Blakaitis stated that they are the Town's existing standards. Councilor Caviness added that as an older neighborhood transforms from all beach boxes, they are still restricted to some degree by the Town's standards. She added that in

15 years, an entire neighborhood may look different. Councilor Burdick stated that there are a couple of neighborhoods with acre lots and they could put at least 10-bedroom homes on those lots. He added that they would not look out of proportion because of the size of the lot. Mayor Pro Tempore Thibodeau reminded Councilor Burdick that he felt that proportion is important. Councilor Burdick agreed.

Mayor Kingston asked why the Town was so concerned when it could no longer control the number of bedrooms and then rushed to change it to septic that was controlled by Dare County. He thought that something should be brought forward that is comparable that give more control to the Town. He understands all of the standards, requirements, and setbacks, but the Town depended upon the bedroom rule for many years until the General Assembly said it can no longer be done. He thought the Town needs to look at a replacement, not something that over-regulates, but controls scale within the Town.

Councilor Britt stated that it cannot be done indirectly by septic or parking. He added that the Town is still indirectly regulating the number of bedrooms and has been told it's not a good thing to do. He thought that the building market is different than it was 15 years ago and maybe the current standards that addressed proportionality are all that is needed.

Vice Chair Murray thought that the main ideas are to maintain the Town's character and the situation where the Town has a lot to offer to a lot of different stakeholders. He noted the fact that more homes have been built and the vast majority of lot sizes will restrict people. If there are a few outliers that are in scale to the lot they are built on, it won't be a problem. Councilor Burdick stated that he likes the idea that the Town controls things and not Dare County. Mayor Pro Tempore Thibodeau noted that the Town is controlling things. Chair Blakaitis stated that the Town is not controlling it presently. Mayor Pro Tempore Thibodeau stated that it is controlled with lot coverage and parking. Chair Blakaitis disagreed, adding that the standard as it read, the Town is not controlling it because it was relying on the Health Department to come in and make a judgment. Mayor Pro Tempore Thibodeau asked if Chair Blakaitis was saying that the Town is not covering anything. Chair Blakaitis stated that he is not. Mayor Pro Tempore Thibodeau pointed out that the Town is covering the lot coverage and parking. She added that the Town is doing things. Chair Blakaitis agreed, adding that the Town is doing a lot. Mayor Pro Tempore Thibodeau explained that the lots themselves restrict what people can build on them. Councilor Burdick pointed out that the Town is not controlling density. Vice Chair Murray commented that density won't be controlled anyway.

Councilor Burdick stated that he doesn't have an answer, adding that the Town is using the Health Department to control density. Mayor Pro Tempore Thibodeau asked if Councilor Burdick meant occupancy. Councilor Burdick stated that she was correct. Mayor Pro Tempore Thibodeau asked Councilor Burdick to state it that way because she doesn't think the Town is controlling occupancy in the summer. Councilor Caviness pointed out that occupancy is what is triggering all of the trouble – traffic, parking, trash, etc. Mayor Pro Tempore Thibodeau pointed out that it is for 10 weeks each year.

Town Manager Layton thought, at a bare minimum, the septic issue will need to be removed from the current ordinance, since it may not be enforceable. He stated that replacing it may be exactly the standards that are in place. He thought the Planning Board needs to look at that piece

and figure out whether what is being done is as simple as just removing that and leaving it with the current standards or if there is some tweaking that will be required to make sure the standards are still applicable in their current form. He thought it was the direction he sees Council going.

Councilor Burdick stated that there was a parking regulation that stated that one has to have a parking place for every bedroom, plus one, and they had to be directly accessible and not stacked. He added that the regulation was changed and he had two houses that had to meet that standard. He stated that today, the occupancy and number of bedrooms can be increased because one is not required to have as much parking as in the past. He noted that there was a parking regulation where it has been allowed to have an increase in occupancy. Mayor Pro Tempore Thibodeau explained that a lot of that was due to the parking looking bad because there was too much, so Council brought it back and allowed the stacking. She added that it was done for aesthetics and runoff. Chair Blakaitis pointed out that even that changes since people invite so many people to come visit them that there is hardly any parking at times.

Chair Blakaitis thought the Planning Board heard some direction from Council and knows what needs to be done. Mayor Kingston thought the Planning Board needs to look at something that can be done to give the Town the control and remove Dare County.

Vice Chair Murray asked if the Health Department's involvement bothered Council on principle or because it hasn't been enforced. Mayor Kingston stated that it should not be a single criterion. He added that there would have to be regulation. Vice Chair Murray stated that it wasn't a homerun by incorporating the Health Department, but it helped. He asked again if it bothered Council if it is in the ordinance. Mayor Pro Tempore Thibodeau thought if it isn't in there, it is still implicit that the standard is there. She added that one cannot build a house without Health Department approval. She stated that whether it is in the ordinance or not, it will always be there.

Town Attorney Hobbs stated that Council should control its own destiny in that there should not be an ordinance that relies upon another body's decision-making to achieve one of the Town's goals. Chair Blakaitis agreed. Town Attorney Hobbs suggested removing that provision from the ordinance and come up with something else that works towards the Town's goals rather than laying someone else's criteria that was used for another purpose to meet the Town's goals.

Mayor Pro Tempore Thibodeau clarified that the Health Department regulations will always be in place, regardless of what the Town does. Councilor Britt stated that one will still have to get a Health Department permit. Mayor Pro Tempore Thibodeau pointed out that it will always be there and will be a factor in controlling what is built on a lot. Councilor Caviness thought it is to an extent.

Councilor Britt moved to refer the issue back to the Planning Board with all of the clarity given to work on an ordinance.

Motion carried 5-0.

ADJOURNMENT

Vice Chair Murray moved to end the joint session with the Town Council. Member McKeithan seconded.

Motion carried 5-0.

The time was 11:02 a.m.

Approved: _____
/s/ Joe Blakaitis, Chairman