



KURE BEACH PLANNING & ZONING COMMISSION
REGULAR MEETING ♦ NOVEMBER 3, 2010

A regular meeting of the Kure Beach Planning and Zoning (P&Z) Commission was held on, November 3, 2010 at 7:00 p.m. A quorum was present.

MEMBERS IN ATTENDANCE

Chairman Craig Galbraith, Members Tim Bullard, Jim Schutta, Alan Votta and Anne Brodsky

STAFF PRESENT

Building Inspector John Batson
Administrative Assistant Josie Fitzgerald

Liaison Commissioner Barry Nelder was present.

Attorney Holt Moore was not in attendance. A quorum of the commission was present.

CALL TO ORDER:

Craig Galbraith called the meeting to order at 7:00 pm.

APPROVAL OF AGENDA:

MOTION Member Bullard made the motion to adopt the agenda with no changes.
SECOND Member Brodsky
VOTE Unanimous

APPROVAL OF MINUTES:

MOTION: Member Brodsky made the motion to adopt the minutes of the October 5, 2010 meeting with no changes.
SECOND: Member Schutta
VOTE: Unanimous

PERSONS TO ADDRESS COMMISSION: Council person Emilie Swarengen

On the Council, I have finance and I have fantastic people on the committee. Our committee has requested for the budget process, to get the other departments to put together a strategic plan for at least five or ten years; a capital plan so the Finance Committee can get an idea of what you will need for a project. If we need to get grants, will we have enough money for the match. For example, if the Fire Department needed a fire truck to keep their fire rating, we need to see if we have enough money. Police may be more strategic in that Council decides if there is a need for more police protection. Some may be a combination like Parks & Recreation and what is more definite for the Ocean Front Park project. What those things cost and how will affect operations. We would like you to work on a strategic plan on things you are working on. A suggestion is something in business district and do we want to put the lines underground, do we want to build a pedestrian walkway, land use plan, etc. What is your vision in the next five years and its impact and its responsibility over other committees you may want to involve in those plans. Ideal to be ready for Council's retreat in January. We could work on it this month or next

month. Take a day or half day, depending on how extensive you think it would be or do it in an afternoon or 2-3 hrs. I would be happy to facilitate that. Or, you could get a student at UNCW to help but not recommend that anyone on this committee to be the facilitator because it is not really fair to them, but someone else because the facilitator is not supposed to be part of the decision making process. Would the P&Z commission consider putting a five-year plan together?

Member Galbraith stated that it sounds good and they have talked about it for the past several years in the sense of form-based planning. There are red flags of concern. Seems like if you are asking different groups to do strategic planning, it becomes a hodge-podge of planning and overlapping and there may be some conflicting. A more effective approach at least from the committees, would be to have a nuts and bolts strategic planning session with Council. Maybe with one or two representatives from the committees that have a specific agenda and then create a vision. Once a vision is created then you can make it more attractive with committees. What I am afraid of is that if we had a strategic plan we may be very broad.

Ms. Swearingen: The council doesn't always know what the committees are planning. And what they are thinking. If we could have the committees lay out their plans and then we could take it to the Council, then the Council could come up with an overall. Otherwise, there is so much going on, I am afraid they may leave something out. If your committee could come up with a plan, I would be glad to take it to them.

Schutta- Whether a fire truck is needed should come up to Council even without a vision. The vision should start with Council. If we are talking about five to ten years down the road, Council should say direct us and then we can go from there. We can all get together and it will probably be a lengthy process to come up with a plan. What do we see happening in the next five years that could affect this town? No growth, then we focus on growth. That could affect us financially. How do we want to grow? Do we want to create a B-1 district where people could come in and shop? I think those are things we need advice from Council and we could work with them.

Galbraith-We have done a number of studies that have identified what the B-1 district should look like which lead into form-based planning. We are trying to create a form based planning process which is on the agenda for tonight. We are thinking about a form-based planning process so for new development we can amortize some of the things from the old development so it will be more architecturally consistent with what we want the vision of the town to be. The problem we are struggling with is there are a number of studies that have architectural design. We are working on sign ordinance and recommending architectural characteristics and haven't gotten as far as we should because of Council issues. Do we want B-1 primarily directed to residential community and provide services or do we want the B-1 district grabbing tourists coming back and forth from Fort Fisher--do we want a balance between those two. Depending on what the vision of the community is, will determine on what we will do. We can recommend different things as far as form based planning if B-1 serving the community instead of a large tourist community pulling people from surrounding states. My concern is we had a number of land use plan studies and architectural form-based studies and we suggested a lot of stuff and we don't know what the Council's vision for the community is. We have asked for it.

Member Votta: Based on the Sawyer Study, we first worked on the power line issue and did a lot of work on it and nothing was done because Council didn't want to talk about it anymore.

Chairman Galbraith: The second component of the study was the sign ordinance. When you look at what the study suggests, it is very form-based type of look. You don't have a lot of large signs, digital signs and we have been aggressive and struggling with that. Probably 80% have been implemented and we are still struggling with 20% as far as size and amortization. There is a vision for the B-1 district that is

already in place and we are charged with that by Council. The B-1 has a vision. On the agenda we are working on zoning overlay and form-based planning because I believe we are approved for us to act as the committee for the B-1 study and the next step is we are going to create a game plan to implement the B-1 study.

Member Brodsky- We get stopped in our tracks and we have to go back to the Planning Board. Every step that is made, we are still at the starting point and the Council says yes or no.

Chairman Galbraith: If people show up here and throw their arms around, it is hard to move forward and everything gets tabled. It is hard to move forward with that kind of response.

Ms. Swearingen: Financing is trying to see what the expenses are in the next five to ten years. Is there a price attached to sign ordinance and putting lines underground. No details but items which you work on that can be done in five year and what the price tag is.

Member Brodsky: We did that, I think a million dollars, I would have to look back at our notes.

Commissioner Nelder: I personally have discussed it many times, but at the last Council meeting, the sign issue got tabled. That is what they are up against.

Member Bullard: All we can do is make suggestions we can't spend the town's money, only the Council can do that.

Further discussion that the committee has given the Council suggestions and the Council should know.

Discussion regarding underground lines: Progress did an engineer study and they said it would be \$30,000 to do the study if feasible to put the lines underground. John Batson did work on it, called Brunswick and got information from them. Progress doesn't want to put lines underground. Brunswick got grants from FEMA and town had to match. Member Brodsky stated that studies were done and Carolina Beach and tried to piggy back with them and if it was done at one time it would be cost reduction, but Carolina Beach said it was difficult and expensive. All the information was given to Council and it was canned.

Further discussion about putting transformers on town property like Ocean Front Park if we buried the lines. All information that goes to Council ends. We could get together with surrounding town and put pressure on Progress Energy. There is the possibility that the town may not get funds from Progress Energy because their attitude in burying lines is not good.

Chairman Galbraith: There is information in minutes. Spoke to others in Carolina Beach, Wrightsville Beach and Brunswick. We heard presentation from Progress Energy and there are two costs. First cost is the engineer study and then the actual cost. We came up with four different recommendations. That would define the cost because the prices were all over the place-- high cost per lineal foot from Progress and much lower from southern beaches. We don't know what the cost is until the engineer study is done Report was put in minutes two or three Council meetings ago.

Only other costs that came out of our discussion would be as we go forward with form-based planning. We will need a professional to pull it together into clean looking ordinance to present to Council and there would be consulting costs. I can't think of anything else that we are thinking of that would have a capital cost or expense associated with it. We recommend suggestions but there is no cost associated. There are consultant, engineering study and attorney costs for the B-1 study. Recommendations for the sign ordinance and the SIC Code there is a benefit but no cost to the town.

We can come up with a strategic plan, but it will be basically what we described. For the form-based plan for a consultant and someone to help us-- and it could be in the range of \$30,000-\$50,000 for the form-based planning and engineering study. Those are potential costs and those are based on the B-1 study because we were charged with that. The sign ordinance and burying the power lines are the two things to get us started and then the complicated process of putting together the form-based planning and we would need a consultant for that.

Member Votta: We talked about power lines for years-- we need to go forward or put it to bed. We never really got hard numbers, but it sounds expensive to do it. We put together information and presented to Council probably in July and nothing has been done.

Chairman Galbraith: Before we apply for grants, an engineer study has to be done --we identified the area that we would recommend in the B-1 district-- any other costs would be for a consultant/legal process to fine tune to put together form-based plan process because that will be radical.

Discussion on Main Street USA- Michelle did that. That has certain obligations attached to it--opens doors for grants, they had many good presentations, i.e. economical development, hotel presentation, etc. They support the sign ordinances, and all we are trying to do. We never got to a point to submit an application. When Michelle left it was dropped.

Chairman Galbraith: There used to be a process to keep up with grants and keeping track of them should be constantly monitored and not sure if anybody in the town is doing that now. That would be critically important. Grants pop up all the time and the time is short and some are a year. There are websites and someone should keep track of what is available and coming up and decide if we want to pursue it.

Member Votta: We have kept in our budget pretty well. When the attorney isn't needed, we don't have him come. He is not on retainer.

Chairman Galbraith: I think we summarized our strategic plan from a capital expenditure, not from a vision plan. We would like to have Council vote and approve what we bring to them. It would be good for the town and for our morale. The only thing we brought to the Council for the sign issue was the height and the amortization. All the other issues that the public were against, were already in the ordinance and wasn't part of what we brought to Council and not sure even the Council understood that.

OLD BUSINESS:

1. SIC Codes – Identify those that will be permitted or prohibited and identify those permitted as a special use.

Chairman Galbraith: We have a zoning process or use process driven by industry definition. The following things came up in the past:

- a. Internet gaming issue-- can it be prohibited by zoning process;
- b. Multiple uses on same site—if retail, can you have manufacturing--what is allowed under our Code now;
- c. Some things we didn't want to have—i.e. used car lots are not in now but were in up to two years ago.

There is some interest in revisiting SIC codes to put in language to clarify any industries we don't want to have. Most zoning processes that use SIC Codes, identify certain industries that have special use permits.

If movie theatres are allowable, a special use permit would be needed. If Council allows a movie theatre, you might want to limit the last showing at midnight because of lighting and people leaving. Identify certain industries that you want to have requiring a special use permit and whether simply eliminate other industries.

Further discussion--Our RA-2 and RA-2a permit dress making, laundering, home cooking. See "customary home occupations", page 1222. Do we have to be so specific? No beauty parlors in home. Can have dressmaker, teach music, home cooking, laundering, but no beauty parlor. Churches and schools are not in a home, that's different category. Hospitals should be a special use. Put an "s" for special use. Bus terminal—bus terminal is in B-1 district. Do we want to question? Leave in or special use permit? Those are businesses allowed in RA-2.

Member Schutta: Do we want to discuss B-4 -- B-4 is laboratory.

Member Bullard: We are not talking about districts just about classifications.

Chairman Galbraith: Look at page 1233 in B-1 which is most items allowable. Look at SIC Codes--since we have special use permit, are there certain ones we want to put "s" by it, so it is an allowable use, but they need special use permit approved by Council. Some I would say, no. "s" for Parking lot, but do we want service stations that require an "s"? Hazard of service stations was discussed--auto repair and we took that out.

Retail stores is a big list. Arcades should have "s" not that it won't be allowable, a special use permit would be required. Council can say as part of the special use permit, yes for an arcade, but not internet gaming as part of the special use permit. If you do it, we can withdraw the special use permit and shut you down. Now internet is allowed under SIC Code 7993, you can't restrict that from a zoning point of view.

We purged all those not allowed, are there others that a special use permit is required? Bus terminal are big buses at a terminal. A trolley stop is possible vision for Ocean Front Park— We don't want to purge bus terminal in case we want a trolley stop so we can use the "s" for bus terminal.

Member Bullard: Are we doing something that we will have to change again?

Chairman Galbraith: SIC is older code. NAICS is newer code. Based on what we have, it is simple to add or eliminate some, change some --look at SIC code and see what we want to change and map to SIC. Some are easy to map to the NAICA Code. Let's look at the SIC Codes.

List of retail stores:

5251-hardware stores.

5261 is retail nursery, lawn and garden supplies

5912 is drug stores

5921 is liquor store, ABC we need to look at. They can put in an ABC store without further approval from Council. Can State override our zoning code? State can't put an ABC store next to a house. We could prohibit that from a zoning point of view.

John Batson: They can't change our zoning codes.

Then there is used merchandise, sporting good, book store, stationery, hobby toy and gift, jewelry, novelty and gift shops, luggage and leather goods, sewing needle and piece goods, catalogue and mail order, florist, tobacco stands and optical.

Retail stores item 18 all items, only ones to put "s" is liquor store, bus terminal #4 and arcade #19. Sec. 18, 5921 liquor store. The section is poorly written. If it is not listed under retail stores, then you could put it in. Don't think anyone would have a problem with general merchandise store. The only one questionable is 5921, liquor stores.

#20 Theater-- most zoning rules require a special use permits to restrict what is being shown, in past when x-rated was shown, restrict time of operation, and enough property for parking. You could have a mini theatre here.

Commissioner Nelder: Would theatre restriction become an issue if we show movies at the new Ocean Front Park? No because it says theatres when housed in a permanent structure. They are talking about an actual movie theatre.

Further discussion about accessories, broad statement, opens the door for anything. Swimming pool accessories and that sort. Gas station with a storage building, used car lot was taken out with auto repair, but we still have service stations.

Member Votta: Incidental use for auto station would be a car lot. Put a special use on it. We could have accessory uses but we could have control over them.

Member Bullard: The purpose is to maintain a town center that is an attractive place for residents and visitors with a commercial and business district that is not a nuisance.

John Batson: Suggests clearly defining to avoid problems with approval from P&Z and Council.

Discussion: Many zoning ordinances require approval. We could put everything requires approval or leave it open-- as long as it doesn't have an "s" it doesn't need approval by Council.

What about recycling at restaurants?

John Batson: I wouldn't bother with that. When Big Daddy's had an outdoor patio, they had a storage area for chairs, tables, etc. Storage buildings would be accessories if it was incidental to what they were doing. Construction trailers are allowed, but not for an office use.

Chairman Galbraith: Permitted uses for B-1, B-2, B-3 ---Look at permitted uses in B-1, item 4 retail businesses that are allowed. For example #5331 is a variety store and is allowed in B-2 but I don't see it in B-1. There are several like that. Some allowed in B-2 and not in B-1 The same for B-3 and not allowed in B-1. If B-1 is our general business, then what is allowed in B-2, with exception of multiple family dwellings, should be allowed in B-1 and the same for B-3 should be allowed in B-1. In B-2, #5399 is allowed, but I don't see it in B-1, that is miscellaneous general merchandise. We need a lot of cleaning up to be consistent. Does anyone object that B-2 things should be allowed in B-1? There was probably a reason why we did that when we started the codes.

In B-3, we are allowing colleges, business colleges, trade schools, dancing schools but I don't think that is allowed in B-1 or B-2. Conference centers in B-3 but not in B-1 or B-2. The way it is written, something we need to think about is identifying which SIC Codes to put a special use permit requirement next to, which to eliminate and to what extent to make sure B-1 is consistent with B-2 and B-3. Seems from B-1 to B-2 to B-3, it should get more restrictive but not exclude things that B-1 shouldn't exclude things in B-2 and B-3 except for residential housing. Even then we may not want to do that if we go to form-based planning and have residential housing above retail. We have that under permitted use in B-1.

Member Bullard: We need to take into consideration purpose of each district before we challenge that.

Chairman Galbraith: Suggests to table this and discuss another time and look at the following:

1. Identify SIC Codes we may want special use permit component
2. Look at the consistency between SIC codes B-1, B-2 and B-3 and residential that might be allowed and not allowed in B-1.
3. Include a paragraph that we had in minutes from last month as to whether you can have multiple uses on a single site which is not clear now in the code. I recommend to use paragraph one:

More than one permitted use can be located on a particular site or within a particular building. All uses on a particular site or within a particular building must be permitted. If a use is not on the permitted use table, then it is prohibited. In addition, the permitted use table also identifies specific uses within a particular SIC code that may be prohibited. If a proposed use cannot be classified into a normal SIC code, the senior Zoning Administrator (John Batson) should determine that a use is not listed and is not similar to a use in the Permitted Use Table, then said use is prohibited. A business in operation may not add another use to their existing operation that is not permitted.

This would clear up a lot of issues that our zoning table is missing now. Those are three things we may want to look at next meeting. Pages 1232 through 1284.

Look at purposes of B-1, B-2, and purpose for B-1 is commercial, B-2 and B-3 is for surrounding residential neighborhoods. If we are allowing merchandise stores in B-2 that should be in B-1. We are saying B-1 should have everything.

MOTION: Member Brodsky made a motion to table for further discussion at next meeting

SECOND: Member Votta

VOTE: Unanimous

2. Zoning Overlay District and Form-Based Planning

(a) Chairman Galbraith: Council has approved P&Z to be the committee to do the overlay study.

(b) Game Plan- We have been charged with using the B-1 study as the model, it is a form-based proposal and that is recommendation in the B-1 study and architectural design. Maybe we should look at the study more seriously. Study the B-1 study, look at the architectural renderings and start thinking how we should write it into an ordinance so if someone wants to come and build, in our ordinance and our description, it will be built to look like what is in the B-1 study.

Discussion: We should get the Sawyer Study. Look at what they are recommending and think about how to translate that into an ordinance. We had literature on form-based study, models, etc. Chairman Galbraith will work on more information on Sawyer Study. Barry Nelder will bring in material from form-based seminar he attended four or five months ago.

(c) Consultant will be hired later, not now maybe next fiscal year.

Chairman Galbraith suggested: Table game plan for next month when we bring in Sawyer Study and more material on form-based planning, Commissioner Nelder will bring in his material. I think the general agreement was that we need to hire a consultant, but it is too early right now.

Discussion for next month is once we get it together, set up a time table for inevitable public hearing, talk with local business community, and putting together a form-based plan requires a lot of planning. Once we look at the Sawyer Study, we will put together a time line, at that point we will think about the need for hiring consultant, perhaps this fiscal year.

MOTION: Member Brodsky made motion to table the form-based planning and zoning overlay.

SECOND: Member Schutta

VOTE: Unanimous

3. Modified Garage /yard Sale Permit Applications status

Discussion to change only the application and get approval from owner of property to have garage sale on another person's property. That language in ordinance is broad. Changing the ordinance would require a public hearing. The recommendation was just change the application to read that you need the owner's permission to have the sale and not change the ordinance. The form has been done already.

4. Sign Ordinance

Based on feedback and the issue of amortization, the major concern was how does it affect me. They didn't want to take down their sign. We recommended that the sign ordinance be implemented, plug some gaping holes. We recommended moving the amortization to 12 years with a three-year amortization process—so actually 15 year amortization. After studying over 100 different sign ordinances, in coastal communities, that is the longest any community would have. It was presented to Council.

At the Council meeting, they wanted to keep what we have. Six signs are affected that are given 15 years. There was discussion about grandfathering and was that considered for those until they were destroyed and replaced.

Chairman Galbraith says grandfathering when reading all literature on planning, is the worst thing to do. It is not good- it is anti-business, and negative business prospective. If you grandfather a 50 foot sign and you change to 10 foot sign for everyone else, that would discourage new business from moving in the area because next door they could have a 50 foot sign. There is a study 1940's, find that grandfather signs lasted 55 yrs.

We discussed and considered grandfathering signs, but we do not recommend something that is not good for the town. We are not supposed to recommend something that is not good planning. Fifteen year amortization is extremely long time. Case law is five years in North Carolina. Other beach communities in and out of North Carolina, typically have five to seven year amortization as reasonable. We are recommending 15 years. The idea of amortization is that you have gotten the economic life out of the sign by then. The signs we are talking about, except maybe one, that has not been completely depreciated. They got the life out it. Grandfathering is really a bad idea.

Discussion on alternate option: We have the 15 year amortization as an option on the table. Can we send Council an option #2 which could be, if grandfather those 6 signs, be more restrictive on replacement. Instead of doing market value, if grandfather and if damaged by more than 50% they have to be replaced as conforming.

If a sign is damaged, the way it is now written, if damaged by more than 50% of the value of the sign—

John Batson suggests attorney may need to be involved. If destroyed by natural disaster, it can be replaced. That is the way it is written now.

Discussion about destruction page 1254.1 --destruction-non-conforming use. Section talks about non-conforming signs. All signs if destroyed will not be permitted as a new sign, etc. Why can't we take non-conforming signs and take out where it says they don't become non-conforming uses?

Suggestion: If Council decides to grandfather, then they need to come up with language for us to deal with what we are talking about. It is either grandfather or amortization—one or the other. We don't have grandfathering now, we have a definite non-conforming sign.

Motion we made on page 5 of our minutes. We were talking about amortizing would be better than grandfathering. Member Schutta made the motion from feedback of the public hearing on sign ordinance and recommended to town council that revision of the code from the existing 7 year amortization with a three-year extension to a twelve-year amortization with a three-year extension, equaling fifteen-years. If the same property owner has it for twelve years, they can apply for an additional three years which would give them 15 years.

John Batson-read the sign ordinance.

The twelve year revision was presented, but not approved by Council. Maintenance and replacement was discussed. Damage can't be more than 50% of value. Originally it was total value of the sign. We replaced it with total replacement value. So it would be 50% of the replacement sign. They would need to get two separate quotes; one to repair existing and one for new one--this affects 7 signs.

Further discussion: We are working on form-based planning. What the community looks like includes signs. We need to be concerned with grandfathering signs and if we ignore what we are going through at creating an image, why go through the process. We might have to grandfather everything else. If we do it once, we will have to do it for everything. It will affect all other issues. We already have non-conforming signs. If historical, they can go to the historical preservation society and state their case and have them determine that you have historical value to the sign and you can get it grant as an historical sign and it can stay forever. There is that provision. You can argue that the Kure Beach pier is historical. The Big Daddy sign could be historical. There is a provision that historical signs are exempt from amortization.

Council was confused because they did not have the updated sign ordinance. Most of what was complained about is already in the ordinance, not what we are proposing. All issues like Led, digital, neon signs, etc. that is already part of the ordinance. What we presented was straight forward; height, size and amortization. Those are the only things outstanding and still being considered. The problem isn't the signs we have, it is the future and creating an ordinance that works for the town and future development. We are trying to come up with a uniform sign ordinance. We are doing exactly what Council is telling us to do and follow the B-1 study done ten years ago.

Chairman Galbraith suggests put back on Town Council agenda. Chairman Galbraith will attend and try to explain and if council wants to grandfather, let us know and then they should give P&Z wording. If Council wants to grandfather, then we have to.

5. Ocean Front Park

Chairman Galbraith stated that our concerns were brought to the meeting on November 1, through our representative. There was concerns about the design.

Commissioner Nelder said all council members were at meeting on November 1st.

Member Votta: They listened to all our concerns and hoping the plan will go back to original footprint. He gave architect a brief synopsis of form- based planning and what we want our town to look like. We should take the lead with this building and create a building that we want our town to look like. The height was discussed, the size of the building was discussed and what we want is a more low-country look. They are going to work on it.

Chairman Galbraith: Not sure if we need a motion, but when we come back next month, can we discuss form-based plan and this building is something we foresee.

Further discussion: The survey taken indicated that the people wanted a place to have concerts, shows, entertainment, simply open pavilion. Why do we even need a building? We spent a lot of time of getting the information. We can have concerts, entertainment, beach music festival. It started with an open-air pavilion.

VI. NEW BUSINESS

None

VII. MEMBER ITEMS

None

VIII. ADJOURNMENT

MOTION: Member Bullard made the motion to adjourn at 8:40 p.m.

SECOND: Member Brodsky

VOTE: Unanimous

Craig Galbraith, Chairman

Josie Fitzgerald
Administrative Assistant