

ORDINANCE COMMITTEE

A G E N D A

TOWN OF CHINCOTEAGUE

February 13, 2014 - 5:00 P.M. – Council Chambers - Town Hall

CALL TO ORDER

ROLL CALL

OPEN FORUM / PUBLIC PARTICIPATION

AGENDA ADOPTION:

1. Discuss Possible Revision to the Floodplain Ordinance
 - Memo from Town Attorney Jon C. Poulson
2. Committee Member Comments

ADJOURN:



STAFF REPORT

To: Ordinance Committee
 Through: Robert Ritter, Town Manger
 From: Bill Neville, Director of Planning
 Date: November 14, 2013 (**Updated February 13, 2014**)
 Subject: Floodplain Ordinance Revisions
 Town Code Section 30 - Floods

FEMA is working on a Coastal Flood Study that will revise the Flood Insurance Rate Maps for Chincoteague Island. Prior to adopting the new community flood maps, other actions must be taken as follows:

Community Responsibilities

- Review FIRMs**
 - Review preliminary FIRMs and **make corrections, comments and appeals** when appropriate
- Conduct Outreach**
 - **Conduct outreach** to those citizens affected by changes on the FIRMs
- Update Ordinance**
 - **Adopt a floodplain ordinance** that meets the National Flood Insurance Program (NFIP) requirements



Virginia - Mapping Status

ACCOMACK COUNTY

Digital Flood Insurance Rate Map (DFIRM) Dates
 Preliminary Flood Map Release: **07.19.13**
 Appeals Period*: **TBD**
 Letter of Final Determination: **04.02.14*** 
 Final Effective FIRM: **10.02.14*** 

11.04.14

05.04.15

Contacts
 FEMA Map Information eXchange (FMIX):
 1-877-336-2627
 Project Planner Mari Radford: 215-931-2880
 Project Engineer Robin Danforth: 213-931-5573

FEMA Region III 5

In addition to the map changes and ordinance revisions, the Town must also complete a recertification under the new NFIP Community Rating System (CRS) manual in early 2014. The new point system to calculate flood insurance discounts relies heavily on increased community participation through an advisory committee and improved website information. Outreach to the public over the next several months will be required and will provide necessary CRS credit.

As the result of a citizen complaint to FEMA, the Town of Chincoteague has received notice that mandatory revisions to Town Code Chapter 30-Floods are required to meet minimum National Flood Insurance Program (NFIP) requirements and the **changes must be adopted by April 4, 2014.**

FEMA has scheduled a ‘community assistance visit’ (CAV) on March 12, 2014 which will give the Town a chance to meet directly with Project Planner Mari Radford and Virginia DCR Coordinator Charley Banks before the revised floodplain ordinance is presented to Town Council for action. At a minimum, the Town will need to request an extension of the FEMA deadline until the April 7, 2014 Town Council meeting.

Draft changes to the Town Code/Chapter 30 – Floods that were presented by Town Staff at the November meeting of the Ordinance Committee have been reviewed by our Town Attorney. Revisions to the ordinance have been tracked with different color text as follows:

- Black** – existing code (effective September 21, 2006), revised through April 4, 2011
- Blue** – changes proposed by C. Banks on March 3, 2011 following last CAV
- Red** – changes proposed by Town Staff following Council approval of the ‘floodplain permit’ and discussion with FEMA about ‘fill and grading’
- Purple** – revisions proposed by Town Attorney Poulson on January 24, 2014

These changes are consistent with the Town’s strategy to modify the Floodplain Ordinance so that it complies with those minimum NFIP standards which apply to coastal communities and with local practices which have previously been acceptable measures of protection from flood events such as filling and grading.

Town Staff recommends that the Ordinance Committee forward this document, along with any other changes from Committee members, to the Town Council for action. This will provide a draft document that can be reviewed by Ms. Radford and Mr. Banks prior to the March 12th meeting.

Law Offices of
JON C. POULSON
Attorney and Counselor at Law

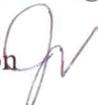
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MEMORANDUM

***** SUBJECT TO ATTORNEY / CLIENT PRIVILEGE *****

TO: Robert Ritter, Town Manager
William Neville, Planning Director
Town of Chincoteague

FROM: Jon C. Poulson 

DATE: January 24, 2014

SUBJECT: Floodplain Ordinance Revisions

Following are my comments relative to the materials that were forwarded to me relative to potential revisions to the Floodplain Ordinance.

1. Sec. 30-1. Purpose. I would add, as an additional paragraph under this section, the paragraph suggested by Rob that appears on page 2 of the November 14, 2013 Minutes changing the last sentence, as follows: "Since the FIRMs have been based on storm surges, paragraph 60.3(c)(10) of the CFR 44 (Cumulative effects of proposed development), which does not apply along lakes, bay shores, and estuaries, and the ocean coast, has been omitted from this Ordinance as not being applicable."
2. Sec. 30-3(d). Strike the words after "ordinance" and substitute the following "and/or any administrative decision made in good faith thereunder."
3. Sec. 30-4. Strike the paragraph and substitute the following: "This Ordinance supercedes Chapter 30 **Floods** of the Code of the Town of Chincoteague previously in effect prior to the adoption of these provisions."
4. Add the penalty and compliance provisions as 30-6.

5. In the first paragraph, make it a Class 2 misdemeanor.

6. Strike the first sentence of the next paragraph and substitute the following: “In addition to the above criminal penalties, all other actions by the Town of Chincoteague for enforcement hereunder are hereby reserved, including but not limited to injunctive relief in the Circuit Court of Accomack County, Virginia.

7. Strike “a reasonable time” in the next sentence, and substitute the following “such time as reasonably determined by the officer charged with the enforcement hereof, based on the nature and seriousness of the violation, and other material circumstance.”

8. Sec. 30-7. Definitions.

Definition of *Development*. Add, after the word “filling” “as defined herein”; after the word “grading” add “as defined herein”. Put a period after operations and strike “or storage of equipment or materials”. I see no reason why storage of equipment or materials should be included in the word *Development*. Development contemplates changes to land and buildings, and the storage of equipment or materials relates purely to personal property which is not permanently affixed to the land. If we leave this provision in the definition, it could easily be construed to apply to somebody that parked three trucks behind their business premises.

Under exemption (3) after “occurs on” in the second line, I would add “or adjacent to”, and at the end thereof, after the word “sidewalk”, I would add “or adjacent thereto”. The reason for this is that most underground public utility lines are not going to be actually put within the hard surface, but are going to be installed in the right of way, which is not necessarily hard surface.

Exemption (7) I think we need to possibly add to this exemption or exception, so as to keep people from piecemeal disturbances. Theoretically, they could disturb less than 10,000 square feet every week. I would suggest adding, at the end of the sentence, “,provided however, that the exceptions shall not apply to cumulative disturbances exceeding 10,000 sq. ft. in area within a period of five (5) ??? years.” The period is, of course, subject to discussion.

The definition of “Fill” or “Filling”. I would suggest the following: “Fill or filling – means any depositing or stockpiling of earth or other materials utilized for the purpose of permanently elevating or altering the then ground level exceeding 10,000 sq. ft. in surface area within any five (5) ??? year period.”

“Grade” or “grading” – means the permanent excavation, filling, or altering of the then ground level by the addition, removal, or elevation change of the earth or other materials, or any combination thereof, including the land in the excavated or filled area, which exceeds 10,000 sq. ft. in surface area within any five (5) ??? year period.

This definition would contemplate that other things other than dirt can be used for filling; and it further contemplates that if somebody places a pile of dirt on a parcel for temporary purposes, as opposed to actually changing the lot elevation, they would not be covered under the definition of *Development*.

9. On page 10 of 27, under FLOODS CD30:5 (b) under the definition of *Manufactured home*, there is a typo on the last line – “one” should be “on”.
10. On page 12 of 27, first full (red) paragraph. Strike “For the latter purpose”, and substitute “For insurance coverage purposes”
11. On page 13 of 27, The redline paragraph on Technical Data. Strike the word “community” and substitute “the Town”.
12. Section 30-14. Permit and application requirements.
I would suggest that we rewrite paragraph (a) as follows:
“(a) Permit Requirement – All uses, activities, and development occurring within any floodplain district, shall be undertaken only upon the issuance of a floodplain permit, unless specifically excepted or exempted under the definition of “Development” under Sec. 30-7 hereof. Such use, activity, or development shall be undertaken only in compliance with the provisions of this Chapter 30, the Virginia Uniform Statewide Building Code, and all other applicable codes and ordinances, including any subdivision regulations, if applicable. Prior to the issuance of any such permit, the Town official charged with the administration hereof shall require all applications to include compliance with all applicable state and federal laws, and shall review all sites for the purpose of determining that they will be in compliance with the issued permit in his reasonable discretion, upon completion of such work.
13. Page 14 of 27. First redline paragraph. Add it as a subsection (k).
14. Page 14 of 27. I like the option Records maintained by official charged with enforcement of Chapter 30.

JCP/smh
Attachments

FLOODS*

Article I. General Provisions

- Sec. 30-1. Purpose.
- Sec. 30-2. Applicability.
- Sec. 30-3. Compliance and liability.
- Sec. 30-4. Abrogation and greater restrictions.
- Sec. 30-5. Severability.
- Sec. 30-6. ~~Reserved.~~Penalty for violations.

Article II. Floodplain Management

- Sec. 30-7. Definitions.
- Sec. 30-8. Reserved.

Article III. Establishment of Zoning Districts

- Sec. 30-9. Description of districts.
- Sec. 30-10. Official floodplain map.
- Sec. 30-11. District boundary changes.
- Sec. 30-12. Interpretation of district boundaries.
- Sec. 30-13. Reserved.

Article IV. District Provisions

- Sec. 30-14. Permit and application requirements.
- Sec. 30-15. General standards.
- Sec. 30-16. Specific standards.
- Sec. 30-17. Standards for subdivision proposals.
- Sec. 30-18. Standards for the coastal high hazard district.
- Sec. 30-19. Anchoring fuel tanks.

Article V. Variances

- Sec. 30-20. Factors to be considered.

Article VI. Enactment

***Cross references**—Buildings and building regulations, ch. 14; environment, ch. 22; streets, sidewalks and other public places, ch. 50; utilities, ch. 62; waterways, ch. 70; zoning, app. A; land subdivision and development, app. B.

State law reference—Flood Damage Reduction Act, Code of Virginia, § 10.1-600 et seq.

ARTICLE I. GENERAL PROVISIONS

Sec. 30-1. Purpose.

The purpose of these provisions is to prevent the loss of life and property, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public funds for flood protection and relief, and the impairment of the tax base by:

- (a) regulating uses, activities, and development which, alone or in combination with other existing or future uses, activities, and development, will cause unacceptable increases in flood heights, velocities, and frequencies.
- (b) restricting or prohibiting certain uses, activities, and development from locating within districts subject to flooding.

- (c) requiring all those uses, activities, and developments that do occur in flood-prone districts to be protected and/or flood-proofed against flooding and flood damage.
- (d) protecting individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.

The special flood hazard areas were generated for storm surges and designated on the Flood Insurance Rate Maps (FIRMs) as Zones AE (base flood elevation data has been provided) and Zones VE (Coastal high hazard base flood elevation data has been provided). References to other special flood hazard areas have been omitted from this ordinance since they are not identified on the [insert community name] FIRMs. If other special flood hazard areas are added as revisions to the FIRMs, this ordinance will be revised to reflect the additional zones. Since the FIRMs have been based on storm surges, paragraph 60.3(c)(10) of the CFR 44 (cumulative effects of proposed developments), which does not apply along lakes, bay shores, estuaries, and the ocean coast, has been omitted from this Ordinance as not being applicable.

Sec. 30-2. Applicability.

These provisions shall apply to all lands within the jurisdiction of the town and identified as being in the 100-year floodplain by the Federal Insurance Administration areas of special flood hazard according to the flood insurance rate map (FIRM) that is provided to the Town of Chincoteague by FEMA.

Sec. 30-3. Compliance and liability.

- (a) No land shall hereafter be developed and no structure shall be located, relocated, constructed, reconstructed, enlarged, or structurally altered except in full compliance with the terms and provisions of this ordinance and any other applicable ordinances and regulations which apply to uses within the jurisdiction of this ordinance.
- (b) The degree of flood protection sought by the provisions of this ordinance is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study. Larger floods may occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that districts outside the floodplain district, or that land uses permitted within such district, will be free from flooding or flood damages.
- (c) Records of actions associated with administering this ordinance will be kept on file and maintained by the zoning administrator.
- (d) This ordinance shall not create liability on the part of the town or any officer or employee thereof for any flood damages that result from reliance on this ordinance and/or any administrative decision lawfully made in good faith thereunder.

Sec. 30-4. Abrogation and greater restrictions.

This Ordinance supersedes any ordinance currently in effect in flood-prone districts. However, any underlying ordinance shall remain in full force and effect to the extent that its provisions are more restrictive than this ordinance. Chapter 30 Floods of the Code of the Town of Chincoteague previously in effect prior to the adoption of these provisions.

Sec. 30-5. Severability.

If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this ordinance. The remaining portions shall remain in full force and effect; and for this purpose, the provisions of this ordinance are hereby declared to be severable.

Add a penalties section

Sec. 30-6. Penalty for violations

Any person who fails to comply with any of the requirements or provisions of this article or directions of the ~~director of planning~~Town Manager or any authorized employee of the ~~community~~Town of Chincoteague shall be guilty of a ~~Class 3~~Class 32 misdemeanor and subject to the penalties therefore.

~~In addition to the above penalties, all other actions are hereby reserved, including an action in equity for the proper enforcement of this article.~~In addition to the above criminal penalties, all other actions by the Town of Chincoteague for enforcement hereunder are hereby reserved, including but not limited to injunctive relief in the Circuit Court of Accomack County, Virginia. The imposition of a fine or penalty for any violation of, or noncompliance with, this article shall not excuse the violation or noncompliance or permit it to continue; and all such persons shall be required to correct or remedy such violations or noncompliances within ~~a reasonable time~~such time as reasonably determined by the officer charged with the enforcement hereof, based on the nature and seriousness of the violation, and other material circumstance. Any structure constructed, reconstructed, enlarged, altered or relocated in noncompliance with this article may be declared by the ~~community~~Town of Chincoteague to be a public nuisance and abatable as such. Flood insurance may be withheld from structures constructed in violation of this article.

Sec. 30-6. Reserved.

ARTICLE II. FLOODPLAIN MANAGEMENT

Sec. 30-7. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Base flood, means the flood having a one percent chance of being equaled or exceeded in any given year.

Base flood elevation means the Federal Emergency Management Agency designated one hundred (100)-year water surface elevation.

Basement means any area of the building having its floor sub-grade (below ground level) on all sides.

Board of Zoning Appeals means the board appointed to review appeals made by individuals with regard to decisions of the Zoning Administrator in the interpretation of this ordinance.

Breakaway wall means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

Coastal high hazard area means a special flood hazard area extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

Development means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling as defined herein, grading as defined herein, paving, excavation or drilling operations, ~~or storage of equipment or materials,~~ except that the term shall not include:

- (1) Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;
- (2) Individual utility service connections;
- (3) Installation, maintenance, or repair of any underground public utility lines when such activity occurs on, or adjacent to, an existing hard-surfaced road, street or sidewalk provided the land-disturbing activity is confined to the area of the road, street or sidewalk, or adjacent to, which is hard-surfaced;
- (4) Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
- (5) Exploration or drilling for oil and gas including the well site, roads, feeder lines, and off-site disposal areas;
- (6) Repair or rebuilding of existing roads, rights-of-way, bridges, communication facilities and other related structures and public facilities;
- (7) Disturbed land areas of less than 10,000 square feet in size, provided however that the exceptions shall not apply to cumulative disturbances exceeding 10,000 sq. ft. in area within a period of _____ (X) year(s);
- (8) Cemetery graves;
- (9) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
- (10) Shoreline erosion control projects on tidal waters when all of the land disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Virginia Marine Resources Commission or the U. S. Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this ordinance; and
- (11) Emergency work to protect life, limb or property, and emergency repairs; however, if the land-disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the building code official.
- (12) Stockpiles and storage of materials

Elevated building means a non-basement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, or columns (posts and piers).

Fill or Filling - means any depositing or stockpiling of earth or other materials utilized for the purpose of permanently elevating or altering the then ground level exceeding 10,000 square feet in surface area within any ~~one~~ (x) year period.*

Grade or Grading - means ~~any excavating or filling of earth material or any combination thereof, including the land in its excavated or filled condition~~the permanent excavation, filling, or altering of the then ground level by the addition, removal, or elevation change of the earth or other materials, or any combination thereof, including the land in the excavated or filled area, which exceeds 10,000 square feet in surface area within any ~~one~~ (X) year period.*

(* Locally proposed definitions)

Flood or flooding means:

(1) A general or temporary condition of partial or complete inundation of normally dry land areas from:

(a) the overflow of inland or tidal waters; or,

(b) the unusual and rapid accumulation or runoff of surface waters from any source.

(2) The collapse or subsistence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph 1(a) of this definition.

Flood Insurance Rate Map (FIRM) - an official map of a community, on which the Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

Flood Insurance Study (FIS) – an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudflow and/or flood-related erosion hazards.

Floodplain or flood-prone area means any land area susceptible to being inundated by water from any source.

Flood proofing - any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Freeboard means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. “Freeboard” tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization in the watershed.

Fuel oil tank means any container greater than 10 gallons used for storage of fuel oil.

Highest adjacent grade - the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic structure means any structure that is:

- (1) listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or,
- (4) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (a) by an approved state program as determined by the Secretary of the Interior; or,
 - (b) directly by the Secretary of the Interior in states without approved programs.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Federal Code 44CFR §60.3.

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term manufactured home also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

New construction means for the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after ~~3/1/1977~~the effective date of an initial Flood Insurance Rate Map on or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which start of construction commenced on or after the ~~2/2/1989~~effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

Primary frontal dune - A continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.

Propane or liquefied petroleum gas tank means a container greater than 50 pounds used for the storage of propane.

Recreational vehicle means a vehicle which is:

- (1) built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projection;
- (3) designed to be self-propelled or permanently towable by a light duty truck; and,

(4) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use.

Shallow flooding area – A special flood hazard area with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Special flood hazard area means the land in the floodplain subject to a one (1%) percent or greater chance of being flooded in any given year as determined in Article III, Section 30-10 of this ordinance.

Start of construction means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of the construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure - for flood plain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. ``Structure" for insurance coverage purposes, means

1. A building with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site;
2. A manufactured home (“a manufacture home,” also known as a mobile home, is a structure: built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or
3. A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community’s floodplain management and building ordinances or laws.

For ~~the latter purpose~~ insurance coverage purposes, “structure” does not mean a recreational vehicle or a park trailer or other similar vehicle, except as described in paragraph (3) of this definition, or a gas or liquid storage tank.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement means any reconstruction, rehabilitation, addition, or other

improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage regardless of the actual repair work performed. The term does not, however, include either:

- (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or
- (2) any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

Sec. 30-8. Reserved.

ARTICLE III. ESTABLISHMENT OF ZONING DISTRICTS

Sec. 30-9. Description of districts.

(a) Basis of Districts - The various floodplain districts shall include areas subject to inundation by waters of the one hundred (100)-year flood. The basis for the delineation of these districts shall be the Flood Insurance Study (FIS) for the Town prepared by the Federal Emergency Management Agency, Federal Insurance Administration, dated June 1, 1984, as amended.

(1) The Coastal Floodplain District shall be those areas identified as coastal AE or A1-30 Zones on the maps accompanying the Flood Insurance Study. Flood elevations are provided in these tidal floodplains; however, floodway data is not applicable.

(2) The Coastal High Hazard District shall be those areas identified as V1— V30, VE, or V Zones on the maps accompanying the Flood Insurance Study.

(b) Overlay Concept

(1) The Floodplain Districts described above shall be overlays to the existing underlying districts as shown on the Official Zoning Ordinance Map, and as such, the provisions for the floodplain districts shall serve as a supplement to the underlying district provisions.

(2) Any conflict between the provisions or requirements of the Floodplain Districts and those of any underlying district, the more restrictive provisions and/or those pertaining to the floodplain districts shall apply.

(3) In the event any provision concerning a Floodplain District is declared inapplicable as a result of any legislative or administrative actions or judicial decision, the basic underlying provisions shall remain applicable.

Sec. 30-10. Official floodplain map.

The boundaries of the Special Flood Hazard Area and Floodplain Districts are established as shown on the Flood Boundary and Floodway Map and/or Flood Insurance Rate Map which is declared to be a part of this ordinance and which shall be kept on file at the town offices.

Sec. 30-11. District boundary changes.

The delineation of any of the Floodplain Districts may be revised by the town where natural or man-made changes have occurred and/or where more detailed studies have been conducted or undertaken by the U. S. Army Corps of Engineers or other qualified agency,

or an individual documents the need for such change. However, prior to any such change, approval must be obtained from the Federal Insurance Administration.

Sec. 30-12. Interpretation of district boundaries.

Initial interpretations of the boundaries of the Floodplain Districts shall be made by the Zoning ~~Officer~~Administrator. Should a dispute arise concerning the boundaries of any of the Districts, the

Board of Zoning Appeals shall make the necessary determination. The person questioning or contesting the location of the District boundary shall be given a reasonable opportunity to present his case to the Board and to submit his own technical evidence if he so desires.

[Add section on submitting new technical data](#)

Submitting Technical Data

~~A community's~~The Town of Chincoteague base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, ~~a community~~the Town shall notify the Federal Insurance Administrator of the changes by submitting technical or scientific data. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and flood plain management requirements will be based upon current data.

Sec. 30-13. Reserved.

ARTICLE IV. DISTRICT PROVISIONS

Sec. 30-14. Permit and application requirements.

(a) Permit Requirement - All uses, activities, and development occurring within any floodplain district, shall be undertaken only upon the issuance of a zoning-floodplain permit, unless specifically excepted or exempted under the definition of "Development" under Sec. 30-7 hereof. Such use, activity, or development shall be undertaken only in strict-compliance with the provisions of the ordinance~~this Chapter 30, the VA-USBC~~Virginia Uniform Statewide Building code, and with-all other applicable codes and ordinances, as amended and the town subdivision regulations including any subdivision regulations, if applicable. Prior to the issuance of any such permit, the zoning officer~~Zoning Administrator~~ shall require all applications to include compliance with all applicable state and federal laws and shall review all sites for the purpose of determining that they will be in compliance with the issued permit in his reasonable discretion, upon completion of such work.~~to assure that they are reasonably safe from flooding.~~

(b) Site Plans and Permit Applications - All applications for development within any floodplain district and all building permits issued for the floodplain shall incorporate the following information:

- (1) For structures to be elevated, The elevation of the lowest floor (including basement).
- (2) For structures to be flood-proofed (non-residential only), the elevation to which the structure will be flood-proofed and the supporting engineering certificate.

- (3) The elevation of the one hundred (100)-year flood.
- (4) Topographic information showing existing and proposed ground elevations.

Sec. 30-15. General standards.

In all special flood hazard areas the following provisions shall apply:

- (a) New construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
- (b) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces.
- (c) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (d) New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.
- (e) Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities, including duct work, shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- (f) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- (g) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
- (h) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- (i) Any alteration, repair, reconstruction or improvements to a building that is in compliance with the provisions of this ordinance shall meet the requirements of “new construction” as contained in this ordinance.
- (j) Any alteration, repair, reconstruction or improvements to a building that is not in compliance with the provisions of this ordinance, shall be undertaken only if said non-conformity is not furthered, extended, or replaced.
- (k) Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc., within this jurisdiction a permit shall be obtained from the U. S. Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission (a joint permit application is available from any of these organizations). Furthermore, in riverine areas, notification of the proposal shall be given by the applicant to all affected adjacent jurisdictions, the Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management) and the Federal

Insurance Administrator.

The flood carrying capacity within an altered or relocated portion of any watercourse shall be maintained.

Sec. 30-16. Specific standards.

In all special flood hazard areas the following provisions shall apply:

(a) Residential Construction - New construction or substantial improvement of any residential structure (including manufactured homes) shall have the lowest floor, including basement, elevated no lower than base flood elevation.

(b) Non-Residential Construction - New construction or substantial improvement of any commercial, industrial, or non-residential building (or manufactured home) shall have the lowest floor, including basement, elevated to no lower than base flood elevation. Floodproofing option? Non-residential construction may be flood-proofed in lieu of being elevated provided that all areas of the building components below the elevation corresponding to the BFE plus one foot are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification, including the specific elevation (in relation to mean sea level) to which such structures are floodproofed, shall be maintained by (title of community administrator) ~~the~~ Town Manager ~~the~~ Zoning Administrator

(c) Elevated Buildings - Enclosed areas, of new construction or substantially improved structures, which are below the regulatory flood protection elevation shall:

- (1) not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be partitioned or finished into separate rooms, except to enclose storage areas;
- (2) be constructed entirely of flood resistant materials below the regulatory flood protection elevation;
- (3) in the Coastal High Hazard District, follow the standards for elevation outlined in Article IV, Section 30-18.
- (4) include, in Zones AE, and A1-30, measures to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of flood waters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet the following minimum design criteria:
 - (a) Provide a minimum of two openings on different sides of each enclosed area subject to flooding.
 - (b) The total net area of all openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding.
 - (c) If a building has more than one enclosed area, each area must have openings to allow flood waters to automatically enter and exit.
 - (d) The bottom of all required openings shall be no higher than one (1) foot above the adjacent grade.

(e) Openings may be equipped with screens, louvers, or other opening coverings or devices, provided they permit the automatic flow of flood waters in both directions.

(f) Foundation enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires openings as outlined above.

(d) Standards for Manufactured Homes and Recreational Vehicles

(1) All manufactured homes placed, or substantially improved, on individual lots or parcels, in expansions to existing manufactured home parks or subdivisions, in a new manufactured home park or subdivision or in substantially improved manufactured home parks or subdivisions, must meet all the requirements for new construction, including elevation and anchoring.

(2) All manufactured homes placed or substantially improved in an existing manufactured home park or subdivision must be elevated so that:

(a) the lowest floor of the manufactured home is elevated no lower than base flood elevation; or,

(b) the manufactured home chassis is supported by reinforced piers or other foundation elements of at least an equivalent strength, of no less than 36 inches in height above the grade;

(c) the manufactured home must be securely anchored to the adequately anchored foundation system to resist flotation, collapse and lateral movement;

(d) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage," any manufactured home placed or substantially improved must meet the standards of Article IV, Section 30-16(d)(2)(a), (b) and (c) above.

(3) All recreational vehicles placed on sites must either:

(a) be on the site for fewer than 180 consecutive days;

(b) be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions); or,

(c) meet all the requirements for new construction, including anchoring and elevation requirements of Article IV, Section 30-16(d)(1) or (2)(a) and (c), above.

Sec. 30-17. Standards for subdivision proposals.

(a) All subdivision proposals shall be consistent with the need to minimize flood damage;

(b) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;

(c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards, and

(d) Base flood elevation data shall be provided for subdivision proposals and other proposed development proposals (including manufactured home parks and subdivisions) that exceed fifty lots or five acres, whichever is the lesser.

Sec. 30-18. Standards for the coastal high hazard district.

The following provisions shall apply within the Coastal High Hazard District:

- (a) All new construction and substantial improvements in Zones V1—V30 and VE (V if base flood elevation is available) shall be elevated on pilings or columns so that:
- (1) the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level (recommend > one foot freeboard); and,
 - (2) the pile or column foundation and structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values shall each have a one percent chance of being equaled or exceeded in any given year (one-percent annual chance).
- (b) A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of Article IV, Section 30-18(a).
- (c) Obtain the elevation (in relation to mean sea level) of the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings and columns) of all new and substantially improved structures in Zones V1—V30 and VE. The Floodplain Management Administrator shall maintain a record of all such information.
- (d) All new construction shall be located landward of the reach of mean high tide.
- (e) Provide that all new construction and substantial improvements have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood-lattice work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purpose of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:
- (1) Breakaway wall collapse shall result from water load less than that which would occur during the base flood; and
 - (2) The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Maximum wind and water loading values to be used in this determination shall each have a one percent chance of being equaled or exceeded in any give year.
- (f) The enclosed space below the lowest floor shall be useable solely for parking of vehicles, building access, or storage. Such space shall not be partitioned into multiple rooms, temperature-controlled, or used for human habitation.
- (g) Prohibit the use of fill for structural support of buildings. When fill is proposed in

a coastal high hazard area, appropriate engineering analyses shall be conducted to evaluate the impacts of the fill prior to issuance of a development permit.

(h) Prohibit man-made alteration of sand dunes which would increase potential flood damage.

(i) All manufactured homes to be placed or substantially improved within Zones V1—V30, V, and VE on the town's Flood Insurance Rate Map on sites must meet the standards of Article IV, Section 30-18(a) through (h) and that manufactured homes placed or substantially improved on other sites in an existing manufactured home park or subdivision with Zones V1—V30, V, and VE on the Flood Insurance Rate Map meet the requirements of Article IV, Section 30-16(e)(1) and (2), if they are located:

- (1) outside of a manufactured home park or subdivision,
- (2) in a new manufactured home park or subdivision,
- (3) in an expansion to an existing manufactured home park or subdivision, or
- (4) in an existing manufactured home park or subdivision in which a manufactured home has incurred "substantial damage."

(j) Recreational vehicles placed on sites within Zones V1—V30, V, and VE on the community's Flood Insurance Rate Map must either:

- (1) be on the site for fewer than 180 consecutive days,
- (2) be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or,
- (3) meet the requirements of Article IV, Section 30-14 and Article IV, Section 30-18(a) through (h).

Sec. 30-19. Anchoring fuel tanks.

(a) All new, replaced, or existing oil, and propane tanks must be anchored against floatation, collapse and lateral movement under flood conditions by means of an approved anchorage system or shall be installed at or above base flood elevation and shall be set upon a firm foundation and supports to prevent floatation, collapse and lateral movement under flood conditions. It shall be unlawful to fill or refill any such tank that is not so anchored or elevated.

(b) All new, replaced, or existing oil tanks shall have their vent pipe extended at least three feet above the top most portion of the body of the tank. This provision shall also apply to substantial improvement buildings and buildings experiencing repetitive loss.

(c) All new, replaced, or existing oil tanks must all be fitted with a fill tube screw-on tight-fit cap with gasket.

(d) This section shall be effective November 4, 2010 for existing or replaced fuel tanks.
(Amended 4/7/08)

(e) Any person violating the provision of this section shall, upon conviction, be guilty of a class 4 misdemeanor and be punished by a fine of not more than two hundred and fifty dollars (\$250.00). Each day in violation shall constitute a separate offense.
(Adopted 11/5/07)

ARTICLE V. VARIANCES

Sec. 30-20. Factors to be considered.

In passing upon applications for variances, the board of zoning appeals shall satisfy all relevant factors and procedures specified in other sections of the zoning ordinance and consider the following additional factors:

- (a) The showing of good and sufficient cause.
- (b) The danger to life and property due to increased flood heights or velocities caused by encroachments. No variance shall be granted for any proposed use, development, or activity within any Floodway District that will cause any increase in the one hundred (100)-year flood elevation.
- (c) The danger that materials may be swept on to other lands or downstream to the injury of others.
- (d) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
- (e) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
- (f) The importance of the services provided by the proposed facility to the community.
- (g) The requirements of the facility for a waterfront location.
- (h) The availability of alternative locations not subject to flooding for the proposed use.
- (i) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
- (j) The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.
- (k) The safety of access by ordinary and emergency vehicles to the property in time of flood.
- (l) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
- (m) The repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- (n) Such other factors which are relevant to the purposes of this ordinance.

All applicants must obtain documentation pertaining to the request for a variance from a Virginia certified engineer to evaluate the proposed project in relation to flood heights and

velocities, and the adequacy of the plans for flood protection and other related matters prior to referring such to the board of zoning appeals.

Variances shall be issued only after the board of zoning appeals has determined that the granting of such will not result in

- (a) unacceptable or prohibited increases in flood heights,
- (b) additional threats to public safety,
- (c) extraordinary public expense; and will not
- (d) create nuisances,
- (e) cause fraud or victimization of the public, or
- (f) conflict with local laws or ordinances.

Variances shall be issued only after the board of zoning appeals has determined that the variance will be the minimum required to provide relief from exceptional hardship to the applicant.

The board of zoning appeals shall notify the applicant for a variance, in writing, that the issuance of a variance to construct a structure below the one hundred (100)-year flood elevation (a) increases the risks to life and property and (b) will result in increased premium rates for flood insurance.

A record shall be maintained of the above notification as well as all variance actions, including justification for the issuance of the variances. Any variances that are issued shall be noted in the annual or biennial report submitted to the Federal Insurance Administrator.

[Section on Existing structures](#)

Sec. 30-21. EXISTING STRUCTURES IN FLOODPLAIN AREAS

A structure or use of a structure or premises which lawfully existed before the enactment of these provisions, but which is not in conformity with these provisions, may be continued subject to the following conditions:

- ~~A. Existing structures in the Floodway Area shall not be expanded or enlarged unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the proposed expansion would not result in any increase in the base flood elevation. (* does not apply in coastal areas)~~
- B. Any modification, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use located in any flood plain areas to an extent or amount of less than fifty (50) percent of its market value shall conform to the VA USBC.
- C. The modification, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use, regardless of its location in a floodplain area to an extent or amount of fifty (50) percent or more of its market value shall be undertaken only in full compliance with this ordinance and shall require the entire structure to conform to the VA USBC.

ARTICLE VI. ENACTMENT

| This ordinance shall become effective upon passage on ~~September 21, 2006~~April 4, 2014.

**ORDINANCE COMMITTEE
TOWN OF CHINCOTEAGUE
November 14, 2013
Meeting Minutes**

Present

Terry Howard, Chairman
Councilman Tripp Muth
Councilman Gene Taylor

Staff

Robert G. Ritter, Jr., Town Manager
William Neville, Planning Director

Call to Order

Chairman Howard called the meeting to order at 5:00 p.m.

Open Forum/Public Participation

There were eight members of the public present.

Ms. Wanda Thornton asked if they could provide comment later in the agenda. Chairman Howard assured all present that public comments would be accepted following presentation of the agenda item.

Agenda Adoption

Councilman Taylor motioned, seconded by Councilman Muth to adopt the agenda. The motion passed unanimously.

1. Discuss Possible Revision to the Floodplain Ordinance

Chairman Howard introduced the first agenda item and asked Mr. Ritter for a presentation.

Town Manager Ritter described the current Town Floodplain Ordinance with revisions proposed by the State to comply with their model ordinance, and several additions considered necessary by Town Staff. Mr. Ritter indicated that these additions are consistent with ordinances from other similar coastal communities based on Staff research.

Councilman Taylor requested that the proposed changes should be described as being the minimum required by the model code or as exceeding the minimum standards

Town Planner Neville described the FEMA process that will lead to adopting new floodplain maps in approximately one year, and the requirement that each community adopt changes, if necessary, to bring their floodplain ordinance into compliance with minimum National Flood Insurance Program (NFIP) standards. Communities may adopt standards which exceed the minimum requirements in order to obtain a community wide discount on insurance rates. The current rate for Chincoteague is a 10% discount based on meeting higher standards.

Mr. Neville explained that the last review of the Town Flood Ordinance was in 2011, and at the time, most of the redline changes shown in the staff report were recommended by the State Coordinator Charley Banks. These changes are required to be adopted by the Town before April

4, 2014 in order to remain in compliance with NFIP standards according to the most recent letter from FEMA.

Two additional changes are proposed by Town Staff to address recent concerns with the required floodplain zoning permit process. The first is a list of exceptions under Section 30-7 Definition of 'Development', and the second is a new definition of 'Fill or Filling', and 'Grade or Grading'. Mr. Neville suggested that these clarifications still accomplish what FEMA wants the community to do however they would exempt minor development activities and only require a permit for land disturbance of over 10,000 square feet to be consistent with the State erosion and sediment control permit.

The proposed permit process was clarified by Mr. Ritter to explain how a Town floodplain permit would be approved after a County Sediment/Erosion Control permit was issued. Mr. Neville concluded by reviewing the other changes recommended by Mr. Banks that include several definitions and one strikethrough for a section on riverine conditions that do not apply.

Mr. Ritter and Mr. Neville recommended that the proposed changes should be discussed by the Committee and forwarded to the Town Attorney for review before sending a recommendation to Town Council for action.

Chairman Howard asked whether these changes were likely to be approved by Charley Banks and FEMA. Staff responded that this an approach recommended by Mr. Banks and that matches our research of other similar communities.

Committee review of each redline change began with a reference to the adoption date of new floodplain maps. Mr. Ritter mentioned a possible change to the purpose section that would limit the applicable FEMA regulations to only those that apply to coastal communities:

"The special flood hazard areas were generated for storm surges and designated on the Flood Insurance Rate Maps (FIRMs) as Zones AE (base flood elevation data has been provided) and Zones VE (Coastal high hazard base flood elevation data has been provided). References to other special flood hazard areas have been omitted from this ordinance since they are not identified on the [insert community name] FIRMs. If other special flood hazard areas are added as revisions to the FIRMs, this ordinance will be revised to reflect the additional zones. Since the FIRMs have been based on storm surges, paragraph 60.3.(c)(10) of the CFR 44 (cumulative effects of proposed developments) has been omitted from this ordinance." (Town of Dauphin Island, Alabama Flood Damage Prevention Ordinance, July 13, 2006)

Mr. Neville explained that the last portion about not requiring expensive engineering studies of cumulative effects was supported by the recent letter from FEMA to the Town of Chincoteague. Discussion continued on the redline changes regarding a penalty for violations.

Proposed changes to the definition of the term 'development' were presented as a necessary next step to exclude certain minor land-disturbing activities from the zoning permit recently adopted by Town Council. Item #7 on the exception list is any disturbed area of less than 10,000 square feet in size that matches the State definition under the Erosion/Sediment Control regulations for permitting purposes.

Town staff recommended that adding details and exceptions to the definition of development is necessary since FEMA is trying to enforce regulations by using a general definition that applies everywhere in the United States without any ability for local officials to interpret and apply the term. Definitions for 'Fill or Filling', and 'Grade or Grading' were reviewed by the Committee.

County Supervisor Wanda Thornton participated in discussing the problems with regulating fill and stockpiles of material such as shells, timber or other materials. She indicated that Accomack County was not going to willingly adopt any regulation or permit requirements for 'fill'. Ms. Thornton referred to the letter from FEMA indicating that some regulations were not applicable to coastal communities, and other FEMA guidance documents that recommend fill around a foundation to minimize flood damage that seem to be contradictory to the requirement for all fill to be regulated. Ms. Thornton expressed her concern over the threat of FEMA removing a community from the flood insurance program and the rate increases that are taking effect over the next several years.

Mr. Neville advised the Committee that the Town could take the position that regulating fill activity has not been done in the past and amend the ordinance to exclude this activity from the definition of 'development', however it is unlikely to be acceptable to FEMA since this definition is a national standard and has already been adopted by both the Town and Accomack County. Ms. Thornton recommended that the same standard should apply in both the Town and County, and that the attorneys should both work on reasonable ordinance provisions.

The next step was proposed by Mr. Ritter to send the proposed definitions and other redline changes to Mr. Poulson, Mr. Taylor and Mr. Fluhart to receive their direction before the Committee makes a recommendation to Town Council in time to adopt changes before the April 4, 2014 deadline.

Mr. Donald Thornton read aloud a portion of the latest FEMA letter which confirms that CFR 44 Section 60.3(c)(10) regarding the study of cumulative impacts does not apply in coastal areas and asked if other sections do not apply as well. Ms. Thornton suggested that this same guidance could be applied to the regulation of fill because the only time fill is regulated is in the V zones and not other floodplain categories. In fact FEMA guidance documents actually show buildings elevated on fill to reduce flood impacts and minimize flood damage.

Councilman Taylor expressed his opinion that there is not any reasonable activity on Chincoteague Island that could cause the floodplain to increase by one foot. He requested that the list of exceptions under the definition of 'development' would also include: 12) stockpiles of natural materials such as shells needed for the shellfish industry. Chairman Howard suggested a more inclusive exception for stockpiles and storage of materials. Ms. Thornton suggested that storage of material at the lumberyard should also be on the list.

Chairman Howard asked what the Town stands to lose if these changes are made to the Flood Ordinance. Mr. Neville described the FEMA process for non-compliance with NFIP minimum requirements that takes several years and allows for the Town to remedy the violation. Several questions from the public led to a discussion of the number of permits required for development, and how long the Town Floodplain Permit would be issued with no fee.

Review of the redline changes continued. Mr. Bobby Lappin asked about base flood elevation changes that are proposed by the new flood maps. There was discussion of the possible benefit of

requiring construction of first floor with one foot of freeboard elevation above base flood elevation. This higher standard would help to provide everyone in the Town with a discount in flood insurance. Ms. Thornton suggested that adding a requirement for 1 foot of freeboard may not allow a community to exceed the 10% discount that is currently provided and may not make it worth exceeding the minimum standards. Mr. Thornton asked if individual property owners would receive a greater discount for voluntarily building above base flood elevation than they would receive by a Town Ordinance that exceeds the minimum requirements.

Discussion continued regarding the benefits of freeboard to balance the uncertainty of ‘average storms’ and flood maps that are dramatically changing base flood elevations. Chairman Howard asked for more information about flood insurance rates and discounts. Concern was expressed for the impact of flood insurance on property values, tax revenues, and the ability for people to sell and finance properties.

Mr. David Johnson asked why a floodplain permit was a problem for people to obtain. This started a discussion about fees, FEMA direction that expensive engineering studies should be completed, and under what conditions a permit should be denied.

Several final changes were described by Mr. Neville. He suggested that the definition of ‘shallow flooding area’ should be removed since there are no areas so designated on the draft maps, and because this would overlap Federal standards with State stormwater management regulations and Town drainage regulations. Ms. Thornton asked what ordinance requirements apply in New Orleans for flood permits and stormwater management in a coastal community at or below sea level. For the last section on Existing Structures, staff recommended deleting paragraph A because any floodway standards do not apply in the coastal area.

Chairman Howard offered an opportunity for additional public comments. Mr. Thornton commented on FEMA’s interest in limiting fill in flood zones on individual properties compared to the beach re-nourishment and storm protection activities that are being approved for whole communities. Commissioner Taylor discussed the current erosion control permit process and complimented Mr. Norman Pitts on working well with the community. He suggested that a floodplain permit process that parallels erosion control would not be too great of a burden if it satisfies FEMA.

Staff was directed to provide these materials to the Town and County attorneys and to schedule this item for further consideration at the Ordinance Committee on January 9th. Committee members thanked the public for attending and providing ideas and suggestions.

2. Committee Member Comments

There were no additional committee comments.

Adjourn:

Councilman Taylor motioned, seconded by Councilman Muth to adjourn the meeting.

Next Meeting: January 9th at 5pm.