Town of Southern Shores

"A Town of Volunteers"

6 Skyline Road, Southern Shores, NC 27949

Telephone: (252) 261-2394 Fax: (252) 261-0452

Web Site: southernshores.org

E-mail: info@southernshores.org

Joint Planning Board and Council Workshop
April 4, 2000
1:00 p.m.-Pitts Center

Mayor Sutherland called the joint Council/Planning Board meeting to order. Mayor Sutherland called upon Planning Board Chairman Morrison to chair the meeting to discuss Phase 2 on the regulation of rental properties.

Chairman Morrison began by saying the approval of the zoning ordinance effective May 1 was preceded by a series of public meetings, a petition, a resolution by the SSCA, and public hearings regarding the large home issue.

He reported that after much deliberation by the Planning Board, the amended zoning ordinance addresses the definitions of accessory buildings, habitable floors and top plate. He stated that the top plate controls the bulk of a structure and no habitable space above the top plate was included.

He stated as this point nothing new was added to the zoning ordinance it was a matter of clarifying the definitions. The Planning Board then looked at the parking spaces and stated that one of the changes is to have a drive aisle so vehicles would not back out into the street. Also changed were the parking spaces, which were put on a sliding scale according to the number of bedrooms, which would have an effect on lot coverage.

The Planning Board also looked at lot disturbance to protect the lot from being cleared before an elevation could be determined. This has become part of the building permit process.

The Planning Board looked at side yard setbacks and recommended the setbacks be amended to 15' from 10' due to a safety issue for fighting fires. When the height limit was increased to 35' no consideration was taken for the fall zone in a fire situation and the change also increased the open space in the residential area.

The oceanfront lot coverage was looked at for reconstruction purposes such as following a storm and everything was referenced to the first line of natural vegetation and not being applied to original construction.

Councilman Denny commented that he remembered an item that was not approved. Chairman Morrison stated that Council did not approve the swimming pool fence amendment.

Chairman Morrison stated that early on the Planning Board had decided not to tackle rental regulations regarding house size. Tom White submitted an opinion August 26, 1999 and it was apparent that this would be much more difficult.

He stated that many recommendations were discussed such as limiting square footage or prohibiting the recombination of lots but there are no clear legislative directives to do that.

Chairman Morrison stated that the large home moratorium was adopted (12/7/99) to allow the Board and Council to look into a way to regulate rental properties.

He stated that Tom White's memo explains the process on how and what can be regulated and why. A study with deliberations and conclusion; that deal with health, safety, and welfare of the community needs to be done.

He stated that it was hoped that the Board could find building code language addressing hotel or mini-hotel structures with a category of eight bedrooms sleeping sixteen people or more that didn't look like a residential house but none was found.

He explained that Council arranged for two State Planners to aid the Board. In working with them some suggested alternatives relating to the large house issue were reviewed. The planners submitted two memo's (February 8 and March 10, 2000) with proposals. The first memo gave seven alternatives to be reviewed. They are: family-residential homes by family residential use permit, rental residential homes by conditional use permit, no rentals allowed in Town, rentals by license only, rentals allowed only in "Rental" zoning district, a combination of alternatives, or status-quo (leave as is).

He stated that the Planning Board felt the only alternatives to consider would be one or two. The Board did not want to outlaw rentals and does not want to require a permit for family residences.

The Board wanted to review the outcome of licensing or permitting as a conditional use. Licensing would set stipulations on a rental property. The stipulations could be things regarding safety or additional parking requirements, etc. A conditional use would do the same thing but the uses would be set at the time of construction.

Both of these would require the applicant to go through a process when the ownership or the property type changed (rental to non-rental or vice versa).

During this process, Chairman Morrison stated that Mike Hejduk wrote the State Department of Insurance (OSFM) and asked for a definition for of a residential home being used for the purpose of renting to a high occupancy (15+). Their response (2/21/00) was there is no definition that could be applied and not to look to the state building code for answers to the large home issues.

Chairman Morrison stated that Currituck County is looking for some of the same answers but that no legislative mandate is available.

Chairman Morrison reviewed the second memo from the state planner dated March 10, 2000. He explained the memo provided language for a possible two tier approach to create a "residential transient use annual license and to require a conditional use permit upon construction of homes that have more than X number of bedrooms. He explained the Planning Board deliberated this thoroughly. He explained the Board found no health, safety, or welfare reason that could be supported and applied to rentals legally.

He commented that the septic permit review by Council was a great project and value to the Town and will have longevity.

He stated that Nags Head and Pine Island are totally different from Southern Shores. Pine Island is strictly rentals and in the winter there is no one there.

He stated the Board is concerned in the enforcement of a rental license, how to it would be enforced and what kind of fee would be set. Having a rental "policeman" would cause more problems. It was considered that at the beginning of the year rules and regulations could be provided to the property owners. The Town has already begun to let the property owner be aware of changes and opened the door of communication by sending them letters regarding the septic situation, the personal watercraft, the rip tide warning, etc. so why not continue? The Town already has a number of rules that are difficult to convey to the property owner and to enforce (i.e. dogs on the beach, garbage cans, and noise).

Chairman Morrison commented that the Planning Board has done a lot. Southern Shores has stricter zoning to start with and now it has been made even more so.

The Board does not see a legislative purpose to come before Council with a recommendation for more regulations, specifically no conditional use permit for rentals and no licensing for rentals.

The Board would encourage Council to monitor what has occurred starting May 1 for a few months and see how houses might change and that the ordinances be rigorously enforced.

Chairman Morrison stated that the Board could not recommend moving forward on regulating large homes. The Long-Range Planning Committee may be a better vehicle to flush out issues like what septic tanks' impact will be and what water supply problems will be in question 20 years from now.

The Board encourages Council to continue corresponding with the property owners regarding the changes within the Town.

Chairman Morrison then asked Council to guide the Board on the next step or to ask any questions.

Dan Shields commented that the Board, in all its deliberations, only came up with two viable alternatives, which were the residential/transient use license and the conditional use permit. He stated as the Board discussed these they agreed that they might not be viable after all. Does Council want to impose and enforce either one of these alternatives?

Councilman Campbell addressed the Mayor by asking if the Board looked into the possibility of requiring conditional use permits only on houses of 6 bedrooms or more and sleeping more than 14 people but not requiring a conditional use of the lesser homes?

Chairman Morrison stated that the Board did but what conditions would be proposed? The Board had already imposed conditions by amending the ordinance (such as side yard setbacks, parking, lot disturbance, etc.) but they could not come up with additional conditions. Chairman Morrison asked what rationale would be used to turn someone down?

Councilman Kennedy stated that once the conditions are met there is no reason to turn someone down.

Councilman Campbell asked if the Board discussed applying conditions to rental homes only with the criteria mentioned above? Chairman Morrison asked what are we trying to control? Councilman Campbell stated the use of the structure. Chairman Morrison asked then you are suggesting that we control the use of a property by saying no rentals allowed? Councilman Campbell stated that it would be the same as licensing houses but not to have a wholesale licensing of all homes in Town.

He stated the Town is still responsible to all the people who spoke at the public hearing and requested Council to do something about these mini-hotels. He believes that progress has been made but more should be done.

Chairman Morrison stated that if there were a conditional use, do you want to preclude the rental of those homes?

Councilman Campbell stated only those that are offered for rent with 6 bedrooms or more. Chairman Morrison stated that the Planning Board found no legislative way to do that.

Councilman Campbell asked that if Board is proposing a conditional use or licensing in that you are only going to require licensing of those people who are taking the larger homes and potentially making them into mini-motels? Chairman Morrison stated that licensing does not stop the large homes.

Chairman Morrison explained that without a reason, a legislative purpose, to not grant a license to a home with 20 occupants what good does it do for anyone to be licensed?

Councilman Campbell stated that is a hypothetical question that he could not answer but those homes stick out like a sore thumb and anyone in this room can tell you the homes from appearance that are in violation of the fact and causing some impact on the Towns infrastructure. He stated for example the ones who have 14 or 15 cars parked out front. We know that it is a rental home and it is impacting our infrastructure.

Chairman Morrison stated the Board could not find a way to determine that. The County controls the water and if a 20,000 sq. ft. lot has an appropriately sized septic system then there really isn't a problem.

The Long-Range Plan states that the County did not view water as a problem when the plan was last done. The problem with licensing or issuing a conditional use is if you can't control the use then what is the point of taking the extra step.

Councilman Campbell stated that giant strides have been made in passing what we have and Council has been in tune with the people in the real estate business, home construction, home owners and in any case all of these things have been accepted by everyone. Some of the recommendations were on the 6-bedroom limit and it did not just come from people who objected to mini-hotels, it came from people in the rental community.

Chairman Morrison stated the number (6 bedroom) is not in dispute but for the Board to recommend to Council moving ahead there needs to be some legal foundation.

Mayor Sutherland stated that the Town does not want to get into any rental patrol activity. He commented that Holden Beach is requiring a septic permit. He stated that the Southern Shores ordinance says the permitted occupancy of the house by the septic permit is such. The County is not enforcing it. It would be for the Town to enforce by someone counting cars and then someone going to double check occupancy.

Councilmen Campbell stated that other towns have restrictions. He stated that Holden Beach only allows a house to be rented for a one-week period in a year. He stated that is not what this Town is proposing. Chairman Morrison asked if that was a zoning ordinance or a restrictive covenant? Councilman Campbell did not know.

Tom Gjestson commented that he talked to the Town Manager and there are no restrictions on rental weeks.

Councilman Kennedy commented that there is nothing to prevent a property owner from getting a larger septic tank to allow more people.

Councilman Campbell stated then there would be no reason to give someone a conditional use but when you have a conditional use you would examine all these various items.

Councilman Kennedy stated a conditional use is where Council would apply conditions to use a property in a certain way. Councilman Campbell stated applicable to everyone. Councilman Kennedy said it would be applicable to that particular property or class of property. He continued by saying he could not think of any conditional uses that would make sense because once you meet the conditional requirements then there is no basis not to approve it. He agrees with the Board that there isn't any way to apply a conditional use.

Councilman Campbell commented it is a poor excuse to say we won't have a law because we don't have a way to enforce it. Councilman Campbell stated that is like having a speed limit law the only ones you are going to enforce it is the ones who are obviously breaking it.

Chairman Morrison stated it is not the matter of enforcing it. It is having a good law to start with that has a rational basis and would be supported by a context.

Councilman Kennedy stated that the Planning Board has put a lot of time into this and have done a good job. He stated that a lot of actions have been taken and we haven't seen the results of those actions yet. He supports the recommendation to not proceed any further at this point in regulating rentals. He doesn't think it will do any good in keeping the large houses out. The building code has been examined including the life safety issues and now is the time to set back and see what will happen with what has been done. He stated he does not think the Town will ever have anything like Pine Island.

Elsa Edwards commented that according to the sq. ft. of her lot she could build a house that is 11,500 sq. ft. without a conditional use permit. She continued by saying it would be a private home not a rental and it would be an abomination to the neighbors but she would be within the septic regulations, and the 30% rule. That is why the Board has settled with what has been done.

Dan Shields stated that a resident came to a Council meeting and made everyone aware that he has 14 people in his family. D. Shields commented that if changes were made to restrict occupancy then that resident might not be able to build a house for his family.

Councilman Campbell stated that when he was on the Planning Board there were provisions for families that did not come to that exclusion. He stated that from the interpretation in reading the zoning ordinance he doesn't think the Town has ever held against the size of a family.

Councilman Smith stated that he agrees with Councilman Kennedy. He asked if there is any reason to keep the moratorium until August 1? Chairman Morrison commented that is Council's decision. Councilman Smith stated that if the Planning Board has finished the work before the eight-month time frame the moratorium should be ended because their work is done.

Dan Shields commented that the Board's work is only done if Council has no further guidance.

Mayor Sutherland opened the floor for comments.

Duke Garrity, President of the NC Home Builders Association, stated that the work that has been done is commendable and he thanked the Council for allowing them to speak today.

He stated that the definition of height in the Town's zoning ordinance is difficult to determine. He would like to see some way to determine the height on lots that are below grade by being able to add fill to find a pre-determined height to start at street level. When lots are below grade they can't put fill in.

Mr. Garrity explained a property owner could be penalized by 8' in a height structure depending on the lot because the height is measured from the lowest point of the grade. He explained a lot of the property owners do not understand why they can't build their house because the setbacks don't fit or the height measurement won't allow the house they chose.

Councilman Campbell asked what Mr. Garrity's recommends to determine the height? Mr. Garrity stated the height measurement should be from the street level to 35' or the lowest of the four corners.

He stated a pre-construction permit is needed with an elevation shot before ground is broke. He stated that the Health Dept. is requiring a lot of fill.

Mark Martin, Sandmark Construction, stated that he has a problem with height and fill also. He explained a situation regarding a lot where the berm was pushed to allow for the driveway and when fill was added on the back corner of the house it made the ridge height 2' over. He had to slide the house 10', it did not change the height but he had to chop the nose off of it. He stated his options were to go before the Board of Adjustment which he was told it would take 2 to 3 months and he didn't have time or to slide the house or put it where the Building Inspector told him to so he slid the house.

He commented it changed the whole character of the house. He would like to see a mechanism that would allow a structure to be built to consider when there is too much dirt and it has to be hauled away or the builder has to chop the roof down because it exceeds the height limit because there is too much dirt.

Mayor Sutherland stated there is a mechanism for Martin's Point lots. They can have just about anything they want that is different from Southern Shores if they ask.

Jim Morrison commented that the height definitions were influenced by the process that was needed to get the height raised from 30' to 35'.

Mark Martin explained that on the particular house he was talking about, the construction loan was done, the plans were finalized, and then the Building Inspector says the house can't be placed where the site plan shows. He stated that it is the process that causes the problems. The architect designs the house, the health dept. says you have to move the house to fit it in, then that throws the contractor back into a situation to either chop off the roof or slide the house.

Councilman Denny asked Mark Martin when did the issue arise on the situation that he had just described?

Mr. Martin stated that he was not able to build. They had the elevation certificate but could not build. Councilman Denny asked if he was aware that he could go before the Board of Adjustment? Mr. Martin said yes but he was told it would take 2 to 3 months to get a ruling from the Board of Adjustment. Councilman Denny asked does it take 2 to 3 months for a Board of Adjustment hearing. Planning Board Chairman Morrison said no.

Chairman Morrison reminded everyone that the Board of Adjustment could only grant an exception for unreasonable problems. He stated at the workshop held by Rich Ducker, they were told having to build a different type house is not an unreasonable restriction.

Councilman Kennedy stated that the more you define height the less leeway the builder and the building inspector have. He suggested that Council come up with some middle ground. The lot disturbance permit does not apply to Martin's Point.

Mr. Martin stated that he was told he could start the house and he would not be in violation until the roof was put on then a stop work order would be issued.

Councilman Denny stated that the purpose of the Board of Adjustment is to hear appeals or decisions from the Building Inspector.

Councilman Denny stated that if the inspector goes to a building lot and there is a hole 6' deep and the 30% lot coverage is abided by and he makes his decision on that hole then he feels that is unreasonable. Everyone agreed.

He further stated that as the Town gets built-out more and more lots become a challenge to build on. He stated that it is the purpose of the Board of Adjustment to rule on these exceptions by a reasonable/unreasonable decision by using local circumstances.

Councilmen Kennedy commented that people were abusing the height issue and that is why it was changed.

Mr. Garrity stated that it is a problem when the real estate agent sells a lot and tells the purchaser they can build their dream house but then it may become difficult to do so if the elevation is down in a hole. The property owner doesn't want to hear that.

Councilman Smith stated that when a lot has a hole and has been allowed to be filled and then the structure impedes the view of an existing house it is a big problem. He commented he did not agree with the changing of the height from 30' to 35'. He would like everyone to sit down and come to a conclusion that makes sense to everyone in determining height.

Mike McCarron addressed the Council and stated that he owns a rental property (13 1st Ave.) and has owned it since 1977 and built on it in 1987. He thanked the Planning Board and Council on the work they have done. He feels it has been very important in keeping the character of the Town. He urged them not to stop and to keep the moratorium for further exploration in restricting rentals. He would like Council to have the same concern for the houses already built as they seem to have for the houses that may be built. The decisions that are made by Council on large homes do impact the character, the property values, and the health of the property and all of us who are already here. When a septic system that accommodates six bedrooms or more is allowed it would effect the aquifer in his area. There are properties in Town who still use wells and the size of septic systems that accommodate these large houses is not a little concern.

He continued to say his property value is affected when other houses have an occupancy of 16 or more people. If local impact must be considered in making laws for them then local neighborhood impact should be considered when looking at how to regulate the size of the home.

Mr. McCarron continued by saying that he would like to see when conditions are imposed that they include the word "character" or input of the neighborhood be added and if it can't then Council should ask what does it mean to legislate rentals accordingly and address how many people can a rental accommodate? If he did not rent his house then he would not have it but he would readily accept legislation that would license him to rent it so that other rental properties do not impact so severely on his and that he would lose the desirability of his rental property.

He urged Council to use the rest of the time of the moratorium to seek any place that would keep the character of the town which is residential and treat rentals for what they are, the exception and he wants to keep it that way.

Randall Wrenn commented that the noise from the heat pumps and pools of these large houses is still an issue to be considered.

Dave Stormont said he has a question to Council regarding the May 1 zoning ordinance. He stated that Southern Shores is a unique neighborhood. It is two communities working in the same acreage, a rental community and a strong residential community. Kitty Hawk is the closest in comparison to Southern Shores. The Planning Board and Council have worked very hard to try to control the size of the rental community. He asked that before the Planning Board backs away and before Council releases the Board that they continue on for what is being done for the rental homes but to also step back and look at the potential residential home builder on Dogwood Trail next year. Ask what about closing off the spaces above garages? What about detached buildings having habitable space?

Mr. Stormont continued by saying the ability to conduct and transact business from the home is a national trend. Permanent residents are going to be doing business from the home why can't they have space to do this or why can' t they have a playroom over the garage? Ask how the parking requirements are affecting a permanent residential. He stated that they have done a great job with regulating rental properties, now he challenged them to look at the permanent year round resident and ask have you done him right? He thanked them for their time.

Councilman Denny commented that the real issue is to state what kind of town do we want to be? He thinks most people would say to continue as we are or as we were a couple of years ago, but change is inevitable. We are a unique community. He thinks there are some people that are being overlooked, second homeowners. He is concerned about them. He remarked that he had a flat top but finally had to rebuild. He asked Frank Stone, at that time, how big of a house should he build?

Frank replied no more than 5 bedrooms, anything bigger creates a party house and the Town is committed to family vacations here. Councilman Denny stated he believes Frank still feels that way. Councilman Denny then stated a new term came about for rentals that allows for a high occupancy "rental machine".

Councilman Denny stated he is not ready to give up on the character of the Town and if it takes "jaw boning", educating, and making a plea to all to maintain the Town then that may be all that can be done.

Councilman Campbell asked if Frank Stone or David Sanders would care to share their thoughts on the issue?

Frank Stone stated that he has been involved with the Town since 1970 and has watched it grow. He thinks Council is on the right track in controlling over development of the community. Originally, there were covenants that were applied to this Town that were more rigid than anything else that was being developed in Dare County at the time which has been continued to this day. He doesn't think the Town should be a community of "mini-hotels" but he feels at a point people's rights are infringed upon. He thinks Council has gone far enough and supports the Planning Board's recommendation to step back and take a look and after a few months, if need be, go back to the table. He addressed Mike McCarron's concern about new houses taking his rentals. He stated that the people coming for vacation now demand amenities and are willing to pay for it. The Town will never be like it used to be. He appreciates the efforts that the Board and Council has done but now is the time to stop.

Bruce Green stated that when he built his house he planned it to be a recreational home and now finds that he is living here full time. Some of the issues across time have influenced his thinking, the height restrictions, changed his property value because other structures were allowed to be taller and now they block his view and the growth of the trees also block his view. He doesn't feel the occupancy issue only applies to the oceanfront it extends to all the houses including those houses with only two or three bedrooms, it doesn't mean that a big house is the only kind that is over crowded. People will abuse whenever they can without thinking what the neighbors feel.

Mayor Sutherland stated it is not Council's intention to infringe on anyone's rights. He built a large house and no one complained and if someone had tried to restrict the building of the house he would have felt it was an infringement of his rights. Council has tried to respond to the citizens but now they have hit a blank wall. He doesn't know what else to ask the Planning Board to do, he is open to suggestions. He agrees to sit back and regroup and recoup and to remove the moratorium. If we would need the moratorium again then it could be done. He thanked the Planning Board for all their work.

Chairman Morrison thanked everyone for all the work that has been put into this issue. He also stated that maybe things really aren't as bad as some think and the Police Department could handle most complaints.

Councilman Denny stated that he is very grateful in the work that the Planning Board has done, you were given an impossible assignment and you almost pulled it off. There is an awareness that has been developed of our concern for the community. He doesn't like calling it large homes, it is the large capacity of the structure and the impact it is having on the beaches. He would like to have a vision statement that goes beyond the Land Use Plan to be held up as a model and to continue talking about it at every opportunity.

Mayor Sutherland suggested that the Long-Range Plan would be the committee to work on this.

Chairman Morrison commented that the Land Use Plan will be done in 2002 and questions regarding these issues will be addressed.

Mayor Sutherland stated Council would look into the problem regarding the "pot hole" on lots for grade and height determination and be reasonable in a decision.

Chairman Morrison suggested that Mike Hejduk explain to everyone at a workshop the problem in determining height and Council then would decide what to do; it is not a Planning Board issue.

Councilman Campbell asked that the builders give ideas to Council on how to address this issue of lots with holes.

Mark Martin stated that Mike Hejduk held to the letter of the ordinance and he is not faulting him for it

Councilman Smith asked had the Outer Banks Home Builders talked about this fill issue and do they have any answers? Mark Martin said that there has been dialogue and having someone understand that there is a problem should allow something to be done.

Tom Gjestson thanked the Planning Board for a job well done. He stated that Tom White told him there is a community near Biltmore that has put a limit of 5,000 sq. ft on all buildings and to keep an eye on how that plays out. He asked Council if they would consider the Town having a septic ordinance and if it would be to the Town's advantage. Since the health department doesn't do much in the way of enforcement it would be a way for the Town to have some control. He also asked for the Planning Board to consider reviewing the 30% rule relating to the recombination of lots.

Chairman Morrison commented that in talking with Tom White regarding the 30% rule and possibly changing the percentage to different areas, Tom White was not optimistic. Chairman Morrison commented that the Board had talked about having a Town "health department" that would enforce the ordinance.

Chairman Morrison commented that the Town of Nags Head has an on-going study regarding septic systems and they are proposing to offer credits to the property owner for either an inspection and/or pumping of the septic tank

Councilman Smith thanked the Planning Board, and Lee Padrick and Tom Richter, (Planners) for all of their help.

Councilman Campbell invited the builders and real estate agents to visit and bring forth their input.

Mayor Sutherland stated that no retribution would come from anyone for making a point for Council's consideration.

Councilman Kennedy made a motion that the Planning Board not do anymore on the large home issue and to wait and see how effective the amended zoning ordinances will be. Mayor Sutherland seconded. Approved unanimously.

Mayor Sutherland recommended that Council see what the procedure is to remove the moratorium and discuss it at the workshop.

Councilman Kennedy made a motion to adjourn at 2:40 p.m. Councilman Smith seconded. Approved unanimously.

ATTEST:

Paul Sutherland
Mayor

Respectfully submitted:

Carrie Gordin
Town Clerk