

Southern Shores Town Council
Town of Southern Shores, North Carolina
Regular Meeting
April 19, 2005
9:00 a.m.-Pitts Center

MINUTES

The Southern Shores Town Council met on April 19, 2005, at the Pitts Center.

The following members were present: Mayor Hal Denny and Council Members Jodi Hess, Dan Shields, David Sanders, and Brian McDonald

Others present included Carl Classen, Town Manager, and Carrie Gordin, Town Clerk.

OPENING

Mayor Denny called the meeting to order at 9:00 a.m. and led the Pledge of Allegiance and led a moment of silence.

APPROVAL OF AGENDA

Council Member Shields moved that the agenda be amended to include under New Business as item D. draft Zoning Ordinance 2005-04-ee Regarding Temporary Uses and item E. draft Zoning Ordinance 2005-04-dd Regarding Commercial Zoning. Council Member Hess seconded. The motion passed with Mayor Denny and Council Members Hess, Shields, Sanders, and McDonald voting aye; no Council Member voting no; and no Council Member absent.

APPROVAL OF MINUTES - MARCH 1, 2005 AND MARCH 15, 2005

Mayor Denny stated that since Council only received the revised drafts that day, he requests that Council delay approval of the minutes until the May 3, 2005 Council meeting. He stated that he has asked staff to change the formatting of the minutes and that they are working on this issue. Hearing no objection, the Mayor so ordered.

EMPLOYEE RECOGNITION

Mayor Denny recognized Chad Forrester, Public Works on his one year anniversary with the Town, as well as Lt. Paul Terry on his birthday.

PUBLIC COMMENT

Jim Skipper, Sprint representative, gave a brief presentation regarding the placement of telephone cable underground, along NC12. He stated that included in the cost is the removal of the telephone poles once the cable is placed underground. He stated that a utility structure will be built on a site between 109 and 111 Ocean Blvd. (paper street). He stated that he also gave the presentation to the Planning Board last night and that a site plan for the utility structure will go before the Town Planning Board in the near future.

John McCarthy, 155 Crooked Back Loop, stated that upon reading the most recent Town newsletter, he is concerned the tax rate would be affected by the County's recent tax reassessment and asked Council to submit a clear statement to the citizens what approach they would be taking during the budget process.

REPORTS

Planning Board

Chairman Jim Groff presented an oral report of the Planning Board meeting from April 18, 2005. The items reviewed were two draft ordinances (ordinance 2005-04-dd and Ordinance #2005-04-ee) which Council will review and discuss later in the meeting. The Planning Board discussed the submitted revised site plan for a 36-unit condominium development called "The Cove". He stated that the site plan still has areas of concern and will be presented to the Board at their May meeting. He stated that Mike Stone and Mike Davenport addressed the Board regarding a plan to move the Sandy Ridge project's ingress/egress 50 feet on the site to also accommodate the Southern Shores Realty property behind Sandy Ridge. He stated that if a revised sketch plan is provided by Friday April 21, 2005 the Board will review at their May meeting. He reported that the Board is reviewing business licenses but he stated that these types of licenses are for revenue and not to control types of businesses. He stated that the Board is reviewing the Town's Subdivision Ordinance and the Planned Unit Development zoning section for unification and that will be discussed at the June meeting. He stated that other items to be brought to the Board are a temporary shed for Ocean Rescue, proposed site modifications to Town Hall, trash disposal, and the zoning section on Home Occupation. Mr. Groff stated that according to Joe Walter, chairman of the Long Range Planning Advisory Committee, 1500 surveys were returned.

Stormwater Committee

Mayor Denny called upon Jay Russell, chairman of the Stormwater Management Advisory Committee. Mr. Russell gave a detailed presentation on the committee's progress. Mayor Denny thanked Mr. Russell for the update and stated that it would be helpful for each Council Member to have a copy of the PowerPoint presentation and requested so. He stated that the committee is asking for direction from Council as the committee continues with some long term issues that are being studied.

Mayor Denny stated that the committee was appointed by Council with a deadline for a final report but it appears that the committee needs to have their charter extended to allow for time to complete the studies and submit a final report. An updated resolution to extend the committee's charter will be presented at the May 3 Council meeting.

Financial Report

Mr. Classen provided revenues and expenditures statements, as well as summary sheets, showing the amended FY2004-2005 budget, the FY2004-2005 budget as of 3/31/2005, and the estimated actual FY2004-2005 budget.

OLD BUSINESS

Non-Resident Property Owner Issues

Mayor Denny stated that Joe Walter has read every comment on each of the returned Long Range Planning surveys and that Mr. Walter would like to address Council on an issue from those responses.

Mr. Walter stated that from reading the surveys the absentee property owners addressed a concern that they felt slighted in regards to information received about what is happening in the Town as

well as they are not being represented fairly in Town. He stated that the trash can issue is a very big problem in trying to have absentee homeowners being responsible for cans being pulled back in a timely manner. Mr. Walter recommended that Council create a committee (s) to address absentee owners concerns and report back to Council on possible solutions. Mr. Walter stated that a lack of communication seems to be a major problem, and further stated that the most effective way of communication with the property owners is through the "Broadcast" email but that not everyone has signed up. He stated that possibly a community bulletin board could be posted at the Food Lion and the Town could further promote the Town's website.

Mayor Denny stated that it may be possible for the Town to add a page to the SSCA's newsletter as well as the Town producing a quarterly newsletter and contacting rental companies instructing their clients on Town regulations.

Trash Cans

Mr. Classen stated that staff is working on an aggressive public education campaign regarding proper solid waste handling.

Council Member McDonald asked what regulations are there that allow Town employees to go on private property. Mr. Classen stated that the employees may go on private property for the purpose of providing a public service but that inmates are not authorized to go on private property, even under supervision. He stated that staff is (Town manager and Public Works supervisor) still working on getting a C&D dumpster once per month, but it is unknown how soon that program will start.

John McCarthy, 155 Crooked Back Loop, was recognized by the Mayor and asked that communication from Council to the residents and non-residents on issues should be in a welcoming tone.

Mike Stone, 8 Sandfiddler Court, was recognized by the Mayor and stated that he has observed that the additional cans provided at the Public Works site are often full by Friday and that other arrangements need to be made.

NEW BUSINESS

Quarterly Report- Hazard Mitigation

Mike Hejduk, Code Enforcement Administrator stated that the Town's Hazard Mitigation Plan was adopted on August 3, 2004. He provided a 3rd Quarter FY 2005/2006 oral and pictorial report. He stated that the Hazard Mitigation Committee will prepare an annual evaluation report to be given to Council at a later time.

Ordinance #2005-04-cc Regarding a Natural Gas Franchise

Mayor Denny stated that Ordinance 2005-01-01, which was approved by the Town Council on January 18, 2005 and February 1, 2005, was not accepted by Eastern North Carolina Natural Gas within the required 30 days and thus automatically expired. The Mayor stated that Council has before them another version titled Ordinance No. 2005-04-cc Relating to Granting a Natural Gas Franchise to Eastern North Carolina Natural Gas. Mr. Classen stated that this franchise ordinance (Ord. No. 2005-04-cc) was developed by the Town Attorney in coordination with the Kill Devil Hills Town attorney.

Mr. Classen stated that to be approved, Ordinance No. 2005-04-cc must be passed twice by the Town Council and it must contain essentially identical language at each meeting when approved but a public hearing is not required.

Mayor Denny stated that currently there are two primary users (Kitty Hawk Elementary School and Duck Woods Country Club) planning on natural gas.

Discussion was held regarding screening being placed around the distribution areas and it was Council's consensus that the Planning Board provides a draft ordinance to Council, which a public hearing would be required, at the June 7 Council meeting.

Mayor Denny moved to approve Ordinance #2005-04-cc Regarding a Natural Gas Franchise but to hold the second approval until June 7 regular Council meeting, along with holding a public hearing on the Ordinance plus a public hearing on an ordinance regarding making above-ground natural gas facilities a conditional use. Council Member Hess seconded the motion. The motion passed with Mayor Denny and Council Members Hess, Shields, Sanders, and McDonald voting aye; no Council Member voting no; and no Council Member absent.

As approved, a copy Ordinance No. 2005-04-05 Natural Gas Franchise is attached hereto as Exhibit A and made part of these minutes.

FY2005-2006 Budget Discussion

Mr. Classen presented an outline for the FY2005-06 budget (list of projects, with broadly estimated costs, not engineer-developed costs, and the years of the capital improvement plan). He stated that the Capital Improvement Plan will drive the budget. He reviewed several issues such as trash/recycle cans cost, the annual cost of vehicle replacements for existing Town vehicles, which includes \$50,000 for future fire truck replacements, building maintenance and new construction, and road improvements.

Council Member Hess requested that the Town Manager investigate what the transition cost would be to utilize the County's phone system, which has an access of usable lines.

Council set a special meeting on April 22 at 1:00 p.m. to allow Council to attend a field trip, around town, to review sites of proposed CIP projects under consideration.

Council requested that the Town Manager submit a draft FY 2005-2006 Budget at the May 17 meeting.

Ordinance 2005-04-ee Regarding Temporary Uses

After explanation of the Ordinance, Mayor Denny moved to set a public hearing date for May 3, 2005 during the regular Council meeting, which begins at 7:00 PM for Ordinance Amendment 2005-04-ee Regarding Temporary Uses. Council Member Hess seconded. The motion passed with Mayor Denny and Council Members Hess, Shields, Sanders, and McDonald voting aye; no Council Member voting no; and no Council Member absent.

Ordinance 2005-04-dd Regarding Commercial Uses

Jim Groff, Planning Board chairman, stated that the Planning Board has been working on regulation of commercial uses for about six months, and these discussions led to Ordinance No. 2005-05-dd Regarding Commercial Uses. After explanation of the Ordinance, Council Member Shields moved to set a public hearing date for May 3, during the regular Council meeting, which

begins at 7:00 PM, for Ordinance 2005-04-dd Regarding Commercial Uses. Mayor Denny seconded. The motion passed with Mayor Denny and Council Members Hess, Shields, Sanders, and McDonald voting aye; no Council Member voting no; and no Council Member absent.

OTHER ITEMS

Council Members' Items

Council Member Hess asked the Town Manager status on changing the name of the road in front of Town Hall. Mr. Classen stated that he would follow up on the issue with the Kitty Hawk Town Manager.

Council Member Sanders asked about the status of the Beech Tree Trail/E. Holly Trail street project. Mr. Classen stated that no bids were received and that a second round of bids is scheduled to be opened May 2.

Council Member Sanders asked about a large trailer that has been parked on Holly for some time. Mayor Denny stated that the property belongs to the SSCA and, hearing no objection, directed the Town Manager to have the matter investigated.

Mayor's Items

Mayor Denny reported that all the Town mayors have been in discussion regarding their differences of opinion on the Dare County Emergency Management Ordinance and that Robert Outten, Dare County attorney, is working with them on the matter.

Mayor Denny stated that he has been in contact with Sheriff Midgett regarding the emergency communication equipment on the Duck water tower and he was told that additional County funds have been approved and service should improve soon.

Town Manager's Items

Mr. Classen presented a renewal contract with Grass Roots Lawn and Garden Care for landscaping maintenance of the Town's cemetery. He stated that the Cemetery Committee had requested that the cemetery be cleaned up monthly rather than quarterly. He stated that presently the contract is \$180 a quarter but the contractor has agreed to continue the contract until June 30, 2006 at a cost of \$90 a month. Mayor Denny moved to approve the contract as presented. Council Member Sanders seconded. The motion passed with Mayor Denny and Council Members Hess, Shields, Sanders, and McDonald voting aye; no Council Member voting no; and no Council Member absent.

Mr. Classen stated that staff has been working with NCDOT and the Town of Duck on a mile marker sign project along NC12 and the beach. He stated that the proposal would include the signs being placed every half mile. He stated that another project of placing street signs on the newly installed traffic light crossover caused discussion that it would encourage more cut-throughs the Town. Staff will look into this further. Hearing no objection, Mayor Denny ordered that the Town Manager move ahead with the mile marker signs.

Mr. Classen reported that staff is working on a Code Compliance Inquiry system through the GIS program and would allow people to make complaints on-line and the track the progress of resolving the complaint.

Mr. Classen stated that there are proposed improvements to the Town Hall under consideration, such as a designated trash can area, emergency access to Skyline, and a walk-way from Town Hall to the Pitts Center, a temporary storage building at the East fire station for Ocean Rescue, and code enforcement education regarding home occupations. He stated that most recently Duck Woods Drive has been brought to the attention of the Code Enforcement Department.

Mr. Classen reviewed the “home occupation” definition and what is considered violations. He stated that staff will be implementing an educational program to the citizens by using the Town’s web site, broadcast email, Town and SSCA newsletters and any other avenues appropriate.

He stated that the Planning Board is reviewing the language of home occupations and making recommendations to the ordinance to submit to Council.

PUBLIC COMMENT

Mayor Denny called for additional comments from the public.

Bob Palombo announced the Build the Bridge-Preserve Our Roads will hold their semi-annual meeting on April 21, 2005 at 7:00 p.m. in the Pitts Center.

There being no further public comments and hearing no other business, Mayor Denny moved to adjourn the meeting at 1:30 p. m. Council Member Hess seconded. The motion passed with Mayor Denny, Council Members Hess, Shields, Sanders, and McDonald voting aye; no Council Member voting no; and no Council Member absent.

ATTEST:

Respectfully submitted:

Mayor pro tem Hess

Carrie Gordin, Town Clerk

Exhibit A

Ordinance No. 2005-04-05

Version 04-19-2005

AN ORDINANCE OF THE
SOUTHERN SHORES TOWN COUNCIL
GRANTING A FRANCHISE TO
EASTERN NORTH CAROLINA NATURAL GAS COMPANY

BE IT ORDAINED BY THE SOUTHERN SHORES TOWN COUNCIL:

I. DEFINITIONS

1.01 As used in this Ordinance, the following terms, words and phrases shall have the meanings respectively ascribed to them in this section:

"Company" shall mean Eastern North Carolina Natural Gas Company, a corporation organized under the laws of the State of North Carolina and authorized to do business in the State of North Carolina and any successor in interest to Eastern North Carolina Natural Gas Company under this franchise Ordinance.

"Town" or "Town of Southern Shores" shall mean:

The Town of Southern Shores, a municipal corporation located in Dare County, North Carolina,

The area now or hereafter within the territorial Town limits of the Town of Southern Shores, or

The Town Council or any officer or agent duly authorized and acting on behalf of the Town as a municipal corporation, as indicated by the context by which the term is used;

"Town Council" shall mean the governing body of the Town of Southern Shores;

"Gas" when used as an unqualified term shall mean either natural or artificial gas, by whatever process or processes derived or manufactured, or both such gases either separately or a mixture of them;

II. FRANCHISE GRANTED

2.01 The Company is hereby granted a nonexclusive right to construct, operate and maintain a gas utilities system within the Town for the production, transmission,

distribution and sale for gas to consumers and users within the Town and to the Town and any and all agencies and departments thereof.

2.02 To the extent that the Town may legally do so, the Company is hereby granted the right, authority and privilege, after written notice delivered to the Town, to construct and install, operate, maintain, lay or relay, renew, replace and repair, (except no advance notice shall be required for emergency repairs) gas pipes, mains, pipelines, conduits, regulators, connections and services thereto (hereinafter "Facilities"), in, through, across, along and under streets, avenues, roads, public alleys, lanes, and such other Town properties and facilities as may be approved by the Town Manager (hereinafter "Public Properties") in the Town for the production, pumping, handling, transmission, distribution and sale of gas for any and all purposes, subject to the terms and conditions hereinafter set forth in this Ordinance. Such activities shall be conducted so as to minimize to the greatest extent practicable (within reasonable economic costs) inconvenience to the public, and damage to the area disturbed. All work shall be done with full consideration of the facilities and rights of others. All Company activities shall be accomplished in accordance with the rules, regulations and standards of the North Carolina Utilities Commission and the Town of Southern Shores.

2.03 Whenever the Company shall cause any opening, excavation or alteration to be made in any Public Properties within the Town in the construction, operation or maintenance of any of its Facilities owned or used by it, the Company shall repair and restore expeditiously such portions of such Public Properties to the same condition in which it found them as nearly as practicable. Additionally, if the Company shall fail following completion of repairs to restore the area to its approximate former condition within a reasonable time, and a written notice is provided by the Town to the Company, the Town may proceed after five (5) calendar days notice by mail or personally delivered to Company to restore such Public Properties as nearly as practicable to their original condition, and the Town shall submit a statement of the costs for this restoration to the Company. The Company agrees to pay the Town for these costs within thirty (30) days. Interest at nine percent (9%) per annum shall accrue on these costs beginning on the 31st day following the date that the Town mails notice of such costs or the date that the Town hand delivers such notice to Company. Conflicts in elevations of Company piping with Town or other utilities that require adjustment of Town or other utilities shall be at Company's expense, and any damage to all such utilities while Company is readjusting Company facilities shall be the responsibility of Company.

In the case of temporary repairs, any opening, excavation or alteration in any Public Properties shall be backfilled immediately after the temporary repairs are finished and the excavated area shall be kept in a safe condition by the Company until the permanent repair is made. The permanent repair shall be made as expeditiously as possible.

Except in emergency situations, the Company shall not excavate in any Public Properties of the Town until it shall obtain written approval from the Town, which shall state in particular the location of proposed excavation and the approximate time to be required to complete the work at the excavated area. The Town will act upon such requests within a reasonable time and shall not be unreasonable in refusing to grant

approval of a Company request. In no event though shall the Town fail to cooperate with the Company to reach agreement as to a commercially feasible method for the Company to comply with its legal obligations in the provision of natural gas service. All excavations, back-filling and paving shall be subject to inspection by the Town and shall be done according to the standard practice of the Town in the installment of its water and sewer installations.

In all cases where any Public Properties shall be excavated, disturbed or altered by the Company, it shall take all precautions necessary or proper for the protection of the public and shall maintain adequate warning signs, barricades, signals and other devices necessary or proper to give adequate notice or warning to the public of the existence of all actual conditions and hazards present. Company shall undertake every reasonable option available to prevent creating a hardship to adjoining properties, including, without limitation, businesses and residences. Company agrees to abide by all present and future laws, regulations and ordinances regulating utility cuts in Public Properties, but Town shall not adopt any ordinance, rule or regulation which shall have the effect of modifying, amending, altering, or voiding all or any part of this Franchise.

Whenever the Town shall grade or re-grade any Public Properties in, along, under or across which the Company shall have installed any of its Facilities, and such grading or re-grading necessitates removal or relocation of such Facilities for Company to remain in compliance with federal or state law or regulation applicable to such Facilities, it shall be the duty of the Company, at the request of the Town, at its own cost and expense, to promptly change said Facilities so as to conform to the new grade which is then being or has been established.

If the Town decides to pave or repave a Public Property, it shall give sixty (60) days prior notice to the Company of the intention to pave or repave such street. When such notice is given, the Company shall perform such work as the Company deems necessary for the extension of new Facilities or the repair or relocation of existing Facilities within Public Property prior to the time the Town begins paving or repaving of the Public Property. With prior written approval by the Town, the Company may perform such work as the Company deems necessary for the extension of new Facilities or the relocation of existing Facilities within Public Property after one year from the date that specific portion of the Public Property has been paved or repaved or if required to serve a customer that requests natural gas service and the Company can economically provide such service.

2.04 This franchise is granted for a term of thirty (30) years beginning _____ and ending at midnight _____. This franchise supersedes any and all former rights or franchises of the Company to operate a gas utilities system in the Town with respect to all acts and things done or admitted to be done, on or after _____.

2.05 The Company agrees to pay an annual franchise tax equal to the amount as required by North Carolina law and which sum shall be payable in accordance with such law. The grant of this franchise shall not cause the Company to be liable for any other taxes, licenses or fees that it would not otherwise be chargeable with under State or Town law or ordinance.

2.06 The Company is hereby granted the right during the existence of this franchise to mortgage or hypothecate this franchise, together with all rights and privileges thereunder and any right or interest therein, as security for indebtedness, subject to acceptance by any legal successor in interest of the obligations, duties, liabilities, limitations and prohibitions set out herein and subject to the approval by the North Carolina Utilities Commission or other governmental agency the approval of which is required by law. The Company shall not assign or transfer its rights under this agreement, provided, however, that this provision shall not prohibit the Company from assigning its rights hereunder to the surviving corporation in any corporate reorganization in which the Company is a party.

III. TOWN TO BE FURNISHED INDEMNITY AGAINST INJURIES, DAMAGE AND NUISANCES

The Company agrees that it will at all times indemnify and save harmless the Town, its officers, employees, and servants for each and all such nuisances, damage, injury (including death) loss, cost or expense (including reasonable attorney fees), caused or occasioned or contributed to by any act or failure to act, of the Company, its officers, agents, servants and employees, in the construction, installation, repairing, maintaining, or operation of said Facilities, equipment or devices of the Company for the sale, transportation and distribution of gas in said Town, including making cuts, disturbances and excavations in the Public Properties, except such indemnity shall not apply to any such loss, cost or expense caused by the negligence of the Town; and the Company shall secure and file, if requested, with the Town certificates for liability insurance in an amount of at least one million dollars.

IV. OBLIGATION OF COMPANY TO FURNISH NATURAL GAS

4.01 Subject to the Company's determination of economic feasibility in accordance with its criteria, the Company agrees to deliver to and distribute for the use of the inhabitants, offices, businesses, commercial enterprises, churches, charities and professional establishments within the Town, during the period of this franchise, and providing there is a demand for same, natural gas in sufficient quantity to supply the demand of customers within the Town who may be served under the provisions of this franchise.

4.02 Service interruptions or impairment for reasons beyond the control of the Company shall not be a breach of this Franchise, but such interruptions or impairments shall be corrected within a reasonable time with as little interruption as possible.

V. TOWN TO BE FURNISHED ACCESS TO MAPS ON REQUEST

5.01 The Company shall from time to time, at the request of the Town, allow Town officials and/or employees to review or inspect maps of its transmission and distribution system within the Town which the Company shall maintain up to date.

VI. CONDITIONS OF REVOCATION

This Franchise may be revoked only upon failure of the Company to remedy any breach of its terms within thirty (30) days after receiving notice in writing of such breach from the Town or, if the breach cannot reasonably be cured within thirty (30) days, the Company must begin the cure within the thirty (30) day period and thereafter proceed to complete the cure with due diligence.

VII. NOTICES

All notices shall be in writing and hand delivered or mailed by registered or certified mail, return receipt requested, postage prepaid to:

Town of Southern Shores
Attention Town Manager
6 Skyline Road
Southern Shores, NC 27949

Eastern North Carolina Natural Gas
c/o Piedmont Natural Gas Company, Inc.
Attention: Senior Vice President – Utility

Operations

1915 Rexford Road
Charlotte, NC 28211

or to such other addresses as may be provided in writing from time to time. Mailed notices shall be deemed received three (3) days after posting.

VIII. BINDING EFFECT

This Franchise shall bind and inure to the benefit of Eastern North Carolina Natural Gas Company and its successors and assigns and the Town of Southern Shores to the full extent allowed by applicable law.

IX. CHANGES OR AMENDMENTS

No agreement, promise, term or condition not contained herein shall have any efficacy or validity. No change or amendment shall be effective until lawfully adopted by the Town and agreed to by the Company.

X. ACCEPTANCE OF FRANCHISE

This Ordinance shall take effect from the day and date of its passage at two (2) regular meetings of the Town, but only after it has been accepted in all its terms and revisions by the Company, in writing, within sixty (60) days after its final passage. Otherwise, the same shall be null and void and of no effect.

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Adopted by the Town Council of the Town of Southern Shores at two (2) regular meetings held on _____, 2005, and _____, 2005.

TOWN OF SOUTHERN SHORES

BY: _____

Mayor

ATTEST: _____

Clerk

APPROVED AS TO FORM:

Town Attorney