



Town of Southern Shores

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Southern Shores Town Council
Town of Southern Shores, North Carolina

Regular Meeting

October 4, 2005

7:00 p.m.-Pitts Center

MINUTES

The Southern Shores Town Council met on October 4, 2005, at the Pitts Center.

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

Also present were: Carl Classen, Town Manager; Carrie Gordin, Town Clerk; and Ike McRee, Town Attorney.

OPENING

Mayor Denny called the meeting to order at 7:00 p.m., led the Pledge of Allegiance and held a moment of silence.

APPROVAL OF AGENDA

Mayor Denny moved to amend the agenda under Old Business to add Item E. Sprint.

Council Member Shields moved to approve the agenda as amended. 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.

APPROVAL OF MINUTES

Council Member Shields moved to approve the September 6, 2005 minutes 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.

PUBLIC COMMENT

Mayor Denny opened the public comment section of the meeting.

Ann Laughler, 25 E. Dogwood Trail, stated she is concerned about traffic safety at S. Dogwood Trail. She requests Council investigate the timing of the traffic light at South Dogwood Trail.

Betty Hawkotte, 104 Osprey Lane, stated she is concerned about the amount of clear cutting in town and asked Council to consider saving trees. She requests that Council consider placing a "Dead End" street sign at the end of Osprey Lane and remove the stop sign at Yaupon Trail. She also is concerned about the number of people in a house neighboring her house on Osprey and the amount of cars they have.

Jon Kenton, 131 Tall Pine Lane, president of the Kitty Hawk Elementary School PTA stated that the PTA does not take a position on a crosswalk on South Dogwood Trail at Pintail. Speaking as a private citizen, he does support the crosswalk. The school will be holding their annual Fall Carnival on September 22 and it would be beneficial to have the crosswalk by that date.

Hearing no other comments, Mayor Denny closed the public comment.

SPECIAL PRESENTATION

OBX Marathon

Amy Montgomery, Executive Director of the event gave a brief presentation regarding the proposed OBX Marathon. The event is sponsored by the Dare County Education Foundation and the Outer Banks Relief Foundation. The Marathon will be held on November 12, 2006 with a 26.2 mile run, a half marathon run and a family fun run. It is expected to have 4,000 runners and be an economic boost to Dare County for the fall of 2006. The event is requesting support from as many sponsors as possible.

Mayor Denny stated that Council would discuss this request at the October 18 Council meeting.

Wright Flight

Mayor Denny reported the representative for Wright Flight is unable to attend.

Recognition of David Bakken-Southern Shores Volunteer Fire Chief (Retired)

Mayor Denny presented a plaque of appreciation and mementos to David Bakken for his 23 years of service to the Southern Shores Volunteer, including his five years as Fire Chief. Mr. Bakken thanked his wife, Peggy, for her years of support, shared a few moments of reflection and thanked the fire department.

REPORTS

Planning Board (Clerk's Note: A copy of the report is attached hereto as Exhibit A and made part of these minutes)

Mayor Denny introduced Jay Russell, who provided the September 19, 2005 Planning Board report in Chairman Groff's absence. Several draft ordinances are still under Planning Board review. The Planning Board recommends approval of Ordinance No. 2005-08-PB9, Recombination of Non-Conforming Lots. A public hearing is required. The Planning Board recommends approval of Council of Ordinance No. 2005-09-PB2-Non-Commercial Signs, which also requires a public hearing.

Mr. Russell introduced Joe Walter, Chairman of the Long Range Planning Committee.

Long Range Planning Committee Interim Report

Joe Walter, Chairman of the Long Range Planning Committee presented the Committee's interim report.

Mayor Denny thanked Mr. Walter and his dedicated committee. Mayor Denny stated that Council is looking forward to the Committee's final report.

Mid-Currituck Bridge-Build the Bridge/Preserve Our Roads

Bob Palombo reported the BB-PR Board met with the representatives from the East Carolina University on September 22, 2005 to discuss the feasibility study for the public/private funding of the Mid-Currituck Sound Bridge.

Mr. Palombo announced that Outer Banks Transportation Task Force is holding a public forum on October 12, 2005, at 8:00 a.m. at the Ramada Inn in Kill Devil Hills.

Southern Shores Volunteer Fire Department

Fire Chief Harvey presented the monthly report. He reported the Fire Department received no calls during or following Hurricane Ophelia.

OLD BUSINESS

Ordinance 2005-09-01 - Recombination of Non-Conforming Lots

Mayor Denny stated that Council has reviewed this ordinance and a public hearing is required.

Council McDonald noted a minor correction on page 1 line 36 by requesting to strike out the word *[at]* *No yard or lot existing at the time of passage of this Ordinance on or after July 7, 1981.*

Hearing no objection, Mayor Denny ordered a public hearing for Ordinance 2005-09-01- Recombination of Non-Conforming Lots as amended be placed on the agenda for November 1, 2005.

Ordinance 2005-09-02 – Noncommercial Signs

Mayor Denny stated the Council is in receipt of a memorandum from the Town Attorney regarding the ability to regulate political signs as proposed in Ordinance 2005-09-02. Mr. McRee stated that some of the language as proposed may be unconstitutional under the First Amendment and the Town could be challenged in court. He stated if the Town is challenged in court and loses at a minimum the ordinance would be found to be void and unenforceable with a possibility of monetary loss.

Council Member McDonald stated that he is not prepared to move ahead with a public hearing on an ordinance when Council has been informed that part of that ordinance is unconstitutional.

Following discussion, Council Member Shields moved to amend Ordinance 2005-09-02 by deleting (strike through) (7c) *Maximum sign dimension is twenty-four inches by thirty-six*

inches (24"x36") and (~~Assumes assumes standard wire type~~) and delete line (7h): A maximum of one sign per candidate per lot, or adjacent to a lot in the right-of-way, will be allowed and hold a public hearing at the next Council meeting. Council Member Sanders seconded.

Council Member Hess offered an amendment to delete the proposed language limiting the time limit signs can be posted as the attorney has stated that language is also unconstitutional.

Council Member Shields stated that such deletion is not part of his motion and he does not wish to include any changes to the motion so he will withdraw the motion. Council Member Sanders also withdrew his second.

Hearing no objection, Mayor Denny directed Ordinance 2005-09-02 - Noncommercial Signs, to be returned to staff to be rewritten so that it is in compliance with the Constitution and to present the revised Ordinance to Council at a later date.

Ordinance 2005-08-02- User Friendly Beach Accesses

Mayor Denny moved to place Ordinance 2005-08-02 on the November 1, 2005 Council agenda for public hearing. 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.

Council Member McDonald acknowledged a typo on under section B.2. Accessory ocean dune platforms shall not exceed two *hundred* (200) square feet. Add the word *hundred* following the word two. Hearing no objection, Mayor Denny ordered the typo be corrected.

Resolution 2005-09-01 – Vegetation Management Advisory Board

Mayor Denny stated that Resolution 2005-09-01 establishes a Vegetation Management Advisory Board. Mayor Denny moved to amend the resolution as presented with language to read for paragraph six: "Members shall serve for a six year term and may be appointed for one additional six year term" and to approve Resolution 2005-09-01. 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.

Sprint Site Plan

Mayor Denny stated that Sprint came before Council several months ago stating they were prepared to put phone lines along Ocean Boulevard underground if the Town could provide a site to place a switching station. The Town identified an area, a paper street known as 28th Street, between 109 and 111 Ocean Blvd. but the Town could not provide a clear title to the property. The Town contacted Kitty Hawk Land Company to request a quit claim deed and the Town attorney is working on completing the paperwork.

Mayor Denny moved to approve a deed of easement and agreement with Sprint for property otherwise known as 28th Street, westside, with conditions as follows:

1. Mutually satisfactory resolution on the question of ownership
2. Mutually satisfactory resolution on language guaranteeing that the above-ground facilities covered in the agreement will be placed underground.

Mayor Denny further moved to authorize and delegate to the Town Manager the authority to execute all documents in support of the Council action. Council Member Shields 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.

NEW BUSINESS

Ordinance 2005-10-01- Town Code - Solid Waste (Clerk's Note: A copy of Ordinance 2005-10-01 is attached hereto as Exhibit B and made part of these minutes)

Mayor Denny stated that at the September 20 Council meeting, Council directed staff to draft an ordinance to amend the Solid Waste section of the Town Code to amend how the annual fee is established for excess solid waste collection and disposal and to delete the current language that requires annual approval by Town Council on setting the fee. No public hearing is required.

The Town Manager presented Ordinance 2005-10-01-Commerical Solid Waste for Council's consideration. Council Member McDonald moved to approve Ordinance 2005-10-01-Commerical Solid Waste as presented. 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.

Dogwood Trail Multi-Use Paths

Mayor Denny stated that a public meeting was held on September 15, 2005 regarding South Dogwood/E. Dogwood Trails multi-use paths projects.

Carl Classen presented a summary of the comments received through October 4. A binder is available at Town Hall for review of all written comments.

OTHER ITEMS

Council

Council Member Hess requested a crosswalk at Kitty Hawk Elementary School (Pintail at South Dogwood) be installed on a temporary basis until the construction is completed on the school and the proposed road work on South Dogwood is completed. Mr. Classen stated that a meeting is scheduled with NCDOT and Kitty Hawk Elementary School tomorrow and this item would be discussed. He will provide an update at the October 18 Council meeting.

Mayor

Hearing no objection, Mayor Denny requested that the mid-month Council meeting be held in a less formal format to allow freer discussion on issues that would be placed on the agenda. Mayor Denny stated that at this meeting the first Tuesday Council meeting agenda would be set.

Mayor Denny stated that the Town of Nags Head has indicated financing a beach nourishment program by increasing the ad valorem taxes and /or create a service district within, which the Town would assess taxes on property benefited by beach nourishment. He requested that the Town Attorney explain, if this program was implemented, what the impact it would have on the distribution of sales tax, occupancy tax or land transfer tax to the other towns.

Mr. McRee stated that upon review of the laws, if the Town of Nags Head chooses to pay for a beach nourishment program with an increase in the ad valorem tax there would be an impact on

the distributions received by the municipalities. The distribution of sales and use taxes could also be impacted, but not occupancy tax. If the Town of Nags Head chooses to pay for its beach nourishment project by creating a service district and assessing benefited properties within the district there would be no impact on the distribution of taxes for the municipalities.

Town Manager

Carl Classen reported that the Town has received several calls regarding the amount of Sargasso grass that is on the beaches and if the Town is going to remove it. He recommends leaving the grass, that it is saving the ground sand as well as catching the wind blown sand.

Council Member McDonald asked if the South Dogwood Trail Multi-Use Path project is fully funded. Mr. Classen stated that following the public input meeting, staff is considering alternatives to the South Dogwood Trail Multi-Use Path. Due to oil cost increases since the original estimate was developed, the cost will be higher.

Mr. Classen called upon the Department Heads to give monthly reports.

Police Chief Pledger presented the monthly police report.

Mike Hejduk, Code Enforcement Administrator, provided a monthly Building Inspection's Report. A street numbering project is underway and Council will be presented with the areas of concern and recommendations.

Glenn Alexander, Public Works Supervisor, reviewed several on-going projects such as mowing, trash/recycle can repairs, and street and sign maintenance.

Town Attorney

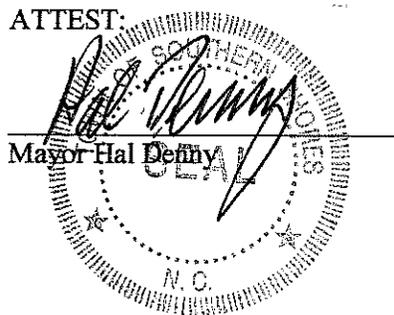
Mr. McRee had no issues to discuss.

PUBLIC COMMENT

Mayor Denny opened the public comment section of the meeting. Hearing no comments, Mayor Denny closed the public comment.

Hearing no other business Mayor Denny moved to adjourn the meeting at 9:18 p.m. Council Member Shields 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.

ATTEST:



Respectfully submitted:


 Carrie Gordin, Town Clerk

EXHIBIT A

Memorandum

To: Southern Shores Town Council
CC: Town Manager
From: Jim Groff, Chairman, Planning Board
Date: 12/8/2005
Re: Recap, Planning Board Meeting of September 19, 2005

Planning Board recommended actions for the Town Council

- 1. Ordinance No. 2005-08-PB9 - Recombination of Non-conforming Lots:** Set a public hearing date and adopt this amendment to the Zoning Ordinance which addresses existing language regarding two adjacent non-conforming lots owned by the same person, clarifying that they shall be considered as a single, (conforming), lot, and requires individuals seeking a building permit for a new or existing structure, to first recombine common ownership lots to create a (conforming) lot sufficient for the entire structure.
- 2. Ordinance No. 2005-09-PB2 - Non-commercial Signs:** Set a public hearing and adopt this amendment to the Zoning Ordinance which seeks to modernize language relating to signs promoting a charity or nonprofit event through revision to the definition of non-commercial signs. This proposed revision also allows for 'banner' signs, increases the allowed size of such signs from 16 to 40 square feet and addresses other aspects such as setbacks, height, display period, etc. Grammatical changes to the law, as they relate to political signs, are also included in this proposed ordinance.

I. Organization: Chairman Groff called the meeting to order at 7:00 PM. Planning Board members Kowalski, Russell, Peckens and Walter, along with Alternates Poisel and McDanel were present. Also present were the Town Manager, Code Enforcement Administrator and Administrative Assistant. Participating in the meeting were Council members Hess and Shields, Southern Shores Realty representative M. Stone and Duck Woods Drive resident J. Connors. Subsequent to approval of the agenda, the Board approved the minutes of its June, July and August meetings.

II. Public Comment: None.

III. Committee Reports: Long Range Plan Advisory Committee: No meetings in August but will begin regular meetings again starting on September 22nd.

Stormwater Management Advisory Committee: Anticipates receipt of Town Engineer's report within a month. Plans to meet next on October 18th.

The Home Occupation Committee: Chairman has prepared suggested revisions to the existing ordinance, and is circulating them among his committee for comment in preparation for informal town meetings on the subject.

IV. Applications: None

V. Policy Discussions:

- A. Ordinance 2005-06-PB6 - Privilege License Tax:** Requested staff to update business list with additional information. Held over to October meeting of the Board.
- B. Ordinance 2005-05-PB7 - Commercial Zoning:** Tied to Privilege License tax. Held over to next Board meeting when complete list of potential businesses is anticipated to be available.
- C. Ordinance 2005-08-PB9 - Recombination of Non-conforming Lots:** Discussed goal: i.e., to maintain a family-home appearance within the Town's ocean and sound areas by inhibiting the development of excessively long, narrow homes on narrow, (50'X 300'+), non-conforming lots. Proposed ordinance approved unanimously.
- D. Ordinance 2005-09-PB2 - Non-commercial Signs:** Noted that existing ordinance limits non-commercial, (charity/special event), signs to 16 square feet. In instances where important information, (e.g. date(s), event name, sponsor/beneficiary, telephone number, etc.) is required, this limitation can reduce letter size to point where sign cannot be read from sponsor's property line. (Signs cannot be placed in Town ROW). Recommended increasing signs to 40 square feet and limiting display period to four weeks plus three days following date of event, and set other conditions. Approved unanimously

Announcements: Next meeting: Monday, October 17th, 2005; 7:00 PM; Pitts Center

Adjournment: Upon motion, the Board meeting adjourned at 8:20 PM.



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Ordinance No. 2005-10-01

AN ORDINANCE OF THE SOUTHERN SHORES TOWN COUNCIL RELATING TO COMMERCIAL SOLID WASTE COLLECTION FEE AND CHARGES

Article I: Purpose

The purpose of this Ordinance is to amend the Town Code of Southern Shores, Dare County, North Carolina, which was originally adopted by the Town Council on June 7, 1988 and subsequently amended.

Article II Construction

For purposes of this Ordinance, underlined words (underline) shall be considered as additions to existing Town Code language and strikethrough words (~~strikethrough~~) shall be considered deletions to existing language. Language of the adopted Town Code shall be shown in italics (*italics*).

Article III Amend Section 8-6, Southern Shores Town Code – Determination of Receptacles size and number

Section 8-6 of the Southern Shores Town Code is hereby amended as follows:

- (a) *Residential: Each single residential unit shall have at least one town-approved and provided solid waste receptacle and a at least one town-approved and provided recycling receptacle. Residential units of four (4) bedrooms or less offered for vacation rentals shall have at least two (2) solid waste receptacles and one recycling (1) receptacle. Residential units of five (5) or more bedrooms offered for vacation rental will have at least three (3) solid waste and one (1) recycling receptacles. All of the additional required receptacles (more than one (1)) for vacation rentals will be purchased from the town by the property owner. The town manager may require property owners to purchase more than the minimum number of receptacles if the town manager determines that more are*

required to accommodate the materials generated at the property.

(b) *Guidelines for specific businesses:*

(1) *Restaurants and eating establishments shall have containers with the following solid waste capacities:*

- a. *Seating for ten (10) to thirty (30) persons: A minimum of one (1) three-yard bulk refuse container.*
- b. *Seating for thirty-one (31) to fifty (50) persons: A minimum of one (1) four-yard bulk refuse container*
- c. *Seating for fifty-one (51) to one hundred (100) persons: A minimum of two (2) four-yard receptacles and an additional four-yard refuse container for each increment of fifty (50) seats or any portion thereof.*

(2) *Shopping centers shall have containers with the following refuse capacities:*

- a. *One (1) to three (3) stores or businesses: A minimum of one (1) four-yard bulk refuse container.*
- b. *Three (3) or more stores or businesses: A minimum of one (1) additional four-yard bulk refuse container per three (3) stores.*
- c. *Examples:*

One to three (3) stores: One (1) four-yard refuse container.

Four (4) stores: Two (2) four-yard receptacles or equal capacity.

Five (5) stores: Two (2) four-yard receptacles or equal capacity.

Six (6) stores: Two (2) four-yard receptacles or equal capacity.

Seven (7) stores: Three (3) four-yard receptacles.

(3) *Evaluation of receptacle capacity for shopping centers and restaurants. If the town, the property owner, or tenant believe the capacity or number of containers is too small or too large, the town will cause a survey to be taken and will manager may adjust the size or numbers of the containers required for that site and/or use if warranted.*

Article IV. Amend Section 8-7, Southern Shores Town Code – Solid waste collection fee and charges

Section 8-7 (b) of the Southern Shores Town Code is hereby amended as follows:

(b) Fees and charges in excess of one-cubic-yard capacity. For each cubic yard of capacity as determined by the size and number of garbage receptacles and containers as required by section 8-6 of this chapter, there shall be assessed a fee or charge in an amount determined annually. ~~by the town council. The fees shall be based upon the cost of collection and disposal of solid waste and garbage by the Town of Southern Shores which is determined to be in excess of the cost of collection of the first cubic yard of all residential and commercial units and establishments.~~ sufficient to recover the cost of providing solid waste collection and disposal but credit shall be given for the first cubic yard of solid waste as per subsection (a) herein.

Article V. Severability

If any words, phrases, language, section or other portion of this Ordinance is held invalid by a court of competent jurisdiction, then all remaining words, phrases, language, section or other portion of this Ordinance shall remain in full force and effect.

Article VII. Effective Date

This Ordinance is effective immediately.

Approved this 4th day October 2005.

S E A L

Hal Denny, Mayor

ATTEST:

Vote: Aye 5 Nay 0

Carrie Gordin, Town Clerk

Date Introduced: 10/4/2005

Approved as to Form:

Ike McRee, Town Attorney