



Town of Southern Shores

5375 N. Virginia Dare Trail, Southern Shores, NC 27949

Phone 252-261-2394 / Fax 252-255-0876

info@southernshores-nc.gov

www.southernshores-nc.gov

Town of Southern Shores

Council Meeting

August 7, 2007

7:00 PM.-Pitts Center

MINUTES

The Southern Shores Town Council met on August 7, 2007 at the Pitts Center.

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

Also present were: Webb Fuller, Town Manager; Carrie Gordin, Town clerk; and Ike McRee, Town Attorney.

Mayor Smith called the meeting to order at 7:00 p.m., led the Pledge of Allegiance and held a moment of silence for the troops around the world, the trapped miners in Utah and their families and those involved in the Minnesota bridge accident.

APPROVAL OF AGENDA

Mayor Smith moved to approve the agenda as presented. Mayor pro tem Shields seconded. The motion passed with Mayor Smith and Council Members Shields, Hess, Sanders and McDonald voting aye; no Council Member voting no; and no Council Member absent.

INTRODUCTION - Police Officer Lora Gilreath

Police Chief Kole introduced Officer Lora Gilreath.

GENERAL PUBLIC COMMENT

Mayor Smith opened the public comment section.

Jim Conners, 80 Duck Woods Drive, addressed council on his concerns about a business parking heavy equipment on a residential lot on Duck Woods Drive. He stated he is not talking about a sign on a vehicle but about a business with a number of large construction equipment used in cutting trees. He stated there have been as many as eight of these types of vehicles parked on the lot, in the right-of-way or on adjacent lots. He stated that he understand the Code Enforcement Office has cited them for vehicle signage but he doesn't feel that department has the proper tools to address this type of problem. He asked that council and the planning board step up and stop this by amending the code. He stated that to allow this equipment to be parked there spoils the residential character of the town.

The town manager stated that the property is a rental house and the company in question is renting the house and has a contract to perform work at that property.

The town attorney stated that proper notice and due process is in order. He stated that civil citations will follow if the noted violations are not corrected. He stated that the property owner can appeal to the Board of Adjustment.

George Kowalski, planning board chairman, stated that the planning board has discussed this issue under home occupation but it is difficult to determine the types, weights, etc. of personal vehicles as to allow or not allow.

Mayor pro tem Shields asked the planning board to continue to work on this process and look at these commercial vehicles. The town attorney and the code enforcement administrator will look over the current zoning provisions.

Bob Palombo, 159 Duck Road, addressed council by saying that 125 people attended the 2006 Land Use Plan workshop held at the Duck Woods Country Club but nothing was heard from the other property owners living out of town. He stated the non-residents should have a voice in the planning of the town's future. He stated that the town should call or email those people, whatever it takes to hear from everyone not to be run by the local minority. He does not want council to just do the minimum requirement on the Land Use Plan as suggested.

Tess Judge, 4016 Ivy Lane, Kitty Hawk, representing All Saint's Episcopal Church Building Committee addressed council to invite them to come see the completed additions to the church. She thanked Mike Hejduk, Code Enforcement Administrator, for his professionalism and his eye for detail. She wanted to express the church's spirit of appreciation and gratitude to council.

Bob Edwards, 2437 S. Memorial Avenue, Nags Head, representing All Saint's Episcopal Church also expressed his appreciation. He stated that the town should be proud of the facility as the church is proud of the facility. He stated that Mike was detailed oriented. He went above the call of duty and that the town should consider him as a valued employee.

Hearing no other comments Mayor Smith closed the public comment section.

REPORTS

Planning Board Report-July 16, 2007

George Kowalski presented the Planning Board report.

Bobby Outten, attorney representing the Outer Banks Community Foundation (OBCF), addressed council regarding the request that a public hearing date would be set on the request from the OBCF to amend the Town's Zoning Ordinance to establish a government and institutional zoning district (G&I) to create a proper locations and setting for operations and structures necessary to provide public services operated by governmental entities and non-profit entities. He stated that he was not made aware of an issue regarding signage and that he did not intend his request to change anything other than this zoning and asks that council set a public hearing and move ahead. He stated that any questions would be addressed at the time of the public hearing. He stated that his client would abide by whatever signage is applicable.

Mayor pro tem Shields stated that council has not seen the document (ordinance) and that council is not prepared to set a public hearing at this time.

The town attorney stated that a public hearing can be set and the process can move ahead and any corrections needed could be held at a later date.

Mayor pro tem Shields asked why the paper street is part of the request for the zoning district. Mr. Outten stated that part of a house sets on that paper street.

Mayor pro tem Shields asked how the litigation over the house being fifteen feet into the paper street will affect anything. Mr. Outten stated that the court will provide a remedy and it would have no impact on the town.

The town attorney stated that the litigation is no concern of the town when considering a land use decision.

Mayor pro tem Shields moved to set a public hearing for September 4, 2007 on the request of a new government and institutional zoning district. Mayor Smith seconded. The motion passed with Mayor Smith and Council Members Shields, Hess, Sanders and McDonald voting aye; no Council Member voting no; and no Council Member absent.

Mayor pro tem Shields stated that the planning board has asked that council provide them with some directions regarding the wireless communication issues.

Council Member Sanders asked the question does the town want to regulate wireless communications due to the different activities that involve wireless communication today.

Mayor pro tem Shields suggested that the planning board look at the whole issue and divide it into packages and that they determine how what is best and keep council informed on their progress.

David Peckens, member of planning board stated that a representative from Verizon is willing to meet with council and the planning board. Council agreed to such a meeting. Mr. Peckens will set it up.

Council Member Hess asked what the roads committee is doing. Chairman Kowalski stated that the committee is proposing to look at the town roads by sectors and submit their findings compared to the ITRE study to council for comment.

[Clerk's Note: Planning Board Report for July 16, 2007 is attached hereto as Exhibit A].

Southern Shores Volunteer Fire Department

Chief Harvey gave monthly report and announced that David Peckens recently retired from the fire department after fifteen years.

Police Department

Chief David Kole gave monthly report.

Council Member Sanders stated that he has heard that the officers are helpful and courteous. Chief Kole stated he feels this is a reflection on the attitude of the department in that it is their department.

MINUTES- May 21, 2007, June 26, 2007 and July 3, 2007

Mayor pro tem Shields moved to approve the three sets of minutes as presented. Mayor Smith second. The motion passed with Mayor Smith and Council Members Shields, Hess, Sanders and McDonald voting aye; no Council Member voting no; and no Council Member absent.

CONSENT AGENDA -None

PUBLIC HEARING

Ordinance 2007-07-01 – Off Street Parking Requirements

Mr. McRee opened the public hearing on Ordinance 2007-07-01 - Off Street Parking Requirements. Hearing from no he closed the public hearing.

Mayor pro tem Shields moved to adopt Ordinance 2007-07-01 as presented. Council Member Hess second. The motion passed with Mayor Smith and Council Members Shields, Hess, Sanders and McDonald voting aye; no Council Member voting no; and no Council Member absent.

[Clerk's Note: Ordinance 2007-07-01 – Off Street Parking Requirements is attached hereto as Exhibit B].

OLD BUSINESS-None

NEW BUSINESS-None

OTHER ITEMS

Town Manager

The next two items for council consideration is regarding personnel items. Mayor pro tem Shields moved to excuse Mayor Smith from these discussions and considerations due to his wife being an employee. Council Member Sanders seconded. The motion passed with Mayor Smith and Council Members Shields, Hess, Sanders and McDonald voting aye; no Council Member voting no; and no Council Member absent. Mayor Smith left the room.

The town manager stated that he received a request that council review the Town's sick leave policy. He provided information with some alternatives for council consideration but stated that the "paid time off" (PTO) practice is not a normal procedure for local government. He stated that he found no other local governments using a different procedure than the town currently is using. He stated that the state local government employee retirement system provides that unused sick leave can be applied to days accrued toward early retirement. He stated if council would decide to use PTO that would eliminate how sick leave would be applied to the retirement system. He asked council to direct him if they would prefer to leave the policy as it is or to develop a PTO policy.

Mayor pro tem Shields moved to keep the sick leave and vacation leave separate in Southern Shores. Council Member Hess seconded.

Council Member McDonald asked how sick leave works. The town manager stated that an employee who takes off for being sick gets paid and sick leave is accumulated at one day per month and has no cap. He stated that unused sick leave can be converted toward retirement under the local government system.

Council Member McDonald asked what would be the advantage to change to a PTO policy. The town manager stated there would be a cap on a PTO but would allow flexibility for an employee to take a certain number of days for whatever use they would want.

The town attorney stated that no employee is paid for unused sick leave it can only be converted toward local government retirement system.

Council Member McDonald stated that he is unsure why council is discussing this.

The town manager discussed comp time and overtime and who can and can't receive it.

Mayor pro tem Shields called for the vote to leave the sick leave policy as it currently stands. Council Member Hess seconded. The motion passed with Council Members Shields, Hess, Sanders and McDonald voting aye; Mayor Smith not voting.

The town manager stated that he needs direction from council regarding retiree dental benefits. He stated that the town has one retiree that the town currently pays their medical benefits. He stated that dental insurance is a separate issue and he is asking if council wants to continue paying for this benefit to the retiree. He recommended that in the future the retiree be allowed to continue to stay on the town's dental plan but that the retiree pay for the dental plan.

The town attorney stated that once benefits are being received by a retired employee the town must continue those benefits but changes to the benefits plan can be made prior to future employee's retirement.

Council Member Sanders stated that currently there is no written policy that the town pays for a retiree's dental plan. The town manager stated that is correct but that the town is currently paying for one retiree's dental plan.

Council Member Hess asked is the town paying for employee's vision plan. The town manager stated that vision is part of the health plan.

Mayor pro tem Shields moved that the town continue to pay 100% for the one retiree's dental plan. Council Member Hess seconded. The motion passed with Council Members Shields, Hess, Sanders and McDonald voting aye; Mayor Smith not voting.

Hearing no other comments on these issues Mayor Smith was called to return to the meeting.

The town manager provided an update on the status of the Ginguite Woods Wastewater Treatment Plant. He stated there is a new operator, Envirotech, and they are meeting with the state water quality division. He stated due to the state violations there is no allowance for any further connections outside the service district to the plant until these violations are taken care of.

Council Member McDonald asked if this is going to affect the Cove subdivision. Mike Hejduk stated the Cove's building permit has been revoked at this time but there is no urgency coming from the Cove.

The town attorney explained that the state utilities commission did not approve extension of service to the Cove and the building permit cannot be re-issued until this issue is addressed. He stated the Cove is outside the service district.

Town Attorney-None

Mayor

Mayor Smith announced that council would go into closed session at the end of the meeting to discuss a personnel issue.

Council

Council Member McDonald asked for an update on the canal dredging project. The town manager stated that it is moving ahead slowly. He stated that the Submerged Aquatic Survey is done, the soil and water testing is not complete and the permit application is being written.

Council Member McDonald asked if additional funds from the state would be available to remove the spoils. The town manager stated there is \$850,000 in the budget. He feels council could seek for additional funds.

Mayor Smith asked what kind of time frame to have the samplings done and the application being submitted. The town manager could not give a specific time but said as soon as the application is submitted bidding process could begin.

Council Member McDonald provided each council member with a copy of the Home Builders Guide Book.

GENERAL PUBLIC COMMENT

Mayor Smith opened the public comment section.

Tom Bennett, 218 Hillcrest Drive, asked if there is any way to project the time frame for the dredging project. The town manager stated there is a very small chance to meet the November deadline.

Mr. Bennett stated that he is concerned about the Hillcrest property owners with the one-year restriction for the use of their property for the spoils. He stated that he is willing to be a liaison to keep the communication open.

Hearing no other comments Mayor Smith closed the public comment section.

Closed Session

Hearing no other business Mayor Smith moved to go into closed session under General Statute 143.318.11 (a) (6) to consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee. Mayor pro tem Shields seconded. The motion passed with Mayor Smith and Council Members Shields, Hess, Sanders and McDonald voting aye; no Council Member voting no; and no Council Member absent.

Upon returning to open session at 9:30 p.m. Mayor pro tem Shields moved to recess the meeting until Tuesday, August 14, 2007, at 8:00 a.m. Council Member Hess seconded. The motion passed with Mayor Smith and Council Members Shields, Hess, Sanders and McDonald voting aye; no Council Member voting no; and no Council Member absent.

The Southern Shores Town Council reconvened on August 14, 2007 at the Pitts Center.

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

Also present were: Ike McRee, Town Attorney and Carrie Gordin, Town clerk.

Mayor Smith called the meeting to order at 8:00 a.m.

Mayor pro tem Shields moved to go into closed session under General Statute 143.318.11 (a) (6) to consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee. Council Member Sanders seconded. The motion passed with Mayor Smith and Council Members Shields, Hess, Sanders and McDonald voting aye; no Council Member voting no; and no Council Member absent.

Following closed session discussion Mayor pro tem Shields moved to go into open session. Council Member Hess seconded. The motion passed with Mayor Smith and Council Members Shields, Hess, Sanders and McDonald voting aye; no Council Member voting no; and no Council Member absent.

Council Member McDonald moved to appoint Merrie Smith, administrative assistant, as interim town manager. Mayor Smith seconded. The motion failed with Mayor Smith and Council Member McDonald voting aye; Council Members Shields, Hess, Sanders voting no; and no Council Member absent.

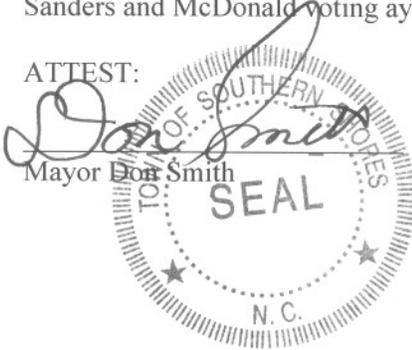
Mayor pro tem Shields moved to appoint Police Chief Kole as interim town manager. Council Member Hess seconded. The motion passed with Council Members Shields, Hess, Sanders voting aye; Mayor Smith and Council Member McDonald voting no; and no Council Member absent.

Mayor Smith expressed his concern regarding the appointment of Chief Kole since he has only been with the town for six months. He stated that Chief Kole is going to be attending BLET School in Elizabeth City and he is still learning about the town. He stated we are still in tourist season and hurricane season.

He stated that he feels Merrie Smith is a better candidate for the interim position. She has been with the town for almost ten years and worked closely with the past three town managers. She is capable of doing the job for a short period of time and should be given the chance.

Hearing no other business Mayor pro tem Shields moved to adjourn the meeting at 8:40 a.m. Council Member Hess seconded. The motion passed with Mayor Smith and Council Members Shields, Hess, Sanders and McDonald voting aye; no Council Member voting no; and no Council Member absent.

ATTEST:



Respectfully submitted:


Carrie Gordin, Town Clerk

Exhibit A

To: Southern Shores Town Council
CC: Town Manager
From: George Kowalski, Chairman, Planning Board
Date: 7/16/2007
Re: Recap, Planning Board Meeting of July 17, 2007

Planning Board recommended actions for the Town Council:

1. Approve 2007-06-PB03 Zoning Map/Ordinance Change: Government and Institutional District Zone

Organization: Chairman Kowalski called the meeting to order at 7:00 PM. Planning Board members George Kowalski, Georgine Poisal, Dave Peckens, Joe Walter, Alternate Jim Connors, sitting in for Jay Russell, Alternate Nancy Wendt, and ETJ Representative Ed Overton were present. Jay Russell was absent with excuse. Also in attendance were the Code Enforcement Administrator Mike Hejduk and Administrative Support Assistant Cyndy Gabrys.

Approval of Agenda: Agenda approved with change.

Approval of Minutes: The Planning Board meeting minutes of June 18, 2007, were approved with minor corrections.

Public Comment: There was no public comment.

Committee Reports:

The **Stormwater Management Advisory Committee** report was presented by George Kowalski, who stated that the Town Council decided on the five questions given to them and Jay Russell will be working with Webb Fuller to arrange for engineering help.

The **Hazard Mitigation Plan Committee** report was given by Mike Hejduk. He stated that the plan is slowly being revised and will be available later in the year.

The **Vegetative Advisory Committee** report was given by Jim Connors who stated that the Vegetative Committee will sit down with the Planning Board and discuss a new vegetative ordinance proposal at a meeting on August 07, 2007, at 2:00 PM at the Pitts Center.

The **Land Use Plan/ Steering Committee:** Nancy Wendt reported that there had been a round table meeting between members of the Council, Planning Board, and committee members on July 12, 2007. It was decided that the State's minimum requirements will be followed and that the Stormwater and Wireless Committees will conduct their business on their own.

The **Wireless Committee**: Chairman Dave Peckens reported on the first meeting of the committee and stated that he had representatives from Verizon willing to come to a meeting to discuss the structure and interconnectivity within the wireless industry, including the latest innovations. The question still remains for the Council as to whether or not this committee will handle all forms of wireless communication or just focus on cell phone towers.

Applications:

1. **2007-06-PB03 –Zoning Map/ Ordinance Change: Government and Institutional District Zone.** Attorney Michael Reeves, representing the Outer Banks Community Foundation, appeared before the Planning Board requesting that a small section of Skyline Drive and the Town’s property be rezoned from an RS-1 zone to a newly designated “Government and Institutional Zone.” The request was being made so that a house and property at 13 Skyline Drive, being donated to the foundation, could be used as office space. However, the property in question, currently owned by Dr. John Tietjen, is in legal dispute. Southern Shores Realty claims that a 14 foot by 150 ft section is deeded to them and is part of a paper road. This road is an entrance to the Southern Shores Realty property that is behind the Tietjen property. Mike Stone, representing Southern Shores Realty, objected to the proposed change in zoning.

Staff was not agreeable to the zoning change and felt that creating a new category called “community non-profit organization” within the RS-1 zoning district and listing it as a conditional use, within Section 7.01.C.1, was a much better solution.

Mr. Reeves, with concurrence from Mr. Michael Stone, stated that there had been progress in settling the dispute regarding the 14 ft claim to property. He also stated that the Outer Banks Community Foundation would not be given the property unless the zoning was changed to allow offices. An extensive discussion took place again delving into all possible ways that the zoning could be changed.

The following district was created:

Section 7.06 G and I District – Government and Institutional District

- A. Intent: The Government and Institutional Zoning District is established to create a proper location and setting for government and institutional operations and structures necessary to provide public services operated by governmental entities and non-profit entities.
- B. Permitted Uses: The following uses are permitted by right:
 1. Governmental offices, office buildings, and meeting rooms;
 2. Town authorized uses of Town owned facilities;
 3. Police stations;
 4. Other town owned facilities;
 5. Residential uses which comply with the requirements of Section 7.01, the RS-1 Single Family Residential District.

6. Offices for non-profit entities qualified under Section 501 (c) (3) of the Internal Revenue Code.
 - a. Notwithstanding other provisions of the Southern Shores Town Ordinances, the following shall apply to permitted uses under this section:
 1. Parking: a minimum of three parking spaces shall be provided.
 2. Signage: one free standing, unlighted sign, not exceeding 3.5 square feet on each side, the bottom of the message board not to be greater than three feet above grade, or one unlighted sign not exceeding 3.5 square feet attached to the primary structure located on the property, shall be permitted; directional signs as permitted in Section 6.03 H.
 3. Handicapped accessibility shall be provided.

C. Dimensional Requirement:

1. Dimensional requirements shall be as provided in the RS-1 Single Family Residential District.

Subsequent to discussion, the Board, by motion, with a 3-2 vote, approved, that the Town Council adopts proposed Ordinance No. 2007-06-PB03.

It should be also noted that this new zone covers an area composed of the Town properties including the Town hall, Pitts Center, and the Police station, two parcels of property adjacent to the town property and on the West side of Skyline Drive and the platted paper road. The North end of the zone ends at the border of the platted road and lots 8 +9, the Welch property.

Caveat: It should also be noted that there have been subsequent issues raised regarding the ramifications of this ordinance with the town's properties regarding signage. Depending upon how it is read by the Attorney, the 3.5 square foot size may affect the Town's building signs size. If this is the case, the size will need to be rewritten and be specific to the type of structure within this zone. In checking sign sizes, within the proposed district, it was found that the sign in front of the Town offices, facing Rt. 158 is in violation of all zoning codes including the commercial zone. The maximum commercial size of a sign is 32 square feet and this sign measures 48 square feet.

There also is an issue with the dimensional requirements which may need to be modified to reflect the commercial district requirements.

I recommend that the possible approval by Council be held up until the language and the open issues can be resolved by staff and the Planning Board can reconsider this ordinance with new modifications.

Other Business

Old Business

1. None

New Business:

1. None.

Other Items:

There were no other items presented by Planning Board members or Chairman.

Mike Hejduk discussed the following three topics:

1. With regards to Home Occupation enforcement, a new complaint form has been created and home owners will be made aware of the current new Home Occupation ordinance by mailing in the September newsletter and by email in the Broadcast News. Also a copy of the complaint form will be online.
2. The Canal Dredging is proceeding with water and plant testing underway.
3. The Cove had its building permit pulled. Effective August 23, 2007, the State will not allow any more sewer hookups to the Guingite Woods Water Reclamation Plant until it complies with all State regulations.
4. The Marketplace construction is progressing nicely and will be the future home of a Starbucks and Italian ice store. The Dogwood dentist office and My Home constructions are currently underway.

Announcements:

Next regular meeting: Monday, August 20, 2007, 7:00PM Pitts Center

Adjournment: Upon motion, the Planning Board meeting adjourned.

Exhibit B

Ordinance 2007-07-01

**AN ORDINANCE OF THE SOUTHERN SHORES TOWN COUNCIL
RELATING TO AMENDING THE ZONING ORDINANCE
REGARDING DEFINITION OF SPECIFIC TERMS**

Dare County, North Carolina

BE IT ORDAINED BY THE SOUTHERN SHORES TOWN COUNCIL AS FOLLOWS:

Article I: Purpose

The purpose of this Ordinance is to amend the Zoning Ordinance of Southern Shores, Dare County, North Carolina, which was originally adopted by the Town Council on July 7, 1981 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 3.02 Southern Shores Zoning Ordinance –

Section 3.02 Definition of Specific Terms and Words

PARKING SPACE: A vehicular storage space plus the necessary access space.

Article IV. Amend Article VI – General Provisions

Section 6.01 Off-Street Parking Requirements

A. General Provisions

- 1. Each parking space, for other than single-family residential homes, shall have a minimum length of twenty (20) feet and a minimum width of ten (10) feet, ~~and a Drive aisle width shall be a minimum~~ of twenty-two (22) feet.*

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 VI: Effective Date

This Ordinance is effective immediately upon adoption.

Adopted this the 7th day of August 2007.

S E A L

Don Smith, Mayor

ATTEST:

VOTE: 5 Aye 0 Nay

Carrie Gordin, Town Clerk
Approved as to form:

Ike McRee, Town Attorney

DATE OF FINAL RECOMMENDATION BY PLANNING BOARD: JULY 3, 2007
DATE INTRODUCED BY TOWN COUNCIL: JULY 3, 2007
DATE(S) ADVERTISED: JULY 19 AND JULY 26, 2007
NAME OF NEWSPAPER: COASTLAND TIMES
DATE OF PUBLIC HEARING: AUGUST 7, 2007