



Town of Southern Shores

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Corrected

Town of Southern Shores
Council Meeting
September 4, 2007
7:00 PM.-Pitts Center

Minutes

The Southern Shores Town Council met on September 4, 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: Chief David Kole, interim 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 our armed forces serving around the world.

APPROVAL OF AGENDA

Mayor Smith asked that the agenda be amended to allow Tim Lee with Tidewater Fibre Recycling Inc. to address council before other items on the agenda. Mayor pro tem Shields moved to amend the agenda by moving Old Business to the beginning of the meeting. 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.

Tidewater Fibre Recycling Service Contract (TFC)

Tim Lee, business development manager for TFC stated that they have been providing curbside recycling for the town since 1995. He stated that he previously met with Webb Fuller to discuss the town renewing the service contract that expires on September 31, 2007 and some options available. He stated that TFC has provided three options for council to consider regarding equipment. The options are that the town maintain a cart inventory (15-20 carts) on site and TFC deliver the carts as directed on a scheduled service day; TFC maintain the cart inventory and deliver carts as directed by the town on a scheduled service day and TFC invoice the town for each cart including a nominal delivery fee and the cart remains town property or TFC and the town negotiate a multiple year agreement with renewal terms that would require TFC to replace all town owned carts with new carts, as directed by the town and TFC would recover the costs with pro-rated charges included in a monthly invoice to the town. He stated that the cart life span is about 10-12 years. He stated that if a TFC truck damages a cart they will replace the cart at no charge. He stated that TFC can repair carts. He stated that the town has some cart inventory that is being used for replacements. He stated that the contract renewal would reflect a fuel surcharge increase (with a cap) and there would be an increase in the cost of service per household.

Mr. Lee stated that the participation rate is 35-50% every rate and if curbside pickup was changed to a drop-off site would reduce your participation rate and the trash collection would increase greatly. Mr. Lee recommends a minimum of a three-year renewal contract and council needs to discuss the replacement process of the carts. He stated that TFC is prepared to continue providing the service until a time that a new contract is approved.

Merrie Smith stated that replacement carts currently are coming from town inventory but soon they will be gone. She stated that some citizens decide not to recycle when they are told the price of a cart is eighty dollars.

Mayor pro tem Shields recommended that council continue this discussion to the September 25 council meeting. Council agreed.

GENERAL PUBLIC COMMENT

Mayor Smith opened the public comment section.

Hearing no comments Mayor Smith closed the public comment section.

REPORTS

Planning Board

George Kowalski presented the August 20, 2007 Planning Board report.

[Clerk's Note: Planning Board Report for August 20, 2007 is attached hereto as Exhibit A].

Southern Shores Volunteer Fire Department

Chief Harvey presented the monthly report. He reported that a TFC recycling truck had a hydraulic leak and the driver did all the right things to contain the spill. Mayor pro tem Shields suggested a letter be sent to TFC stating our appreciation to the supervisor/driver for their quick clean up activity.

Police Department

Chief Kole presented the monthly report.

Canal Dredging Project

Mike Hejduk provided a dredging update. He stated he provided council with a compression of a time line for the application and the project at the council workshop. He stated there are some items that need to be finalized before the permit application is accepted. He stated there is a requirement that all canal property owners need to be notified of the project, which has been done, and they need to acknowledge in writing that they know about the project but one property owner has not responded accordingly. He stated he talked to the individual and he is waiting for a response. He stated the individual is aware of the importance of the issue but is not ready to respond. He stated the town attorney is drafting a letter for the canal property owners describing the potential impacts on their properties.

Mike Hejduk stated that he contacted Quible and issued a purchase order requesting they begin the scoping session with the subcontractor to develop the bid specifications and at what cost. He stated that will take thirty days. He stated he has received three names for consideration for project managers but is not prepared to release those names at this time.

Mike Hejduk stated he has drafted a position description but he doesn't know how this person would be hired under contract by either the town or by Quible or by request for qualifications (RFQ).

Mike Hejduk stated that by the end of the month Quible will have looked at the canals and the access points and any interference with utilities all which is needed to prepare the bid specifications.

MINUTES- August 7, 2007

Mayor pro tem Shields moved to approve the August 7, 2007 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

Tax Pick Ups and Releases-April –June 2007

Mayor pro tem Shields moved to approve the Tax Pick Ups and Releases as presented. 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.

[Clerk's Note: The 2007 Tax Pick Ups and Releases for the months of April –June is attached hereto as Exhibit B].

PUBLIC HEARINGS

Ordinance 2007-09-01 – Amend Zoning Map

Ike McRee stated the purpose of the scheduled public hearing on certain zoning map amendment to re-zone two properties identified as PIN 20987717010713 and 20987717010646 from RS-1 to a new Government and Institutional Zone (G&I Zone) and an additional property (PIN 20987717012593), Town Hall complex, from commercial zone to Government and Institutional Zone as well as a portion of a paper street known as Michael Allen Street.

He stated it is necessary to note that the town received a valid zoning protest petition which has been certified by the town clerk and this means under general statute rather than a simple majority vote needed to approve the zoning, a ¾ majority vote is required for approval.

Mike Hejduk, Town Code Enforcement Administrator provided a power point presentation which included plat amendments showing the paper street (Michael Allen Street) from 1947, 1951 and 1954 and plat (s) showing past, current and proposed zoning districts as applicable.

Following the presentation Mayor pro tem Shields asked who owns Michael Allen Street. Ike McRee stated the town does not have a deed to the street.

Mike Stone, Southern Shores Realty, stated that Frank Stone has a deed to Michael Allen Street and that the connecting paper street known as Dunes Street which is adjacent to a large piece of property owned by Frank Stone.

Council Member McDonald asked what is the logic in including the street as part of the new zoning district.

Mike Hejduk stated when the applicant requested to amend the text of the zoning ordinance it became apparent that the zoning map would also need to be amended but was not included in the initial application. He stated that there was discussion of a boundary but not placed in ordinance form. He stated that placing the boundary line along the southern portion of Michael Allen Street as originally platted would have gone through the building on site than rather placing the boundary line on the northern side of the Teitjen property would be thirty-five feet into the right-of-way of the street.

Mayor pro tem Shields asked if state code requires access to a property. Mike Hejduk stated the Town's Zoning Ordinance has a section on lot access requirements.

Mayor Smith asked if the eight acres owned by Frank Stone has an alternative access than using Michael Allen Street. Mike Hejduk stated there is an access from Hwy. 158. west of Sandy Ridge Center.

Mayor pro tem Shields asked for a clarification in that the protest petition deals with Michael Allen Street. Ike McRee stated that the protest petition is in opposition to the proposed G&I Zone.

Ike McRee stated that council has received a separate petition of similar concerns, requesting prohibiting new neighborhood traffic cut-through, that should be made as part of the record of this public hearing.

Hearing no other questions from council Ike McRee opened the public hearing for Ordinance 2007-09-01 amendment to the zoning map. He stated there would be a second public hearing on the text amendment Ordinance 2007-09-02 as applicable to the G& I zoning district.

David Stick, 3800 Elijah Baum Road, Kitty Hawk, stated that he has a longer association with Southern Shores than anyone. He stated his father, Frank Stick, began developing the town back in 1946. He provided some history regarding the town and over those years there was only one surveyor and plats were amended over the years. He stated that Michael Allen Street was named after his son. He stated he understood and was assured when he took over the development of Southern Shores a number of years later after his dad resigned and his partners talked him into coming in here he was assured that street had long since been abandoned. He stated he was shocked to hear tonight that we are talking about Michael Alan Street. He served as president of Kitty Hawk Land Company for twenty years and later he founded Southern Shores Realty. He stated that he was the one responsible for the development of the canals. He stated that he also founded the Outer Banks Community Foundation (OBCF) and he supports council adopting the ordinances.

Edward Green, Manteo, stated that he was one of the original fore founders of the OBCF and how important and valuable it is to the community. He stated that it is important for them to have a permanent home, now and in the future. He feels all of Dare County would appreciate from making this project work and he appeals to council that they approach this positively and would be satisfactory to everyone.

Tom Welch, 17 Skyline Road, stated that he agrees that the OBCF is a great foundation and should have a place in the community. However, he stated the issues that he and his wife have is the proposed re-zoning issue as written. He stated there are four issues that he would like to discuss. He stated that the property owners who are within the 100' buffer overwhelmingly protested this proposal, by petition, which caused the required $\frac{3}{4}$ majority vote for approval by council and these people want to keep the street as is. They are asking for council support. He stated this proposal will eliminate 37,000 sq. ft. of the RS-1 zone as well as 250' feet of frontage. He stated approval of this would open the area up for any tax exempt institutions such as halfway and drug rehabilitation houses.

Mr. Welch stated that no one is objecting to the OBCF but they are concerned about the uncertainty of eliminating residential land. He asked whether the town wants to get into the business of institutions in any way. He stated there is a clear disconnect between the proposal and what the residents and council have said in the past about the kind of town we want. He stated there is no mention in the Town's Land Use Plan or the Long Range Plan regarding institutional business and no mention of eliminating residential zones to accommodate tax-exempt organizations. It has always been said that we want our town to be more residential not less. Residents and land owners want the council to maintain the integrity of these past statements of what we want our town to be, residential and ever more residential. He also stated that in any ordinance amendment the planning board is to adopt a statement describing whether its zoning action is consistent with the adopted Land Use Plan and explain why the planning board considers the re-zoning action taken to be reasonable and in the public interest and he hopes this is addressed during the public hearing.

Mr. Welch proceeded to read a statement from Mr. Jim Potter, resident of 20 Skyline Road, who was unable to attend tonight's hearing. In the letter Mr. Potter expressed his concern that the re-zoning will increase the probability of at traffic cut through from Duck Road through the Skyline neighborhood to Hwy. 158. by way of a platted paper street known as Michael Allen Street. Mr. Potter expressed concern regarding Michael Allen Street use in the future. He also addressed the contested litigation between the owner of the 150 foot residential part of Michael Allen Street and the Teitjen property (OBCF). He wrote the claim is that Michael Allen Street would be reduced in width from 50 to 35 feet. He believes a Skyline access to Hwy 158 has been impeded by both the residential zoning of the street and by the litigation but with the re-zoning both of these conditions change. With this proposal the 150 feet of residential Michael Allen Street is eliminated and replaced with a G & I zone. There are no definitions in the proposed ordinance or the current ordinance addressing setback or buffers for the G&I zone. How will this affect Michael Allen Street and the Teitjen property? It appears the current zoning ordinance will prohibit road access from the G&I zones to commercial zone but only if the commercial zone is to be used for commercial purposes but not if the property is used for a residential purpose. If the use of Michael Allen Street would be permitted and possibly joining another paper street, Dune Street, which goes to Hwy. 158 is troubling. Another concern addressed is if the re-zoning is approved and OBCF is the new owner of the property is the Teitjen litigation case dropped or does OBCF file a new case. If the corporation is given or gains the right to the full 50 foot width of Michael Allen Street does that make access more likely? All these possibilities are troubling to the residents and they want council to know they do not want Skyline Road to connect to Hwy. 158 under any circumstances.

We are asking council to attach language to this rezoning proposal specifically prohibiting a Skyline Road to Hwy. 158 link. A petition has been submitted with more than 96 town residents and property owners requesting that. If this prohibition is not attached, the rezoning proposal should be defeated. If council needs to do this prohibition as a separate action, then we believe the council should do that before considering any re-zoning. We do understand the council may want to defeat this proposal based on the other issues expressed earlier.

Nick Nuzzi, 41 Skyline Road, stated that he owns property on Skyline but that he lives at Porpoise Run so he isn't directly affected but that he concurs with Mr. Green and Mr. Welch. He supports the OBCF in using the property but he is not in support of a road being cut through Skyline and disturbing the neighbors.

Noreen Welch, 17 Skyline Road, read a letter submitted by Sarah Potter, 20 Skyline Road who was unable to attend tonight's meeting. In the letter Mrs. Potter stated that she also owns properties at 14 and 18 Skyline Road.

Sarah Potter's family has owned property and have been coming here for twenty-five years. She states their view of the ocean to the Kitty Hawk Pier has not survived the push of development. She has watched as the traffic on Ocean Blvd. has increased from an annoyance to a chaotic pedestrian

safety hazard which was never intended to handle such volume. For the most part the travelers and Southern Shores residents feel that each is a nuisance. Remarkably, she notes that on the Skyline Road side things have remained the same over the past twenty-five years a safe, quiet residential street that reflects the real character of the town. Although no one in the room today may be held responsible for the changes along Ocean Blvd today council does have the authority and responsibility to prevent anything even remotely similar from happening to Skyline Road. She feels this zoning change would erode the residential character somewhat under any circumstances. Without specific provisions either in the ordinance or in other ordinances specifically prohibiting any access to skyline from Hwy. 158 could one day allow traffic cutting through the street just to get from one place to another as quickly as possible. These drivers are not cautious or careful and their presence on Skyline Road would destroy the residential character completely. She feels this council should and must keep this from happening.

Karen Costello, 7 Skyline Road, addressed council by stating she is speaking for the property owner, Signal Lee, who is unable to be here tonight as well as she being a yearly renter of the property. She stated this property is specifically in the re-zoning. She would like to see the residential zone to remain as residential and doesn't want it changed. She stated that she does support the OBCF's activities. She stated that once OBCF owns the property the litigation may be ended and part of the house on the Teitjen property thirteen feet of the house may need to be taken down. She asked why can't the Teitjen property be the only property re-zoned and not affect other properties. She stated that she is concerned that the Teitjen property may start out as an office but could get changed to a woman's shelter and they are protected by confidentially and it wouldn't be known that the use has changed.

Bruce Bortz, 44 Skyline Road, stated that he will keep most of his comments for the text public hearing but that he is confused that a public hearing is being held on a zoning map amendment to create a new district but have no regulations for the district. He stated that the proposal is changing the name of the zone but in his opinion it is an expansion of the commercial district. He stated that the Town's 1997 Land Use Plan questionnaire asks about expanding the commercial district about 75% responded stated it is adequate as is and the town may accept request to re-zone commercial to residential on a case by case basis. He doesn't know if there is a request for a re-zoning it appears you are considering a site plan for a particular business or use that is not what you have before you, you have a map amendment to expand a district with a new name and to include two lots that are not in the commercial district. He stated there is a state requirement that a zoning issue considered needs to reflect how the zoning is consistent with the town's Land Use Plan and that has not been demonstrated. He is opposed to any zoning expansion and to a greater traffic flow on Skyline Road.

Richard Walker, 30 Skyline Road, he stated that he re-enforces the previous speaker, the Welch's and Mr. Bortz. He would not like to see a 501(c) (3) organization of a substance abuse house etc. on Skyline Road. He doesn't object to changing the municipal complex to a new zoning district but that the two residential properties (Teitjen and Lee) should not be included. He would not like to see the traffic and hear the noise if re-zoned. He stated the zoning ordinance currently reads it prohibits all uses of improvement for commercial facilities including, but not limited to parking areas, vehicular access ways, active and repair septic areas and required open spaces shall be obtained entirely within the general commercial zoning district. He stated that he feels this is the real reason behind this action to allow an access road to the commercial property from Skyline Road. He, as well as others who have spoken, do not want this. He stated that the traffic and noise would lower the value of the properties.

Mr. Walker stated that Skyline Road is a very narrow street and unless the town is going to make improvements to it any additional traffic will impact the area. He asked, rhetorically, how many children would need to be lost before everyone would agree this is a bad idea. He stated leave Skyline Road and Michael Allen Street as it is so there is no access into the eight acres.

Helen Ford, 129 Tall Pine Lane, resident for twenty years and is currently serving proudly on the OBCF board as the president. She believes the OBCF and the town and the Skyline Road residents can have a win-win marriage. The attorneys will address issues that will put some issues to rest during this hearing. She stated that Dr. Teitjen has made a generous offer and part of the deed restrictions state that the property be used as an office and that is what OBCF plans on doing. She stated the property can not be sold. She stated that Dr. Teitjen wants to preserve the house as a flat top with a plaque honoring Frank Stick. She stated that the OBCF is celebrating their 25th anniversary and have given two million dollars in grants and scholarships. She stated that the OBCF slogan is For Good – For Ever and that is what they expect to be. She asked that council support this request.

Bobby Outten, attorney representing OBCF, stated that he met with Webb Fuller and Mike Hejduk to discuss the best way to proceed with this request. It was decided that an application be submitted to the planning board. He stated that OBCF does not want to have any negative impacts on Skyline Road or with the town. He stated he has even spoken to Mr. Welch and he had no concerns with the OBCF using the property but he was concerned with Michael Allen Street becoming a cut-through. Mr. Outten stated that is something that OBCF can't solve. He stated the zoning ordinance addresses that issue. He stated if council approves the zoning amendment tonight it will not change the use of the street from what it is. He stated the litigation on the ownership for that street has nothing to do with this zoning amendment request. He stated that council and the planning board can adopt new zoning regulating street cut-throughs, at a later time, but that has nothing to do with tonight's public hearing.

He stated that currently on the town hall site the use can be for commercial and for town hall in the G&I zone those uses remain the same and residential use has not been changed this new proposed zone allows for a use of a non-profit 501(c) (3) office and not for any other uses that may be used by a non-profit 501(c) (3) organization. He stated the impacts of this use will be less than a rental or a year round rental which is allowed. He stated that under the current zoning home occupations does allow certain uses that the residents may object to. He stated adopting this amendment is written so that the G&I zone is the only place in town a non-profit 501 (c) (3) organization can be. He stated the Federal Housing Act allows certain group homes in a residential community that the town can not prohibit.

Mayor pro tem Shields asked how are we preventing this property from being used for something other than an office. Mr. Outten stated the text amendment limits the use to a 501 (c) (3) office.

Council Member McDonald asked if there are specific restrictions in the deed that the OBCF would need to abide by.

Mr. Outten stated when Dr. Teitjen presented the offer he expressed that he wanted to preserve and keep a "flat top" house in the town and donate it to the OBCF in honor of Frank Stick as a memorial to him. He stated that in the deed restriction it states the "flat top" would be kept and used as an office. He stated in the deed it states if this is not done the property would revert back to Dr. Teitjen or his heirs and OBCF would lose the ability to use the property and that the property can not be sold.

Council Member McDonald asked if OBCF would have a problem with the re-zoning to be rephrased to extend to the southern boundary of Michael Allen Street. Mr. Outten stated that fourteen feet of the structure extends into the paper street so that is why the boundary is on the northern boundary. He stated that typically zoning lines that land on property lines.

Mayor Smith stated if he were living on Skyline he would be concerned. He stated that it sounds like there is some kind of deal. He supports OBCF in what they do. He stated if the boundary is left at the north side of the Teitjen house that is the litigation debate. He stated that Mr. Stick said that street was never intended to be open.

Mr. Outten stated if the boundary line is set on the south side then nothing has been accomplished to satisfy the issues spoken by the people tonight except to put fourteen feet of the OBCF house outside the zone which impacts the use of the house by the OBCF. He stated the road issue exists no matter where if boundary is placed. He stated there is no scheme in this request. He stated that OBCF doesn't own the land so they can't negotiate anything. He stated the town needs to take some action regarding Michael Allen Street not OBCF. He stated the zoning request has not taken away or given rights to anyone.

Mayor Smith stated that council has not seen any documentation from OBCF that would protect the town if the OBCF decides to tear down the house and build something else.

Mr. Outten stated that the town can't re-zone a piece of property based on a promise into the future, that is considered contract zoning and is illegal. He stated if this approved it would allow residential and town uses in the area to be re-zoned which is already allowed and now are allowing a non-profit use in that zone. He stated if OBCF failed and Dr. Teitjen would get it back and could use it as a non-profit office or as residential and if he lived in the house he would be allowed to use the house for whatever the current zoning would allow.

Mike Stone, 8 Sandfiddler Court, he stated he doesn't have a problem with the OBCF. He stated that he would like to see the boundary line either to the northern boundary or to the southern boundary of the property to which he has a deed. He stated he does not want to give any credibility to Dr. Teitjen's claim. He stated Dr. Teitjen added on to the house and put up a cinderblock wall on his property and we don't know when that happened. He stated if council approves the re-zoning he would like to see the boundary line be on the fifty-foot line at the north or south side, don't care on which side, just wants the whole thing to be zoned.

Mike Stone stated that the eight acres has been owned by Frank Stone for twenty-five years and expects to have the right to use the property just like it could be used twenty-five years ago. He stated that some citizens have been misinformed and have not heard all of the story. He stated that at one time the town asked if they would agree to a central entrance but someone protested that. He stated there was an agreement between parties that would allow for a central entrance and potentially would have eliminated the use of Michael Allen Street but that didn't happen. He stated currently the way the property is laid out they have access to the eight acres from Hwy. 158 but they would no longer be able to turn left to come back to a stop light. But if there was a central entrance shared with Goodwill and the Sandy Ridge Shopping Center you would. He stated it was implied that the third party backed out because they received misinformation.

Gray Berryman, 37 Skyline Road, stated he strongly supports OBCF using the property and is the best use of the land. He stated the zoning change, as proposed, does not address the cut through issue. He doesn't want to limit Mr. Stone's access to his eight acres and if he wants to access it from Skyline for residential use or from Hwy. 158 for commercial use that is alright as long as those two accesses don't connect there is no problem. He offered some suggestions on ways to amend the ordinance.

Mr. Berryman stated language could be added to the amendment prohibiting cut-throughs or approve simultaneously an ordinance prohibiting access from Skyline Road to Hwy. 158 or not include the thirty-six feet of the paper street as part of the G&I zone.

Ike McRee asked for any other public comments hearing none he closed the public hearing.

Council Member Sanders asked that a clarification be given in that certain uses in an RS-1 zone can not be prohibited by state and federal law such as half-way houses, women shelters etc. Mr. McRee stated that is correct.

Council Member Hess stated that the new G&I zoning district would allow family care homes just like they are currently allowed in the RS-1 zone. Mr. McRee stated that is correct.

Council Member Sanders asked if a definition could be given for a 501 (c) (3)

Mr. Outten stated a 501 (c) (3) status is given by the IRS for a tax deductible organization (non-profit) and contributions are tax deductible. They are community based organizations that must meet certain IRS criteria.

Mr. Outten stated that as an option to the boundary line for the zoning map could be amended to be twenty-five feet north of or south of either lot, which would split the road down the middle that would encompass the house and would have a measuring point.

Council Member McDonald stated that if the eight acres is used for commercial the access to that property would be from Hwy. 158 and if the eight acres is used for residential then the access could come from Skyline Road through Michael Allen Street. He stated we aren't changing the use of the paper street by adopting the new zone it is still the same. He asked if someone from OBCF lived in the Teitjen house and wanted to use it for an office is it allowed. Mr. McRee stated yes if they comply with the home occupation regulations.

Mike Hejduk stated that the OBCF only wants to use the house as an office.

Mayor Smith asked why the Teitjen property could be the only property to be amended to the G&I zone. Mr. McRee stated that would be illegal spot zoning.

Mike Hejduk stated that an option that was considered, but not accepted, was to make the use a conditional in any place within the RS-1 zone and they would be required to come back to council once the ordinance was changed and conditions would be set for that specific property.

Mayor pro tem Shields stated that when Sandy Ridge was approved the same discussion was held regarding Dunes Street (paper street) but this doesn't have anything to do with the re-zoning.

Mayor pro tem Shields moved to approve Ordinance 2007-09-01-Zoning Map as presented. Council Member Hess seconded.

Mayor Smith stated that he is not ready to vote. He stated that the town attorney provided council with some additional information for consideration that addressed methods that may allow the referenced re-zoning to be adopted and to respond to the concerns expressed by the Skyline Road property owners. Those considerations included a reduction of the re-zoning to exclude Michael Allen Street, amend the zoning ordinance to require adjacent property access to a major thoroughfare or vacate a portion of Michael Allen Street.

Council Member McDonald stated that if it makes the citizens of Skyline feel better to not include the street in the re-zoning then take the street out.

Mr. McRee stated that council can amend the context by reducing, but not expanding, the proposed zoning area at this public hearing. He stated that council has the ability to regulate and control streets and may address Michael Allen Street at a later time.

Mayor Smith asked Joe Walter, member of the planning board, if he was the one who voted against the proposed ordinance and would he state why he voted against it. Mr. Walter stated he did vote against it but that he didn't think this was the appropriate time to answer.

Mayor pro tem Shields called for the vote. [Note: The town received a valid zoning protest petition and has been certified by the town clerk. This means under general statute rather than a simple majority vote a $\frac{3}{4}$ majority vote is required for approval.]

Council Members Shields, Hess, and Sanders voting aye. The motion failed with Mayor Smith and Council Member McDonald voting no and no Council Member absent.

Council Member McDonald stated that he would like to see the boundary changed.

Mr. Outten stated OBCF needs the building to be encompassed by the zoning district. He stated if that means splitting the boundary line down the middle of the street by twenty-five feet from the north or south side of the street, it doesn't matter. He stated the law suit is not relevant to this re-zoning.

Council Member Hess moved to approve Ordinance 2007-09-01 by changing the boundary line south of the north boundary of Michael Allen Street as platted and this ordinance is consistent with the Town's Land Use Plan in that it does not increase the commercial zone and does not extend the Government and Institutional zone to all of the RS-1 zone and is in the best interest of the public. Mayor pro tem Shields seconded.

The motion passed with Council Members Shields, Hess, Sanders and McDonald voting aye; Mayor Smith voting no; and no Council Member absent.

[Note: The town received a valid zoning protest petition and has been certified by the town clerk. This means under general statute rather than a simple majority vote a $\frac{3}{4}$ majority vote is required for approval.]

[Clerk's Note: Ordinance 2007-09-01 – Amending Zoning Map is attached hereto as Exhibit C].

[Clerk's Note: Petition to Protest Proposed Amendment of the Town Zoning Ordinance 2007-09-01 and Petition prohibiting new neighborhood traffic cut through are attached hereto as Exhibit D & E]. Hard copy only.

Ordinance 2007-09-02 – Create New Government and Institutional Zoning District

Ike McRee stated the purpose of the scheduled public hearing on proposed Ordinance 2007-09-02- Create Government and Institutional Zoning District.

Mike Hejduk stated the drafting of this ordinance allows as a permitted use offices for non-profit entities qualified under the section 501(c)(3) of the Internal Revenue Code, the only condition associated with that is that the structure needs to be handicap accessible and some changes as related to signage that would distinguish between existing signage at town hall and along Skyline Road and some dimensional changes to not increase any non-conformity that is already existing.

Mr. McRee opened the public hearing.

Bruce Bortz, 44 Skyline Road, stated that his family started coming to Southern Shores in 1956 and built the house that he currently lives in, in 1968. He stated he is the longest full time resident on Skyline Road and he has seen many changes on the road. He stated he was on the Southern Shores planning board for eight years and is a certified planner and he is the deputy director of planning

and development for the Town of Nags Head. He has been involved in community planning issues for twenty-five years. He stated that Skyline Road is a residence road where people walk and children play. He stated that there was a time when Skyline Road was a cut-through road and it was not a nice road. He stated he is concerned increasing the degree of intensity on Skyline. He stated Skyline is a sub-standard road and has not been improved for the last twenty-five years. He stated there are issues of vegetation growing out into the road. He wants to keep the road residential and he stated that the ordinance as written will allow any 501 (c) (3) organization to build an office building. He stated council can not enforce an agreement in a deed. He stated that OBCF is a great organization but the potential for redevelopment is there. He stated in his professional opinion the re-zoning is subject to challenge. He stated the lot coverage as written allows part of the zoning district to have 85% lot coverage (municipal) and another part of the zoning district to have 30% lot coverage (501(c)(3)). He stated the amendment if adopted allows any 501 (c) (3) not just the OBCF. He opposes any zoning map or text amendment that would increase the intensity of vehicular traffic on Skyline Road.

Bobby Outten stated that he respects Mr. Bortz and his issues he addressed tonight. He stated this is a small zoning district and he doesn't see that a large corporation would be interested. He stated that he doesn't see the lot coverage difference as an issue and most towns have flexibility in their municipal complex. He stated there is no evidence that vehicular traffic would increase by OBCF, a rental unit or a home occupation could create more traffic. He asked that council approve this ordinance as they previously approved the map change and find that this is consistent with the Town Land Use Plan and find that it is in the best interest of the town because it makes it consistent with your ordinances and allows similar and greater impact uses in this zone.

Hearing no other comments Mr. McRee closed the public hearing.

Council Member Hess stated that upon review of the ordinance there is language that does not apply to the specific property and should be removed. She asked on page 4 lines 3-6 be deleted *In the case of an oceanfront lot, only that area landward of the first line of stable natural vegetation (as defined by CAMA) shall be used for calculating lot coverage.*

Council Member McDonald also noted that on page 3 line 32 to delete *boat launching areas, and bathing beaches.*

Council Member Hess moved to approve 2007-09-02- with the modification by removing certain text as noted page 4 lines 3-6 *In the case of an oceanfront lot, only that area landward of the first line of stable natural vegetation (as defined by CAMA) shall be used for calculating lot coverage* and page 3 line 32 *boat launching areas, and bathing beaches* and this ordinance is consistent with the Town's Land Use Plan and is in the best interest of the public. Mayor pro tem Shields seconded.

The motion passed with Council Members Shields, Hess, Sanders and McDonald voting aye; Mayor Smith voting no; and no Council Member absent.

[Clerk's Note: Ordinance 2007-09-02 – Creating a new zoning district, Government and Institutional Zone (G&I) is attached hereto as Exhibit F].

OLD BUSINESS

Tidewater Fibre Recycling Service Contract

This item discussed at the beginning of the meeting.

NEW BUSINESS

Resolution 2007-09-01 – Supporting NC Big Sweep

Mayor pro tem Shields moved to adopt Resolution 2007-09-01 – Supporting NC Big Sweep 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: Resolution 2007-09-01 – Supporting NC Big Sweep is attached hereto as Exhibit G].

OTHER ITEMS

Town Manager-None

Town Attorney-None

Mayor-None

Council

Council Member Hess asked how council would like to proceed on the process for selecting an interim manager or to move forward toward the selection of a full time manager.

Ike McRee stated it would be advisable for council to consider the process and move ahead.

Council Member Hess stated that she would like to see council use the same assessment panel process that was used in the selection of the police chief.

Following discussion council agreed to hold a special meeting on September 13, 2007, beginning at 11:00 a.m. in the Pitts Center.

Mayor pro tem Shields requested that council consider allowing the presidents of the Southern Shores Civic Association and the Chicahawk Property Owners Association to give reports by placing them on the on the agenda at the night meetings to increase communication.

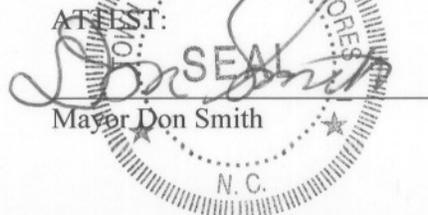
He also asked that NCDOT be contacted to see when the road painting of Juniper Trail would be completed. Police Chief Kole stated that he would look into it again.

GENERAL PUBLIC COMMENT

Mayor Smith opened the public comment section.

Hearing no comments Mayor Smith closed the public comment section.

Hearing no other business Mayor Smith moved to adjourn the meeting at 10:20 p.m. 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.

ATTEST:

Mayor Don Smith

Respectfully submitted:


Carrie Gordin, Town Clerk

Exhibit A

To: Southern Shores Town Council
CC: Town Manager
From: George Kowalski, Chairman, Planning Board
Date: 8/24/07
Re: Recap, Planning Board Meeting of August 20, 2007

Planning Board recommended actions for the Town Council:

- 1. Approve 2007-08-PB05 Zoning Map/Ordinance Change: Government and Institutional District Zone**
- 2. Approve 2007-08-PB08: Ordinance to amend the Town of Southern Shores Zoning Map. Dare County, NC**

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

Approval of Agenda: Agenda was approved.

Approval of Minutes: No minutes were approved.

Public Comment: There was no public comment.

Committee Reports:

The **Stormwater Management Advisory Committee** report was presented by Jay Russell, who stated that the committee was in the process of writing an ordinance but first was going to look into Stormwater ordinances written by other towns. Mike Hejduk discussed the Stormwater modifications created at 135 Duck Road.

The **Hazard Mitigation Plan Committee** report was given by Mike Hejduk. He stated that the committee was checking into the cost of burying all utility lines underground.

The **Vegetative Advisory Committee** report was given by Jim Connors who stated that the Vegetative Committee will sit down and begin drafting an ordinance based upon the Duck ordinance.

George Kowalski introduced a copy of an email sent from Erika Churchill, Staff Attorney, Research Division, North Carolina General Assembly, to Rep. Paul Stam, discussing the fact that a county or city would need to seek authority from the General Assembly to regulate the removal or clear-cutting of trees and the requirement of re-

planting and placement of trees within their jurisdiction. It was suggested that the Vegetation Committee research this topic before they continue to draft an ordinance.

The **Land Use Plan/ Steering Committee:** Mike Hejduk reported that that a meeting had been held this past week establishing a network system. The next meeting will be held on 8/30/07.

The **Wireless Committee:** Chairman Dave Peckens was absent therefore no report was presented.

Applications:

2007-08-PB05 –Zoning Map/ Ordinance Change: Government and Institutional District Zone. This ordinance is an updated correction to Ordinance No. 2007-06-PB03, Government and Institutional Zone that was passed by the Planning Board at the June 17, 2007 meeting. This update was written in order to rectify sign size and lot coverage issues. In effect it allows for the sign in front of the Town offices to not exceed 48 square feet in area. It also limits the lot coverage within the zone to 30% except for Town owned facilities and fire stations.

Even though it was explained that the ordinance for adoption to Council had been passed the previous month, there were residents of Skyline Drive, present at the meeting, who were opposed to the creation of this new zone. They were Thomas Welch, Jim Potter, and Gray Berryman. All three said that they were against this ordinance unless it included a provision that would prohibit the existence of the paper road named Michael Alan Street. They were against Michael Alan Street being used as a cut through street. It was explained to all present that this ordinance did not change any access routes and that it did not affect the current status of Michael Alan Street in any fashion.

A "Petition to Protest" the ordinance was presented to the Planning Board by Mr. Welch. During the latter part of the week, Mike Hejduk sent an email to the Planning Board members stating that the right to submit a "Petition of Protest" was not part of the ordinance adoption procedure.

Subsequent to discussion, the Board, by motion, with a 4-1 vote, approved that the Town Council adopt proposed Ordinance No. 2007-08-PB05.

2007-08-PB08 –Zoning Map/ Ordinance to amend the Town of Southern Shores Zoning Map, Dare County, North Carolina. This ordinance amends the zoning map to include the Government and Institutional Zone.

Subsequent to discussion the Board, by motion, with a 4-1 vote, approved, that the Town Council adopt proposed Ordinance No. 2007-08-PB08.

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. The progress in informing certain home owners and residential occupants on Duck Woods Drive about violations of the signage and home occupation ordinances. A number of the issues seem to have been resolved.
2. The construction of My Home, the dentist's office and the Marketplace are well under way
3. The owner of the sewage treatment facility that was to contract with the Cove has hired a contractor to perform all requirements posed by the State of North Carolina. He assured Mike that the plant will be in compliance shortly and the Cove may be reapplying for their building permit.

Announcements:

Next regular meeting: Monday, September 17, 2007, 7:00 PM in the Pitts Center

Adjournment: Upon motion, the Planning Board meeting adjourned.

Exhibit B

**Town of Southern Shores-
Tax Department 8/28/2007**

<u>PICKUPS</u>		<u>RELEASES</u>
		April
		Vehicle
		\$17.61
		May
		Vehicle
		\$1.87
		June
		Vehicle
		\$54.93
		April Real
		\$188.98
<u>TOTAL</u>	\$0.00	\$263.39

**An Ordinance of the Southern Shores Town Council
Amending the Town of Southern Shores Zoning Map
Dare County, North Carolina**

Article I: Purpose

The purpose of this Ordinance is to amend the Official Zoning Map of the Town of Southern Shores, Dare County, North Carolina, which was adopted by the Town Council on April 4, 2000 and subsequently amended.

Article II. Amendment to Zoning Map

The Official Zoning Map of the Town of Southern Shores, North Carolina, which was adopted on April 4, 2000 and as subsequently amended, is hereby amended as follows:

The properties currently shown in the Dare County Tax Assessor's Office as PIN 20987717010713 and PIN 20987717010646 are hereby re-zoned from Single Family Residential (RS1) to Government and Institutional (G&I).

The property currently shown in the Dare County Tax Assessor's Office as PIN 20987717012593 is hereby re-zoned from Commercial (C) to Government and Institutional (G&I).

The southern twenty-five feet of the right-of-way for that unopened street known as Michael Alan Street extending from the intersection of Michael Alan Street with Skyline Road west a distance of 150.15 feet is hereby re-zoned from Single Family Residential (RS1) to Government and Institutional (G&I).

Article III. 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 IV. Effective Date

This Ordinance is effective upon adoption.

Adopted this the 4th day of September, 2007

S E A L

Don Smith, Mayor

ATTEST:

VOTE: 4 Aye 1 Nay

Carrie Gordin, Town Clerk

APPROVED AS TO FORM:

Ike McRee, Town Attorney

Date(s) Advertised: August 16 and 30, 2007
Name of Newspaper: Coastland Times
Date of Public Hearing: September 4, 2007

Exhibit D & E-Hard Copy Only

Exhibit F-as approved

Ordinance No. 2007-09-02

**AN ORDINANCE OF THE SOUTHERN SHORES TOWN COUNCIL
AMENDING THE TOWN OF SOUTHERN SHORES ZONING ORDINANCE TO ADD A
GOVERNMENT AND INSTITUTIONAL DISTRICT ZONE**

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 6.01. Off-street parking requirements.

Section 6.01 of the Southern Shores Zoning Ordinance is hereby amended as follows:

C. Minimum parking requirements. The number of off-street parking spaces required by this section shall be provided on the same lot with the principal use and the required number of off-street parking spaces specified for each use shall be considered as the absolute minimum. Where a fraction of a space is required by this article, the next whole number shall be provided. In addition, a developer shall evaluate his own needs to determine if they are greater than the minimum specified by this article.

3. Retail and office uses:

- Animal hospitals: Five (5) spaces per veterinarian plus one (1) space for each employee but no less than sixteen (16) spaces.*

- *Funeral Home: One (1) parking space for each four (4) seats in the chapel or parlor.*
- *Garden center/nursery: One (1) space for every five hundred (500) square feet of outdoor retail display area.*
- *General or professional offices, banks (other than doctors dentists, see Clinic requirements): One (1) parking space for each two hundred (200) square feet of gross floor space plus one (1) space for each two (2) employees.*
- *Grocery stores and appliance stores: One (1) parking space for each five hundred (500) square feet of gross floor area.*
- *Municipal building: One (1) parking space for each two hundred (200) square feet of net office areas, plus one (1) space for each two (2) seats in municipal council chambers.*
- *Municipal complex: One (1) parking space for each two hundred (200) square feet gross floor space.*
- *Restaurant: One (1) parking space for every three (3) customer seats, plus one (1) additional parking space for each employee.*
- *Retail uses not otherwise listed: One (1) parking space for each two hundred (200) square feet of floor area.*
- *Theaters: One (1) parking space for each three (3) seats.*
- *Non-profit entities: A minimum of three (3) parking spaces shall be provided.*

Article IV. Amend Section 6.03 Regulations governing signs.

A. Section 6.03 of the Southern Shores Zoning Ordinance is hereby amended as follows:

The Town of Southern Shores adopts these standards and regulations to insure that permitted signs reflect the aesthetics desired by its residents; promote traffic safety; and, provide minimum interference with individual property rights.

M. Signs permitted in Government and Institutional (G/I) district.

1. Town owned facilities are subject to the following conditions.

a. One (1) free standing sign with frame or one attached sign with frame per facility. Any such freestanding sign with frame shall not exceed forty-eight (48) square feet, shall be located permanently on the ground and the sign structure and the sign shall not exceed four (4) feet above street grade. Any such attached sign with frame shall not exceed twenty-four (24) square feet, shall be placed on the exterior wall of the building which it identifies and shall not extend more than fifteen (15) inches beyond the wall surfaces.

b. Directional signs as permitted in Section 6.03.H.

2. Non-Profit entities qualified under Section 501 (c) (3) of the Internal Revenue Code.

a. One (1) free standing sign with frame or one attached sign with frame per facility. Any such freestanding sign with frame shall not exceed four (4) square feet, shall be located permanently on the ground and the sign

structure and the sign shall not exceed three (3) feet above street grade. Any such attached sign with frame shall not exceed four (4) square feet.

b. Directional signs as permitted in Section 6.03.H.

Article V. Add Section 7.06 Southern Shores Zoning Ordinance – 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 services operated by 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. Notwithstanding other provisions of the Southern Shores Town Ordinances, the following shall apply to permitted uses under this section:
 - a. Handicapped accessibility shall be provided.

C. Conditional uses permitted. The following uses are permitted subject to the requirements of this district and such additional regulations and requirements as may be imposed by the Town council as provided in article X:

1. Community recreation facilities including, golf courses, tennis courts, community centers, libraries, picnic areas, and concessions integral thereto, provided that there is no open commercial activity and no sign other than a directional non-commercial sign is allowed.

D. Dimensional requirements.

1. Minimum lot size: Ten thousand (10,000) square feet.
2. Minimum lot width: Fifty (50) feet (measured at the building setback line).
3. Minimum front yard (setback): Twenty-five (25) feet.
4. Minimum side yard (setback): Ten (10) feet; an additional five (5) foot side yard adjacent to the street is required for a corner lot. Fifteen (15) feet for swimming pools.

5. Minimum rear yard (setback): Twenty-five (25) feet.

6. Maximum allowable lot coverage: Thirty (30) percent, except Town-owned facilities and fire stations. Eighty-five (85) percent for Town-owned facilities and fire stations.

7. Height:

Height, top plate: Twenty-six (26) feet.

Height, maximum: Thirty-five (35) feet.

Article VI. 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 upon adoption.

Adopted this the 4th day of September 2007.

S E A L

Don Smith, Mayor

ATTEST:

VOTE: 4 Aye 1 Nay

Carrie Gordin, Town Clerk

Approved as to form:

Ike McRee, Town Attorney

DATE(S) ADVERTISED:
NAME OF NEWSPAPER:
DATE OF PUBLIC HEARING:

AUGUST 16, AND AUGUST 30, 2007
COASTLAND TIMES
SEPTEMBER 4, 2007

EXHIBIT G

Resolution 2007-09-01

**A RESOLUTION OF THE TOWN COUNCIL
OF SOUTHERN SHORES
DECLARING OCTOBER 6, 2007 AS
SOUTHERN SHORES BIG SWEEP 2007 DAY**

WHEREAS, The Town of Southern Shores is rich in natural resources and beauty; and

WHEREAS, water is a basic and essential need for all life; and,

WHEREAS, trash fouls our waterways as well as our landscapes; and,

WHEREAS, every citizen should contribute to keeping our environment clean and healthy by working together to preserve clean water and the natural beauty of our surroundings;

WHEREAS, North Carolina Big Sweep is a statewide community effort to retrieve trash from North Carolina's waterways and landscapes;

WHEREAS, during its first twenty years, North Carolina Big Sweep volunteers have retrieved over 8 million pounds of debris from our environment, including tires, white goods and other solid waste;

NOW, THEREFORE, BE IT RESOLVED that the Town Council of The Town of Southern Shores, North Carolina, meeting on September 4, 2007, does hereby declare October 7, 2007 as TOWN OF SOUTHERN SHORES BIG SWEEP DAY in Dare County, and does further hereby urge every citizen to do his or her part to restore the beauty and function of our lakes and streams by volunteering to participate in the Big Sweep event.

Adopted this 4th day of September 2007.

SEAL

Donel C. Smith
Mayor

ATTEST:

Carrie Gordin, Town Clerk