



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
October 2, 2007
7:00 P.M.-Pitts Center

Minutes

The Southern Shores Town Council met on October 2, 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 the family of Doris Archibald, long time resident and our armed forces serving around the world.

APPROVAL OF AGENDA

Mayor Smith requested Tidewater Fibre be placed on the October 23, 2007 agenda. Mayor pro tem Shields moved the agenda be amended as requested. 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.

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 September 17, 2007 Planning Board report.

Chairman Kowalski, as part of the report, requested council set a conditional use hearing for Starbucks Restaurant (LDA-2007-09-01) at the Marketplace.

Council Member Hess moved to set the Starbucks Restaurant conditional use hearing for the November 7, 2007, council meeting. Council Member McDonald 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: Planning Board Report for September 17, 2007 is attached hereto as Exhibit A].

Southern Shores Volunteer Fire Department

Chief Harvey presented the monthly report.

Police Department

Chief Kole presented the monthly report.

Southern Shores Civic Association

Tom Bennett, president, provided information on dates for upcoming SSCA meetings.

Chicahauk Property Owners Association (CPOA)

Joe Walter, president, stated he would like to address the vicious attack made upon Mike Hejduk's personal property and that the CPOA is donating \$1,000 to the already \$1,000 Crime Line Reward. He asked the council to begin fixing the town's roads and council needs to be developing the capital improvement plan as quickly as possible. He stated the CPOA is submitting a site plan for improvements to Trinitie Park (tennis courts) to the planning board as a conditional use. He announced the next meeting of the CPOA.

Canal Dredging Project

Joe Anlauf with Quible and Kendall Turnage with Environmental Professional Inc. were present.

Joe Anlauf provided the same presentation from the September 25 council meeting. He stated council approved Quible to move ahead for the additional permits needed and to develop the bid documents. He will present the bid documents to the manager and staff in late October and advertise the bid in November and award the bid in December.

Mayor Smith asked by submitting, in the permit, the hydraulic method is to be used but now there is a change to using both the hydraulic and the mechanical methods would this cause a delay in getting the permit approved. Joe Anlauf said no.

Mayor Smith asked can an extension be applied for March and April since the dredging schedule is through November to February. Joe Anlauf stated no dredging is allowed in April.

Council Member Hess asked can the dredging of phase one be done in January–March. Joe Anlauf stated he is hopeful and there may be some increases in costs with the mobilization/demobilization process.

Kendall Turnage stated CAMA has all the information needed at this time. He stated as other agencies begin their review additional information may be needed. He stated there is concern regarding the water quality. He stated most applications are not approved before 120 days.

MINUTES-September 4, 2007 and September 13, 2007 Special Meeting

Mayor Smith stated upon review of the September 4 minutes he would like to amend the minutes to include the exact statement made by David Stick during the public hearing held on September 4, 2007 amending the Town's Zoning Map for the Government & Institutional District as related to the paper street (Michael Alan Street). The town clerk provided the statement to council prior to the meeting.

Mayor pro tem Shields moved to approve the September 4, 2007 minutes as corrected. 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.

Mayor pro tem Shields moved to approve the September 13, 2007 minutes as presented. 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.

CONSENT AGENDA-None

OLD BUSINESS

Tidewater Fibre Contract-Moved to October 23, 2007 council meeting

NEW BUSINESS

Procedure for closing a street-Michael Alan Street

Ike McRee, town attorney, provided council with information regarding the process needed to close a street. He stated from the approval of the new Government and Institutional zoning district petition was submitted by residents requesting a paper street (Michael Alan Street) not be allowed as an access road. He stated the specific process to vacate a road council first must adoption a resolution declaring its intent to vacate the portion of the street, hold a public hearing, the resolution must be placed in the local newspaper once a week for four weeks and a copy of the resolution must be sent to each property owner abutting the portion of the street proposed to be vacated. The notice must be posted at two places on the street area. After the public hearing the council may adopt a resolution vacating the portion of the street upon finding that the vacation is not contrary to the public interest and that no individual who owns property in the vicinity of the street is deprived of reasonable means of ingress/egress to their property because of the vacation.

Mayor Smith stated since hearing David Stick's comments that the street was never to be opened and the property behind it has access to Hwy. 158 he sees no reason not to close the street.

Mr. McRee stated by following the process that determination may be made.

Mayor pro tem Shields stated there are two paper streets (Michael Alan and Dunes Streets) which both lead to an undeveloped eight acre parcel (from different directions) and to remove one access before it is known what the property is to be used for he feels the property should have two accesses.

Council Member McDonald questioned if the town has a right to close the street when the town does not own it. He has a problem with taking away a property owner rights. He stated the use of the eight acres affects which access would be the best access. He stated the town's land use plan states we don't encourage access onto major thoroughfares. He stated when it is known how the property (8 acres) is going to be developed then the town could address the issue on which access would be used. He does not support having an access from Hwy. 158 through to Skyline Road but until the land is being developed it is not an issue. He stated the plat should have been changed but it wasn't and now it is someone's private property.

Mr. McRee stated there are several options for council to consider but they have the right to proceed with abandoning the street; it is in the town's right-of-way.

Mayor Smith stated he supports the property owners request to close the street and if he lived there he personally would not like to have Michael Alan Street open with the chance of having Dune Street open also that would allow a cut-through from Skyline Road to Hwy. 158.

Council Member Hess suggested waiting until the owner decides how he wants to develop the property before making a change. She stated the property may not be developed for another ten years and why act now. She stated she has looked at all the plats and at one point all the streets were vacated and then the streets were re-aligned. She stated the property owner of the eight acres agreed to swap fifty feet of his property to allow a central access at the Sandy Ridge Shopping Center and Goodwill but that fell through.

Council Member McDonald suggested tasking the planning board to develop an ordinance that if there are two entrances to a piece of property the property owner decides which one entrance they want to use.

Mike Stone stated the eight acres in questions has belonged to his family for over twenty-five years. He stated there are no plans at this time to develop it. He stated he has been listening to everyone and he doesn't like the town trying to take their property. He stated council is trying to solve a defect in a deed by an individual property owner and he doesn't appreciate it.

Mayor Smith stated council isn't trying to take away anyone's property; they are talking about a road. You (Stone) can do what you want with your property.

Dare County Solid Waste Contract

Chief Kole, acting town manager recommends council approve the Dare County Solid Waste contract as presented. He stated the contract amount is lower this year with the same services.

Mayor pro tem Shields moved to approve the contract as presented and authorize the execution of the contract as needed. 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.

NCDOT Bridge Inspection Agreement

Chief Kole recommends council approve the NCDOT Bridge Inspection Agreement. He stated the town bridges are required to be inspected by NCDOT every two years.

Mayor pro tem Shields moved to authorize the NCDOT Bridge Inspection Agreement be approved as presented and authorize the execution of the agreement as needed. 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.

OTHER ITEMS

Town Manager

Chief Kole requested this meeting be recessed until October 8, 2007 at 2:00 p.m. to allow council to meet with Hartwell Wright of the North Carolina League of Municipalities (NCLM) to discuss the procedures used in the selection of hiring a town manager.

He reported the town has a new cell phone system (US Cellular) at a considerable cost less than the previous system and it appears to be working better.

He requested council consider approving a new pay classification study. He stated the last study was done in 2003. He stated some employees do not have correct job description.

Mayor pro tem Shields stated he agrees the study should be done but to postpone it until the new town manager is hired. There was no further comment.

Chief Kole stated in order to move ahead with hiring a canal dredging project manager council should decide the way the position would be hired. He stated there are three choices for consideration as an employee with the town with benefits, contracted by the town or contracted through Quible Engineering.

Council Member Hess stated she feels it would depend on who the candidate is. She suggested if it is Webb Fuller then he would need to be hired through Quible. She stated she doesn't see any reason to delay any longer; we have told the citizens we are moving ahead and we have a good candidate.

Mayor Smith asked if the NCLM representative could recommend some names or sources for consideration as an option for candidates and he suggested council ask him. He also thought George Wood had another name for consideration that hasn't been contacted.

Council Member McDonald asked is there a rush at this time. He stated Quible is working on the bid documents, the application has been submitted and we want to pick the right person for the position.

Mayor pro tem Shields stated the project manager needs to be involved, upfront, with the contract development and bidding process.

Council Member Hess stated to move ahead with the selection is to let Mike Hejduk be relieved from the duty of this issue so he can continue to work on his other many projects.

Mayor Smith suggested the town manager contact the other candidate to see if he is interested. He stated the town needs the right person for the job.

Everyone agreed the project needs to keep moving. Further discussion would be held at the recessed meeting on October 8.

Discussion was held regarding the microphones needing to be replaced. Chief Kole will look into other options.

Chief Kole stated the OBX Marathon has requested the town appoint an ambassador to the event.

Mayor pro tem Shields stated Southern Shores is not part of the actual event but it would be nice to put a sign to welcome them.

Merrie Smith stated last year the towns of Southern Shores and Kitty Hawk shared the cost of a banner and Kitty Hawk is putting it up again this year. A welcome banner is all the town can do.

Town Attorney-None

Mayor

Mayor Smith addressed a resolution submitted by the Town of Nags Head regarding changes from the Division of Water Quality on storm water issues (proposed changes to Title 15A). He asked if council wanted to support the resolution opposing those changes.

Council Member McDonald reported he attended the information meeting held by the Division of Water Quality from the Department of Environment and Natural Resources. He stated it was very interesting but he didn't believe due diligence was done on their part in that no grandfathering or exclusions were made to control storm water for individual property owners. He stated the new rules are going to have a major impact on the individual property owner that has property ½ mile from the SAV waters. He stated as the regulations apply "one size does not fit all". He encouraged everyone to read the information and submit your comments before the October 15 deadline.

Jim Conners, town resident stated he also attended the meeting and he agrees with Council Member McDonald. He stated the data being used doesn't apply to Dare County and he would recommend council support the Nags Head resolution opposing the changes.

Joe Anlauf stated there is a 90-day review process by the Division of Water Quality for each individual permit and there is a lot of opposition to the amendments.

Mayor pro tem Shields moved to draft a resolution similar to that of Nags Heads but to request that more due diligence be investigated before the rules are adopted by the state. 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.

The draft resolution is to be reviewed by council at the October 8 recessed meeting.

Council

Council Member Hess read for the record a prepared statement:

"It is time to set the record straight for the citizens of Southern Shores. There has been a lot of press stating that the mayor is unhappy with the Council vote. As he has pointed out several times when challenged on other issues, this is a democracy which means that all the members of the Council are free to vote whatever their conscience dictates.

Let's talk about the voting record for a minute. I took the time to review the Town Council minutes on file since December, 2005 to see just what the voting record of this Council has been. I

ignored the votes covering such items as approval of minutes, proclamations, reports, and consent agendas. By my count there were 149 votes on all other issues. Of that 149, 129 or 87% of the votes were unanimous; 6 or 4% were 4-1; 12 or 8% were 3-2; and 2 or 1% were 2-3. Now, of all those votes, how many were against the mayor's wishes – after all that is the issue here. The answer for 2 years is 9 votes out of 149.

The biggest issue, of course, is the budget. The mayor claims that we “refuse to listen to taxpayers.” That is an interesting statement considering that every one of the citizens speaking up at the public hearing on the budget spoke in favor of maintaining the chipping and lifeguard programs, the two services the mayor wanted us to cut from the budget. They also spoke out on the need for taking better care of our roads. They chastised the Council for not having a Capital Improvement Plan in place. Not one complained about the need for additional tax money in order to accomplish this.

There is a double standard going on here as well. While the mayor wants us to cut out the chipping program and reduce the lifeguard service, he does advocate spending \$19,000 to compensate the Town Council. In addition, he declared a holiday for the Town employees for Gerald Ford's funeral at a cost of somewhere around \$2-4K. He wants employee sick pay to be used for personal time, and wants all employees with 10 years service to receive health benefits for the rest of their lives after they leave the Town employment. I can't begin to estimate what this would cost the Town in future years.

In replying to an email from one of our citizens recently, the mayor stated, “I am looking forward to Election Day. It would be nice to have a council that will serve the town with integrity, honesty and especially unbiased open-mindedness...” I have to tell you I deeply resent being accused of lacking integrity, honesty and open-mindedness. In any discussion we have by listening to all points of view and only then arriving at a final decision. I never start a discussion saying I will not support a particular side of an issue, something the mayor has done on more than one occasion.

There have been several documents published describing the role of a mayor in the State of North Carolina. In NC, the mayor is just one of the council members whose major role is to be the official signing documents, attending ribbon cuttings and chairing the Council meetings. He has no more authority than the rest of the Council in running the Town. Only the Town Manager can direct the work of employees. He is responsible, however, to act as Team Leader – coalescing the council, building consensus, and enhancing group performance. Accusing the council of lacking integrity, honesty and open-mindedness does not fit this category. In fact, it violates our own Code of Ethics which states that we commit to “conducting all duties and directing all actions to maintain public confidence in the integrity of Southern Shores Government.”

I could go on with other examples, but I think this sufficient at the moment. We have spent the past 2 years, looking backwards at previous decisions, putting out current fires and not looking to the future of Southern Shores at all. The voters will decide in November, and I am very happy about that. This is your chance to speak out and choose the type of town you want to live in. The mayor is hoping to replace us with his candidates so they will vote exactly the way he wants. But do not expect our Town to be the same town if that happens. The Southern Shores that made you want to move here in the first place will not exist.

If you truly want a council with integrity, honesty and unbiased open-mindedness, and who will not bend to the dictates of one person, select our candidates carefully. Whoever you choose, just vote! ”

Mayor Smith responded by saying not everything Council Member Hess said is true. He addressed some of the comments made by Council Member Hess. He stated regarding the employee health insurance, he was not involved with that conversation. He stated that years ago certain employees were told that after being with the town for ten years they would receive their health insurance paid from that point forward. He asked that the issue be investigated. He stated that Webb Fuller made the recommendation that council should be compensated and he agrees with that, the other town's council is compensated. He stated to get younger people to run for council they should be compensated. He stated he has always been honest and respectful of everybody. He stated look at the record this year alone the taxes were raised 15% when the inflation rate was 2% and every town held the line on taxes, even the county. He stated he would tell the people to look at her voting record and make a decision accordingly.

Council Member Hess stated the mayor is right in that the taxes were raised but the reason is we had to raise the taxes due to the taxes being low over the past few years. She stated the people have discussed the conditions of the town's roads.

Council Member Sanders stated he and the other council members received an email from a resident (Andy Moynihan) regarding the personal property attack made on Mike Hejduk. He read the email. Council Member Sanders stated he agrees with Mr. Moynihan's comments and Council Member Sanders wants everyone to know that council stands behind our town employees especially when they are conducting town business. Council Member Sanders stated the majority of public opinion is the incident is work related since it is an isolated severe incident. Mr. Moynihan proposed that council consider approaching Mr. Hejduk to offer, if there are any damages not covered by insurance, some type of consideration be made.

Chief Kole stated due to the amount of publicity regarding this incident the investigation has been compromised. He stated speaking as the town manager he would ask council to think carefully before making a decision that possibly would set a precedent.

Mayor Smith read his email response to Mr. Moynihan. Mayor Smith's response is that the police department needs to complete the investigation and that accusations toward others should not be made. He stated he does not support council compensating Mike for the incident even though it is a bad situation.

Council Member Sanders stated upon having conversation with Mr. Moynihan it seems his concern is the appearance that council shows they stand behind and support their employees and do whatever is possible from such incidents.

Council Member Sanders suggested a resolution be drafted stating that council does stand by their employees, uphold the laws and supports them in the conduct of their duties.

Mayor pro tem Shields suggested the town manager draft a resolution and council will consider it at the October workshop.

Council Member Sanders stated he was concerned about the public comment made regarding the 3-2 votes. He stated he did not know that anyone else was looking into this comment but his independent research showed in the 3-2 votes it wasn't always the same group. He stated the comment is a fallacy and that the council members should be voting their conscience.

Council Member Sanders stated Council Member McDonald did an outstanding job in explaining the Water Quality issue and he should be the town spoke person on that subject.

PUBLIC COMMENT

Mayor Smith opened the public comment section.

Jeff Blinken, 287 Hillcrest Drive, stated he does not support the use of property on Hillcrest Drive as spoil sites for the canal dredging. He stated he does not want to be a neighbor to a commercial dump zone in a residential area. He stated he does not want to be put at risk with the odors from the spoils or that the wall of spoils may fall following a hurricane. He asked if the town has a liability bond. He felt some members of council was laughing at him and stated this is a serious matter and he wasn't getting proper respect. He stated he will hire counsel to tie up the canal dredging project for as long as it takes.

Willo Kelly, Outer Banks Home Builders liason stated that any individuals wanting to respond to the storm water changes as proposed by the Dept. of Water Quality email Tom Reeder.

Ed Cowell, 134 Beech Tree Trail, stated there was a time when Skyline Road had two entrances and he asked that when council considers closing Michael Alan Street they think about an emergency exit.

Jim Conners, 83 Duck Woods Drive, stated he has spoken about the incident with Mike Hejduk on several occasions and if it has hampered the investigation that is a shame but it needs to be made public. He thinks an attack on an employee regardless of the type of attack is serious and is only a step away from a more serious incident. He stated the public is never told of the outcomes of incidents but it would be nice to know.

He stated he feels the mayor's chats are breeding a negative environment and false accusations are made and he would like to see it end. He stated there are only a few people who attend and the ones that speak are a big liability to the mayor.

Mayor Smith responded by saying that he is going to continue the "chats". He stated he gets more input from the citizens at the chats. He understands people are going to say things but he would need to have an overwhelming amount of people to say they don't want the "mayor chats" before he would stop them.

Jim Conners stated citizens can call the town hall to talk to an employee or the town manager before bringing their question (s) to the mayor's chat. He stated most of the comments have been negative toward certain employees. He stated the mayor conducts the chats and he should handle the conduct in a civil manner. He stated there is a process in place if there is a complaint against an employee it is the town manager's responsibility to investigate and respond.

Mayor Smith stated when things are not getting done people call him. He stated regarding Mike's incident accusations were made against certain groups of people; he asked that we wait until the police are finished doing the investigation. He stated when the investigation is closed then council can respond if needed.

Council Member Sanders stated it has been his observation, during the mayor chats; it is easy to get into a cycle that is not recognizable. He stated comments are made at the "chats" by citizens that they have seen something that is not right, over a period of time, and nothing is being done. Then they make a comment that the town manager doesn't know an answer. He stated that might be because it is the first time anyone has heard it and it has not been brought to staff attention until at mayor's chat. If a complaint has been made and no action has been taken then bring it up at the mayor's chat. He suggested asking the citizen if they have brought the issue to staff.

Hearing no comments Mayor Smith closed the public comment section.

Hearing no other business Mayor pro tem Shields moved to recess the meeting to October 8, 2007, at 2:00 p.m. to further discuss the hiring process of a town manager. 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:



Don Smith, Mayor



Respectfully submitted:



Carrie Gordin, Town Clerk

Exhibit A

To: Southern Shores Town Council
CC: Town Manager
From: George Kowalski, Chairman, Planning Board
Date: 9/20/2007

Re: Recap, Planning Board Meeting of September 17, 2007

Planning Board recommended actions for the Town Council:

1. Approve LDA 2007-09-01: Starbucks Coffee

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 Dave Peckens, alternate Nancy Wendt, and ETJ Representative Ed Overton were present. 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 with changes.

Approval of Minutes: The minutes of July 16, 2007 and August 20, 2007 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 will have another meeting on September 19, 2007, to begin laying the ground work for an ordinance.

The Hazard Mitigation Plan Committee report was given by Mike Hejduk. He stated that the estimate for underground power lines would be available mid-October.

The Vegetative Advisory Committee report was given by Jim Connors, who stated that the Vegetative Committee had a meeting on September 18, 2007, and work has begun on creating an ordinance similar to Duck's ordinance but much looser.

The Land Use Plan/ Steering Committee: Mike Hejduk reported that a meeting had been held this past week establishing a network system. They are on

task and at the planned pace.

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

The Roads/Streets Committee: Chairman Dave Peckens was absent therefore no report was presented.

Applications:

LDA 2007-09-01 -Starbucks Coffee at the Marketplace Shopping Center-Conditional Use. Starbucks has applied for permission to open a restaurant in the Marketplace. Restaurants are a conditional use and must have approval by the Planning Board and Town Council and have a scheduled public hearing. The Board heard a presentation from both Mike Hejduk and Eunice Zhoe of MJM Architects, a representative of Starbucks.

Subsequent to discussion, the Board, by motion, with a 5-0 vote, recommended that the Town Council approve the Starbucks Restaurant as a conditional use with modified Special, Standard, and Land Use Plan conditions and that the Town Council schedule a public hearing.

Other Business

Old Business

1. None

New Business:

1. None.

Other Items:

Joe Walter read a prepared statement with regards to the vandalism in Chichahauk that occurred to Mike Hejduk's property.

Jim Connors reiterated his perspective on the damage and his dismay at the incident.

Mike Hejduk discussed the following topics:

1. The construction of My Home and the dentist's office are in the process of being completed and the Marketplace construction is finished.
2. The State has lifted all restrictions on the Ginguite sewage treatment facility and the Cove has been reissued it's building permit.

Announcements:

Next regular meeting: Monday, October 15, 2007, 7:00 PM in the Pitts Center

Adjournment: Upon motion, the Planning Board meeting adjourned.

