



# Town of Southern Shores

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Town of Southern Shores

Council Meeting

December 4, 2007

7:00 PM.-Pitts Center

## Minutes

The Southern Shores Town Council met on December 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 troops serving around the world and for the family of Robert Wrenn, long time resident.

### APPROVAL OF AGENDA

Council Member Hess moved to approve the agenda 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.

### RECOGNITION OF OUTGOING COUNCIL MEMBERS

Mayor Smith thanked Council Members Shields and Sanders for their public services and presented each one with a framed town seal, a certificate of appreciation and a town shirt.

### OATHS OF OFFICE

Carrie Gordin, town clerk, swore in Jodi Hess, Jim Pfizenmayer and Kevin Stroud as the new council members.

### ELECTION OF MAYOR PRO TEM

Mayor Smith moved to nominate Council Member McDonald as Mayor pro tem. Council Member Pfizenmayer seconded. Mayor Smith asked for any other nominations, hearing none the nominations were closed.

Council Member Hess asked Council Member McDonald, with his busy schedule, can he take on the duties of the position. Council Member McDonald stated that he had turned down some things and has made time for the appointment. The motion passed with Mayor Smith, Council Members Hess, McDonald, Pfizenmayer and Stroud voting aye; no council Member voting no; and no council Member absent or not voting.

Carrie Gordin, town clerk swore in Council Member McDonald as Mayor pro tem.

Mayor Smith called for a short recess for picture taking and refreshments. Mayor Smith reconvened the meeting.

### **GENERAL PUBLIC COMMENT**

Mayor Smith opened the public comment section.

Pete Macfarlane, 67 Trinitie Trail, asked council to look into the incorrect spelling of Trinitie Trail being used by the US Postal Service. He stated he, as well as his neighbors, receives mail addressed as **Trinite** and that is not the legal spelling of the name. He stated in trying to set up an Internet account he was told his street name spelling was not valid. He submitted a theory that the US Postal Service, without authority, made a change since the Town of Duck has a street name also similar to Trinitie. He stated he has addressed council on this issue before but nothing was done. He is concerned how the use of this illegal spelling will affect legal documents.

### **APPROVAL of MINUTES** – November 7, 2007

Council Member Hess moved to approve the November 7, 2007 minutes as presented. Council Member McDonald seconded. The motion passed with Mayor Smith, Council Members Hess, McDonald, Pfizenmayer and Stroud voting aye; no council Member voting no; and no council Member absent or not voting.

### **CONSENT AGENDA** –None

### **PRESENTATION**

Mike Hejduk, Code Enforcement Administrator, provided a detailed power point presentation on the town's commercial solid waste. He stated the Town Code has a chapter on solid waste. He stated municipalities are required to adopt a ten-year plan and the town adopted a ten-year plan in 1997 and then in 2006 the town joined with the county on a ten-year plan and annual report is sent to NC Department of Environment and Natural Resources.

Following the presentation it was suggested that a county-wide recycling program should be promoted and that it would be beneficial to the Outer Banks.

He stated that he rode with a Dare County solid waste driver and found several issues that need to be addressed regarding pick up such as dumpsters with no lids, rusted out bottoms etc. He stated if the debris is water-logged, from having no lid, the tonnage charge would be higher.

He stated there are some ways that tonnage cost could be reduced. The trash pick up schedule could be reduced from three times to two times a week in the off season. He stated the formula the town is currently using for calculating the cost needs to be changed.

Council Member McDonald suggested meeting with the business owners to discuss some of these issues at the January workshop. Council agreed.

Council Member McDonald asked what problems there might be if businesses need to have dumpster pads. Mike Hejduk stated the use of available parking spaces at the Marketplace or at other businesses could be used for the placing of dumpsters if implemented.

Merrie Smith, administrative assistant, stated she talked to Tim Lee with Tidewater Fibre and he agreed to collect the commercial recycling at the same cost as is being charged for the residential collection. She stated there are several recycling companies available to provide services to meet the new state ABC regulations beginning in January for disposing of glass.

Council Member Hess recommended the county be notified that the town wants to change the commercial solid waste pickup from three times a week to two times in the off season.

### CONDITIONAL USE HEARING

Chicahawk Property Owners Association (CPOA)-Trinitie Park (LDA-2007-10-01).

Ike McRee opened the Trinitie Park (LDA-2007-10-01) Conditional Use hearing. He explained this is a quasi-judicial procedure and anyone wishing to present evidence must be sworn in.

Carrie Gordin, town clerk swore in Mike Hejduk, Code Enforcement Administrator; Karl Daniels, John Gualtieri and Jim Connors representing CPOA.

Mike Hejduk presented information provided in the application and from the site plan. He stated in the Executive Summary of Facts there are certain items that show a negative response but once a new as built survey is submitted those items may be corrected.

Council Member Hess asked how long is the conditional use plan (application) good for once council approves it. Mike Hejduk stated the applicant must meet the conditions set forth and usually they have six months to build a structure or then a new site plan would be needed.

Council Member McDonald asked what storm water impact this project may have on the property. Mike Hejduk stated the storm water issues appear to be sufficient and that the basin could be enlarged but that does not appear to be needed.

Karl Daniels, 168 Chicahawk Trail, member of the CPOA board. He stated it is the intent of the CPOA to maintain and care for the community property and they decided the gazebo needed to be repaired and set forth developing a site plan. He stated it is shown on the site plan for an optional sewer site but it is not intended to be used immediately. He stated the initial construction (Phase 1) is to replace the gazebo and to add a basketball court, Phase 2 is to increase the parking lot as the demand for use increases.

Council Member McDonald asked if there are plans to provide a permanent restroom. Mr. Daniels stated a porta-john would be provided during the season.

Council Member Hess asked what is the time frame for completion of the project. She recommended a five-year sunset date on the second phase of construction.

Someone asked if any lights were proposed. Council Member Pfizenmayer stated that the gazebo is modeled after the one at the marina and no lights are provided.

Hearing no other comments Mr. McRee closed the conditional use hearing.

Council Member Hess stated that if lights were to be added CPOA would need to go before the planning board with an amended site plan.

Ike McRee stated he sees no need to include a sunset provision since the zoning regulations as applicable to building permits provide a time frame of completion for a project. He stated the applicant could request a vested right but none has been presented that allows for a two-year time frame to complete the project. He stated before their expiration date they can come before council to request an extension if needed in accordance to the zoning regulations.

Council Member Hess moved to grant the conditional use application for the Chicahawk Property Owners Association -Trinitie Park (LDA-2007-10-01) amended site plan based upon the Findings of Fact as presented by staff with the special and standard conditions as set forth in the Council Executive Summary dated 11/13/2007. Council Member Stroud seconded. The motion passed with Mayor Smith, Council Members Hess, McDonald, Pfizenmayer and Stroud voting aye; no council Member voting no; and no council Member absent or not voting.

[Clerk's Note: A copy of the certain and standard conditions from the LDA-2007-10-01 Executive Summary dated 11/13/2007 are attached hereto as Exhibit A].

## REPORTS

### Planning Board

George Kowalski, chairman read the November 19, 2007 recap.

[Clerk's Note: A copy of Planning Board Report for November 19, 2007 is attached hereto as Exhibit B].

### Southern Shores Volunteer Fire Department

Chief Harvey presented monthly report.

### Police Department

Chief Kole presented monthly report. He provided a copy of a pedestrian crosswalk signs he would like to install on NC12. He stated he has requested approval from NCDOT but hasn't heard from them.

Council Member Stroud suggested using a permanent reflector post instead of using the signs. He asked what NCDOT was to provide at the crosswalks initially. Chief Kole stated NCDOT has done all that they are going to do. He thinks something more needs to be done. He stated it is not the town's responsibility but he is trying to be pro active, it is a safety issue.

Council Member McDonald stated he is concerned that the posts and cars would be damaged. He stated he likes the signs that Nags Head is using.

Chief Kole stated in response to a request from a concerned citizen, the bicyclists have been contacted and asked to abide by the rules of the road.

### Southern Shores Civic Association (SSCA)

Tom Bennett, president, stated the board has agreed to allow the town access to the N. Marina property when the mechanical dredge is used for a spoil site but with a number of certain conditions. He stated the town attorney is for working on the lease for this use

He reported the SSCA is having a unique opportunity in 2008 on their election for their board, in that, there are five vacancies on the board and there are seven candidates running. He stated this has only happened one other time. He stated the League of Women Voter's is handling the counting of the ballots and the announcement of the winners.

## Chicahauk Property Owners Association (CPOA)

Karl Daniels thanked council for approving the Trinitie Park site plan. He announced there will be a special guest at the CPOA board meeting (December 6) to discuss procedures for preparing an environmental easement on some common areas. He thanked Chief Kole for speaking to the bicyclists.

### Canal Dredging Update

Joe Anlauf, Quible Engineering, stated the bid documents are 75% complete. He reviewed some of the materials included in the bid documents with council. He stated Mike Hejduk and he are meeting with CAMA representatives in Washington, NC on December 10.

Joe Anlauf stated the contractor will be performing a turnkey operation and the details that are provided are very important. He stated the SSCA has been very generous and gracious in allowing the use of property at the North marina as a spoil site and the town attorney is working on a license agreement for the property. He stated the time line for the completion of the bid documents will be the last part of December with a four week time frame for the bid process with a pre-bid conference set for the first week of January.

Council Member Stroud stated he is concerned looking at the time line he doesn't see that the project is going to happen this year.

Joe Anlauf stated that it is possible and upon review of the bids valuable information would be gained. He stated the town needs to go through the exercise and move ahead while waiting for the CAMA permit.

Council Member Stroud asked if the town is talking to the Hillcrest property owners to keep them updated and he is concerned that the town may lose that spoil site property.

Council Member McDonald explained the town was in a Catch 22 with needing a spoil site before the permit could be applied for.

Joe Anlauf stated there is a canal dredging meeting held every Thursday, which several Hillcrest property owners attend. He stated Quible is the project manager but there are certain decisions that need to be made by council. He stated it would be beneficial for council to meet with the Hillcrest property owners. He stated he does not have the authority to re-negotiate with them.

Tom Bennett has been actively participating in the meetings as well as Council Member Pfizenmayer.

Council Member McDonald stated up to this point council has done everything they could do to see this project moving ahead.

## **OLD BUSINESS**

### Contracts

Council Member Hess moved to approve the proposed engineering service contract with Quible & Associates as presented. Council Member McDonald seconded. The motion passed with Mayor Smith, Council Members Hess, McDonald, Pfizenmayer and Stroud voting aye; no council Member voting no; and no council Member absent or not voting.

Ike McRee stated a service contract for Surf Rescue for continuing life guard service from 2008-2010 if presented.

Mayor Smith asked how changes can be made to the contract. Ike McRee stated by agreement of both parties an amendment could be made.

Mayor Smith stated he is concerned about signing a three-year contract and he would like to discuss this further at the retreat.

Mirek Dabrowski, owner of Surf Rescue, stated he needs to hire his staff as early in the year before May. He stated one problem is he works on a calendar year but the town's budget is on a fiscal year. He really needs to know what council wants so he can prepare his budget to hire his staff.

Mayor Smith stated he is concerned about finding ways to reduce the budget since the town has had a 40% tax increase over the last four years. He stated he doesn't feel a roving guard is needed and the people need to take some personal responsibility for their safety. He would like to see an updated contract with a lower cost with two stationary stands only.

Council Member McDonald stated he would like to see data on the impact that the roving guards have.

Fire Chief Harvey stated council needs to ask what level of service they want and do they want to take the chance of risking a citizen's life because they tried to rescue someone.

Mayor Smith stated legally the town is better off not providing the service but by providing the service the town incurs responsibility. He asked does the town need to post "red flags" and what is the town's responsibility.

Council Member McDonald asked what is the goal to cut operating expenses is 10% the amount, if so then do so?

Mayor Smith stated this can be discussed at the retreat but a \$40,000 savings could be made if the supervisor and roving life guard were removed from the contract.

Fire Chief Harvey stated to give up the supervisor then the fire department would be the backup then a truck would be needed to remove victims from the beach which would impact the budget.

Council Member Hess stated she would not want to risk her family for a cost of a few dollars.

Council McDonald suggested the Surf Rescue contract be re-submitted with the best service available with a 10% decrease in its budget. He recommended cutting the ½ roving guard and changing the calendar to Memorial Day to Labor Day instead of May to October.

Council Member Hess stated she supports looking at cutting contract services but not to cut everything across the board at 10%.

George Kowalski stated there have been several rescue calls that weren't at the life guard stands. He stated he agrees with a shorter season but not eliminating coverage.

Council Member Stroud stated he doesn't support cutting service but does support shortening the season.

Mirek Dabrowski agreed to submit a new contract with changes as discussed by Council. Council will review and consider at the January meeting.

Chief Kole stated changes are needed to the Tidewater Fibre contract and the commercial businesses need to be told of the new procedure. He will work with Tidewater Fibre and staff on this.

Mayor Smith stated he wants the town to get out of collecting trash and recycle for the businesses and changes are needed to the ordinance. Council needs to decide if they want to offer this service to the businesses. It is recommended eliminating the third pickup in the winter for commercial trash pickup and

the Saturday pickup. Also the commercial recycling collection cost should be the same cost as the residential pickup cost.

## NEW BUSINESS

### Appointment to Firemen's Local Relief Fund

Mayor Smith moved to re-appoint Al Smith to the Firemen's Local Relief Fund for a term to expire on December 21, 2009. Council Member Hess seconded. The motion passed with Mayor Smith, Council Members Hess, McDonald, Pfizenmayer and Stroud voting aye; no council Member voting no; and no council Member absent or not voting.

## OTHER ITEMS

### Town Manager -None

### Town Attorney

Ike McRee submitted a letter in response to Mr. Bierwerth's, resident, questions from the November 7, 2007 council meeting. Mr. McRee stated that Mr. Bierwerth has been advised several times there are no code violations for the Pitts Center and all of his allegations have been addressed. Furthermore, he stated that in Mr. Bierwerth's complaints he accused Mike Hejduk, Code Enforcement Administrator, of being negligent in his duties of which Mr. McRee stated this is not true and Mr. Bierwerth's comments jeopardized Mr. Hejduk's reputation as a building inspector in which these comments had no basis. He recommends that council not address this issue anymore.

### Mayor

Mayor Smith asked council to decide on the date for the annual retreat. Following discussion council agreed to set January 8 and 9, 2008 beginning at 8:00 a.m. in the Pitts Center for the 2008 Retreat.

Mayor Smith asked council if the town attorney should be present at all council meetings. Council agreed that the town attorney continue attending the night council meeting and he would be notified if he needed to attend other council meetings.

Mayor Smith asked council if they would consider changing the format of the day council meeting by not voting on issues at that meeting and holding an informal discussion type workshop. Council agreed to place this item on the Retreat agenda.

Mayor Smith reported the County implementation of the sand fencing program is underway. He stated the town's area has been identified for the fencing and planting and it should begin in late January.

### Council

Council Member McDonald reported that the Coastal Resource Commission is reviewing the rules and regulations regarding required oceanfront setbacks at a meeting next month. He stated the new rules apply to everyone and everyone should be aware.

Council Member Pfizenmayer thanked everyone who stayed for all of tonight's meeting and to those who voted for him. He stated he is looking forward to serving the town.

**GENERAL PUBLIC COMMENT**

Mayor Smith opened the public comment section, hearing from no one he closed the public comment section.

**CLOSED SESSION**

Mayor Smith moved to go into closed session under N.C.G.S. 143.318. (a) (6). Council Member Stroud seconded. The motion passed with Mayor Smith, Council Members Hess, McDonald, Pfizenmayer and Stroud voting aye; no Council Member voting no; and no Council Member absent or not voting.

Upon returning to open session Mayor Smith moved to adjourn the meeting at 11:20 p.m. Council Member McDonald seconded. The motion passed with Mayor Smith, Council Members Hess, McDonald, Pfizenmayer and Stroud voting aye; no Council Member voting no; and no Council Member absent or not voting.

ATTEST:

  
\_\_\_\_\_  
Don Smith, Mayor



Respectfully submitted:

  
\_\_\_\_\_  
Carrie Gordin, Town Clerk

## Exhibit A

### Planning Board Executive Summary

**Project No.** LDA2006-12-01  
**Project Name:** Starbucks @ The Marketplace Shopping Center  
**Project Location:** 5599 N. Croatan Hwy  
**Application:** Conditional Use – Restaurant

#### **Description of Project:**

The former movie theater space is being gutted and reconfigured to provide three (3) tenant spaces. The architectural plans submitted for the demolition work proposed three (3) retail stores. The change from an Assembly to Mercantile Occupancy would have posed a reduced life safety risk to the public. The floorplan for the proposed Starbucks is a restaurant configuration. While the proposed calculated occupant load of 42 is less than 50 for an Assembly Occupancy by NC Building Code, the Town Zoning Ordinance was recently changed to make Restaurants a Conditional Use within the Commercial District.

#### **Adjacent Properties:**

NCDOT US158, Southern Shores Realty Commercial Property, Single-Family Homes on Palmetto Lane.

#### **Staff Recommendation:**

Recommend rejection pending submission of additional required documentation listed below:

1. Dare County Health Dept. tentative letter of approval for sewage disposal.
2. Change from Town/County solid waste disposal service for The Marketplace to require private hauler due to dumpster maintenance and Solid Waste Ordinance / Fee discrepancies.
3. Lifting of Notice of Condemnation and Stop Work Order on existing building shell.
4. Submission of updated Site Plan
5. Applicant (Starbucks Coffee) to provide copy of lease agreement confirming standing in the property.

#### **Special Conditions:**

1. N/A

#### **Standard Conditions:**

1. That the applicant must strictly abide by all requirements of the Zoning Ordinance of Southern Shores, North Carolina, and must also strictly comply with all other local, state, and federal ordinances, laws, rules and regulations as one or more ordinances, laws, rules and regulations may apply to this development; and,
2. No building permit shall be issued until written evidence satisfactory to the Code Enforcement Administrator is submitted to the Town in accordance with Section 10.04 B.6, Southern Shores Zoning Ordinance; and,
3. For purposes of this application and this application alone, the phrase "Building Inspector" found in Section 10.04 B.8, Southern Shores Zoning Ordinance, shall be the Code Enforcement Administrator as appointed by the Town Manager; and,
4. Per the provisions of Section 10.02 B, C and D, Southern Shores Zoning Ordinance, approval of this application shall be null and void if:
  - a. No building permit for the principal structure is issued within one hundred and eighty (180) days from the date of final approval of the site plan by Town Council; and,
  - b. The start of construction has not commenced within 180 days from the date of issuance of the building permit or if after commencement work is discontinued for a period of 12 months; or,
  - c. The work authorized by the building permit issued is not prosecuted to completion within 18 months of the date of issuance of the building permit.

**Exhibit B**

**To:** Southern Shores Town Council  
**CC:** Town Manager  
**From:** George Kowalski, Chairman, Planning Board  
**Date:** 11/25/2007  
**Re:** Recap, Planning Board Meeting of November 19, 2007

**Planning Board recommended actions for the Town Council:**

**1. None**

**Organization:** Chairman Kowalski called the meeting to order at 7:00 PM. Planning Board members George Kowalski, Georgine Poisal, Joe Walter, Jay Russell, Dave Peckens, alternate Nancy Wendt, and alternate Jim Connors were present with ETJ Representative Ed Overton 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:** The minutes of October 15, 2007, were approved with corrections.

**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 has no meetings scheduled for the month of November and will have one in December.

The **Hazard Mitigation Plan Committee** report was given by Mike Hejduk. He stated that the estimate for underground power for the canal and sound power lines have been received and he will present those figures in the Capital Improvement Plan.

The **Vegetative Advisory Committee** report was moved to the New Business session of the meeting when a proposed ordinance would be submitted.

The **Land Use Plan/ Steering Committee:** Mike Hejduk stated that the committee has been meeting regularly, with two new meetings scheduled for 11/29 and 12/6/2007, to go over objectives and a policy statement. Two new members will be required from the new council.

The **Wireless Committee:** Chairman Dave Peckens reported that there has not been a meeting since the first meeting. He stated that the promised presentations from members of the wireless industry will not be happening and that there does not seem to be any interest by industry representatives to appear in front of the town. He believes that current Federal Law prevents towns from blocking future wireless development and that Dare

County is getting the maximum wireless service that is intended currently by the industry. He proposed that the committee disband. Members of the committee asked that a meeting be held to discuss these points further before asking to be disbanded by the Council.

**The Roads/Streets Committee:** Chairman Dave Peckens stated that the committee has met twice. There are seven members on the committee. The committee will examine all 37 miles of town road ways and, using specific guidelines, will evaluate the conditions of the road on a 10 point scale with "1" equaling replacing a road immediately. He stated that the committee felt that Chicahawk Trail and Poteskeet Trail and Loop were the worst roads. He also stated that they are using the figure of \$100 per foot as the replacement cost. This amount can vary since only bad spots on a road may be fixed and extend the life of a road. Preliminary calculations place road repair at a cost of around \$300-\$400,000 per year and that a two cent increase in the tax rate should cover the cost of road repair and replacement.

### **Applications:**

None

### **Other Business**

#### **Old Business:**

#### **1. Ordinance No. 2007-10-PB09- Ordinance to Amend the Town of Southern Shores Zoning Ordinance Regarding Tree and Vegetation Preservation and Planting.**

##### **New Business:**

Jim Connors, as chairman of the Vegetative Committee, introduced Sally Lowe, a member of the committee, who along with Gigi Hagenah, spent the previous month speaking to Planning Board members and revising the Vegetative ordinance. Many portions of the original ordinance had been changed and certain sections dropped altogether. After an extensive discussion and the presentation of alternative ideas, the ordinance will be modified more and returned to the Planning Board next month for further discussion and possible approval. Ms. Kelly, from the Builders Association, spoke out against the ordinance and pointed out in detail the current issues that Duck was having with enforcing their vegetative ordinance. The Vegetation Committee noted the ordinance presented is a greatly simplified and improved version of the Duck Ordinance.

#### **New Business:**

- 1. Community Lighting.** Mike Hejduk made a presentation to the Board on the topic of residential lighting. This was based upon a complaint by a resident on 10<sup>th</sup> Avenue regarding a light post on 9<sup>th</sup> Avenue. Mike wanted to know whether or not the Planning Board wanted to pursue this lighting issue. The consensus was yes and that the first thing that was necessary to do was to educate the residents of Southern Shores and make them aware of the fact that there was a lighting ordinance in place and that many were violating it. This

could be done by a Broadcast News emailing and an article in the town newsletter. There are night sky standards issued by the International Dark Sky Association which can be found at [www.darksky.org](http://www.darksky.org). Nancy Wendt volunteered to be the Planning Board intermediary and to follow this project through with town volunteers. The town of Duck follows these standards.

2. **Capital Improvement Plan.** Mike Hejduk made a presentation to the Board on the topic of capital improvement by going over an extensive data chart which tabulated all future major expenses. The expenses are best guess projections but Mike wanted the Planning Board to be aware of them and to be involved in their creation since he feels that this is a responsibility of the Planning Board.

**Other Items:**

1. Planning Board Member Concerns:
  - a. Georgine Poisal expressed concern that she felt that a loop hole existed in the home occupation ordinance which did nothing to prevent home business owners from storing their equipment on neighborhood undeveloped lots. She will explore any modifications that are necessary to close this loop hole.
2. Chairman Concerns: none
3. Code Enforcement Administrator concerns:
  - The dentist office has been issued a partial certificate of occupancy and will be allowed to operate while still needing to have required lighting installed on the property.

**Announcements:**

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

**Adjournment:** Upon motion, the Planning Board meeting adjourned.