

Town of Southern Shores

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Town of Southern Shores
Council Meeting
January 6, 2009
7:00 PM.-Pitts Center

Minutes

The Southern Shores Town Council met on January 6, 2009 at the Pitts Center.

The following Council Members were present: Mayor Don Smith, Brian McDonald, Jodi Hess, Kevin Stroud and Jim Pfizenmayer.

Also present were: Charles Read, Town Manager, Carrie Gordin, Town Clerk and Ben Gallop, 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.

APPROVAL OF AGENDA

Mayor Smith moved to amend the agenda by having a closed session following the Consent agenda and then return to continue the meeting. Council Member McDonald seconded. The motion passed with Mayor Smith and Council Members McDonald, Hess, and Stroud and Pfizenmayer voting aye; no council member voting no and no Council Member absent.

PUBLIC COMMENT

Andy Keeney, 6088 Currituck Road, Martin's Point stated he is the out-going commodore to the Martin's Point Yacht Club, reported as the permanent charity of the club's choice will be the Southern Shores Volunteer Fire Department and have donated over \$1500 in the last two years.

Bobby Outten, Dare County attorney, provided information regarding the Department of Insurance's request to raise homeowner's insurance in eighteen coastal counties. He stated a 5-15% increase on wind and hail surcharges has been put into place depending on what area you are in. He stated a second change is the deductible has been changed where there will be a two percent increase of a home's value for wind and hail and the homeowner will be charged per occurrence. He stated in addition to these increases the Department of Insurance raised homeowner's insurance rate here on the beach by 18% and on Roanoke Island by 22%. He stated there doesn't seem to be a good reason for the increases or the varied rate increases depending on what area.

He stated the Dare County Commissioners has been following this and met and decided to challenge the Department of Insurance on these rate increases and with the Town of Nags Head they hired a law firm in Raleigh and it was filed on December 22, 2008. He stated there is no case history for this type of action but the suit has been filed five different ways. He stated he personally contacted all eighteen county managers to request their support and contributions as a party to fight it and several counties have already

made a commitment. He stated the initial cost is \$50,000. He stated he knows Nags Heads has approved \$10,000, Currituck County has approved up to \$10,000 and Washington has approved \$5,000. He stated Kill Devil Hills and Duck are considering it. He stated at this time he doesn't know of any rejections. He is asking Southern Shores to become a participant to the action and financial support. Mayor Smith asked since the county is a party in the law suit why do towns need to get involved. Mr. Outten stated if all eighteen counties and a hundred towns are involved it would become a North Carolina issue.

Council Member Hess asked if the rate increases have been put on hold since the challenge has been put into place. Mr. Outten stated he doesn't think so but the document filing is in the hands of the courts.

Mr. Outten stated if the money is not spent there will be a pro rata rebate given to participating parties.

Council Member McDonald asked what justification was given for the rate increase. Mr. Outten stated a risk analysis was done but the statistics don't make sense. Council Member McDonald stated Dare County pays two to three times more than other parts of the state.

Council Member Hess stated the North Carolina League of Municipalities is meeting tomorrow and would it be beneficial to get them involved. Mr. Outten stated it may be but it would be difficult for them to support a specific group.

Council Member McDonald stated there may need to be a counter public relations statement regarding the donor counties that give money back to the state, which Dare County is one, and how those funds help those counties that don't have much money.

Mayor Smith asked can the town join but decide on a dollar amount at their January 20 meeting. Mr. Outten stated the town is welcome to participate but if you chose not to the county is moving forward.

Council Member Hess moved to join with Dare County in filing for this challenge and offer ten thousand dollars in support towards legal fees. Council Member McDonald seconded. The motion passed with Mayor Smith and Council Members McDonald, Hess, and Stroud and Pfizenmayer voting aye; no council member voting no and no Council Member absent.

The Town Manager asked would a resolution be helpful. Mr. Outten stated it is not necessary.

Council Member Stroud asked if the money that is being held by the County for beach nourishment could be used. Mr. Outten stated the General Statutes does not allow that money to be used for another purpose.

Mr. Gallop stated there will be forthcoming a joint representation agreement to sign and he recommends a motion be made to authorize the Town Attorney to execute the agreement on Council's behalf if it is an acceptable agreement. Mayor Smith moved and Council Member Hess seconded. The motion passed with Mayor Smith and Council Members McDonald, Hess, and Stroud and Pfizenmayer voting aye; no council member voting no and no Council Member absent.

APPROVAL MINUTES –November 25, 2008 and December 2, 2008.

Council Member Hess moved to approve the minutes as presented. Council Member McDonald seconded. The motion passed with Mayor Smith and Council Members McDonald, Hess, and Stroud and Pfizenmayer voting aye; no council member voting no and no Council Member absent.

CONSENT AGENDA-None

Mayor Smith moved to go into closed session under NCGS 143.318.11 (a) (3) to consult with the Town Attorney in order to preserve the attorney-client privilege regarding the canal dredging project mediation meeting. Council Member McDonald seconded. The motion passed with Mayor Smith and Council Members McDonald, Hess, and Stroud and Pfizenmayer voting aye; no council member voting no and no Council Member absent.

[Clerk's Note: Mayor Smith asked everyone to stay and Council moved to an upstairs office for the closed session].

Council returned from closed session and Mayor Smith moved to come back into open session. Council Member McDonald seconded. The motion passed with Mayor Smith and Council Members McDonald, Hess, and Stroud and Pfizenmayer voting aye; no council member voting no and no Council Member absent.

Mayor Smith asked John Leidy, attorney, to give an update on the canal dredging project in regards to the mediation meeting held on December 16, 2008. He read from a prepared statement.

Mr. Leidy reported that pursuant to a court order in the pending administrative law case, the Town participated in a mediated settlement conference with the Division of Coastal Management. The mediation was conducted at a neutral location in Washington, North Carolina. The Town was represented by the Mayor, Commissioner McDonald, Town Manager Read, Attorney John Leidy, and George Wood, the Town's environmental consultant. The director of the Coastal Management, two attorneys from the Attorney General's office, and representatives from the Marine Fisheries and Wildlife Resources offices also participated.

He reported the parties reached an agreement by which they will work together to enable the Town to get a canal maintenance dredging permit. There are several steps in the process that will be undertaken on an expedited basis including the following:

1. The Town would submit a revised and modified canal maintenance dredging plan and plats supporting that project. This has been done.
2. Staff from the represented agencies will review the revised project submitted by the Town and let the Town know any additional information it needs by January 17.
3. The parties agreed to meet as necessary to work out any additional request for information or project details.
4. The Director of the Division of Coastal Management will issue the final decision on the Town's modified project by February 27, 2009.

The Town is confident that it will obtain the permit from the Division of Coastal Management under this arrangement. However, if the Division still refuses to issue the permit, the contested case hearing will be rescheduled for trial for March 16, 2009. There are some additional steps that the Town is undertaking to facilitate approval. This includes the identification of a new spoil disposal area and the design of a spoil disposal site subject to Division approval.

He stated as soon as the Division of Coastal Management had issued its permit, the Town will be eligible to resume the application project for necessary permits from the Army Core of Engineers. It should be noted that the Core will not continue its review of the Town's permit application until the State permit has been issued. Based on these developments and the continued efforts by Town staff, the Board, the Town's attorneys and consultants, we are comfortable with the

progress we are making and, at this point, are cautiously optimistic that we will be engaged in dredging operations as early as the fall of 2009.

REPORTS

Planning Board

Nancy Wendt, chairman, stated there was no December meeting. She reported the Planning Board approved Zoning Text Amendment (ZTA) at their November 17, 2008 meeting regarding non-conformities and requests Council set a public hearing for the February 3, 2009 Council meeting on draft Ordinance 2008-12-01 Non-Conforming Side-Yard-Setbacks.

She reported a public meeting was held last night on this amendment change and no issues arose.

She reported the Wireless Committee have met with various wireless service providers and have had positive feedback. The committee will continue to discuss what data is needed to draft an ordinance to be presented to Council at a later time.

She reported Sam Williams and she met with the CAMA representative on what is needed to complete the Land Use Plan.

Council Member Hess asked Mr. Gallop to clarify how the approval of this ordinance would remove the stigma attached to a non-conforming property. He stated it will not and a non-conforming issue will not prevent a homeowner from selling his property.

Mayor Smith moved to set a public hearing on February 3, 2009 to hear comments on draft Ordinance 2008-12 -01. Council Member McDonald seconded. The motion passed with Mayor Smith and Council Members McDonald, Hess, and Stroud and Pfizenmayer voting aye; no council member voting no and no Council Member absent.

Mayor Smith thanked everyone for their part in putting together the public information workshop and stated that staff did a great job.

Southern Shores Volunteer Fire Department

Chief Harvey presented the monthly report and a year-end report.

Police Department

Chief Kole presented the monthly report.

Southern Shores Civic Association (SSCA)

Dan Shields, president, stated their General Membership meeting with elections will be held Monday January 12, 2009.

Chicahauk Property Owners Association (CPOA)

A CPOA representative stated they are happy to hear about the proposed road repairs. She asked what has happened to the citizen's watch program. Chief Kole stated there has been no interest shown. He stated the police department is willing to try again but someone needs to approach them.

OLD BUSINESS

Southern Shores Volunteer Fire Department Draft Contract

Mr. Gallop stated there was a delay due to the holidays but final information is being gathered and he will have something for the fire department soon. Once the negotiations are concluded the Town Manager will bring to Council.

NC Department of Transportation (NCDOT) Memorandum of Understanding

Mr. Gallop stated upon reviewing the comments with the NCDOT representative it was learned the agreement would not be amended and the agreement only applies to NC12. Council's consensus is to take no action.

Multi-Use Path-Juniper Trail Phase II

Alvin Rountree, Code Enforcement Administrator stated the Juniper Trail Multi-Purpose Path, Phase 2 was never completed. A preliminary site plan has been prepared by Quible & Associates showing actual data and preliminary cost estimates. He recommends Council approve the project for bid and that the final phase of this 175 feet multi-purpose concrete path be completed.

Council directed the Town Manager to move ahead and see that the project is completed. Council previously approved this expense for this project as part of the CIP and it is noted the project is under budget by \$3,000.

NEW BUSINESS

Council Calendar for 2009-Resolution

Mayor Smith read and moved to approve Resolution 2009-01-01-2009 Council calendar. Council Member Stroud seconded.

Council Member Hess asked if the resolution could be amended to include the specific dates for the meetings as has been placed on the previous resolutions and amend the motion accordingly.

Mayor Smith moved to amend the motion to include meeting dates in the resolution. Council Member Stroud seconded. The motion passed with Mayor Smith and Council Members McDonald, Hess, and Stroud and Pfizenmayer voting aye; no council member voting no and no Council Member absent.

[Clerk's Note: A copy of Resolution 2009-01-01 is hereby attached as Exhibit A].

2009 Annual Retreat

Council agreed to set February 19 and 20 as the dates for the Annual Retreat to be held at the Pitts Center beginning at 8:00 a.m.

The Town Manager asked Council what type of format they would like to see and he requested the second half of the second day of the retreat be set aside for budget discussion.

Council agreed there is no need for a facilitator. Council agreed they want all departments and civic associations present at the retreat.

Change January Workshop Date

Mayor Smith stated due to the Town Manager and he being away on January 27, the regularly scheduled workshop, he recommends to change the workshop to January 20. Hearing no objection approved.

Proposal to Establish a Planning Advisory Group

Nancy Wendt stated in December there were a number of planning issues such as integrating the new CIP into the preparation of next year's proposed operating budget, completing the CAMA LUP update and clarifying Southern Shores LR Comprehensive Plan and since there is no full time planning person on town staff the Town Manager asked the Planning Board what they could do to help.

The Board presented a proposal to the Town Manager and the Mayor and they liked it. The Board has been working on meeting the December deadlines for the Land Use Plan. She stated Council should have received backup documentation about this group and she is asking that Council allow time at the January 20 meeting to hear their proposal. She stated the members of this group are Sam Williams, Mike Florez, current members of the Planning Board and Bill Gleason chairman of the CIP. It is the group's goal to compile a comprehensive plan. Hearing no objection Council agreed to place this issue on the January 20 agenda.

OTHER ITEMS

Town Manager

The Town Manager announced the trash and recycle cans placed at the Public Works site will be removed and appropriate signage will be placed stating no dumping. There is a consideration that the driveway into the public works parking lot will be blocked off after hours.

Council Member Hess stated she agrees it is a mess and something needs to be done but taking away the receptacles and not having anything there may cause problems. She suggested Council consider placing a dumpster there.

Council Member Pfizenmayer supports the removal of the cans.

Town Attorney

The Town Attorney requested Council go into closed session briefly following regular business under NCGS 143.318.11 (a) (3) attorney/client privilege (to discuss the Department of Insurance's lawsuit).

Mayor -None

Council

Council Member Hess asked if the post office, newspaper delivery and Dare County for trash pickup has been notified regarding the road work being done on Kingfisher/Soundview. The Town Manager thanked her and he will make the needed contacts.

Council Member Pfizenmayer announced the 30th Anniversary Committee is meeting on January 7 at 7:00 p.m in the Pitts Center and he encouraged those who would like to volunteer to attend.

GENERAL PUBLIC COMMENT -None

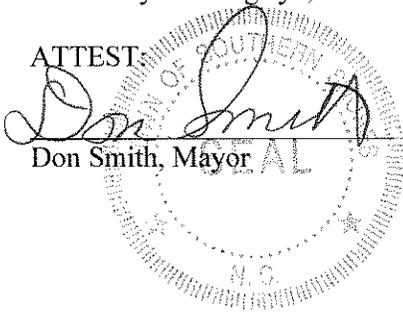
Hearing no other regular business Mayor Smith moved to go into closed session pursuant to NCGS 143.318.11(a) (3) to consult with town attorney in order to preserve our client privilege.

Council Member McDonald seconded. The motion passed with Mayor Smith and Council Members McDonald, Hess, and Stroud and Pfizenmayer voting aye; no council member voting no and Council Member absent.

Mayor Smith moved to enter into open session. Council Member Pfizenmayer seconded. The motion passed with Mayor Smith and Council Members McDonald, Hess, and Stroud and Pfizenmayer voting aye; no council member voting no and Council Member absent. No action was taken.

Mayor Smith moved to adjourn the meeting at 9:20 p.m. Council Member Pfizenmayer seconded. The motion passed with Mayor Smith and Council Members McDonald, Hess, and Stroud and Pfizenmayer voting aye; no council member voting no and Council Member absent.

ATTEST



Respectfully submitted:


Carrie Gordin, Town Clerk

COUNCIL MEETING SCHEDULE

WHEREAS, the Town Council of Southern Shores hereby resolves to implement the following as its monthly meeting schedule for calendar year 2009 and;

WHEREAS, all Council meetings are scheduled to be held in the Kern P. Pitts Center and this is a Dare county voting place.

BE IT RESOLVED that the regular monthly meetings of the Town of Southern Shores Town Council will take place in the Kern P. Pitts Center on the first Tuesday of each month being called to order at 7:00 p.m. but more specifically as follows:

- | | |
|---------------------------|-----------------------------|
| Tuesday, January 6, 2009 | Tuesday, July 7, 2009 |
| Tuesday, February 3, 2009 | Tuesday, August 4, 2009 |
| Tuesday, March 3, 2009 | Tuesday, September 1, 2009 |
| Tuesday, April 7, 2009 | Tuesday, October 6, 2009 |
| Tuesday, May 5, 2009 | Wednesday, November 4, 2009 |
| Tuesday, June 2, 2009 | Tuesday, December 1, 2009 |

BE IT RESOLVED that the regular monthly Town of Southern Shores Town Council agenda workshop meetings will take place on the fourth Tuesday of each month being called to order at 8:00 a.m. in the Kern P. Pitts Center but more specifically as follows:

- | | |
|----------------------------|-----------------------------|
| Tuesday, January 20, 2009 | Tuesday, July 28, 2009 |
| Tuesday, February 24, 2009 | Tuesday, August 25, 2009 |
| Tuesday, March 24, 2009 | Tuesday, September 22, 2009 |
| Tuesday, April 28, 2009 | Tuesday, October 27, 2009 |
| Tuesday, May 26, 2009 | Tuesday, November 24, 2009 |
| Tuesday, June 23, 2009 | |

BE IT RESOLVED if Council finds there are no specific items for the fourth Tuesday meeting agenda the meeting will be cancelled.

BE IT RESOLVED if an election is being held on the first Tuesday of a month then the Council meeting date will be changed to the first Wednesday at 7:00 p.m.

BE IT FURTHER RESOLVED that to process routine actions in an expeditious manner a consent agenda will be utilized and administered by the Town Manager as part of Council’s regular meeting agenda.

BE IT FURTHER RESOLVED to insure public comment is heard one or more Public Comment sections will be placed on the Council meeting agendas. Such comments shall be brief and to the point. The Mayor and or Council may address comments raised or refer the comments to staff for further investigation.

Adopted this 6th day of January 2009.

S E A L

Mayor Don Smith

ATTEST:

Carrie Gordin, Town Clerk