



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

June 2, 2009

7:00 P.M.-Pitts Center

The Southern Shores Town Council met on June 2, 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: 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 to add Municipal Records Retention and Disposition Schedule under New Business as item B and to remove the Atlantic Tree contract at this time and he stated there will be no closed 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.

GENERAL PUBLIC COMMENT

Mayor Smith opened the public comment section.

Don Bierwerth, 249 Sea Oats Trail, stated he is 80 years old and the oldest living member of the Southern Shores Town Council. He stated he is still waiting for a reply from the town or a ruling from the attorney regarding the allowable occupancy for the Pitts Center. He stated he provided Council and the Town Attorney with information at the last Council meeting. He provided Council with a copy of an email dated February 12, 2006 from Mike Hejduk, past code enforcement administrator to Carl Classen, past town manager which was also copied to that current council regarding a health department permit and building occupancy as applies to assembly use. Mr. Bierwerth stated this document proves the building inspector never got a permit from the County when the occupancy use was changed. He stated he has asked questions time and time again and has never received an answer. He would like an answer.

[Clerk's Note: A copy of the email dated February 12, 2006 is hereby attached as Exhibit A].

Hearing no other comments Mayor Smith closed public comment.

APPROVAL MINUTES- May 5, 2009

Council Member Hess moved to approve the minutes as presented. 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 no Council Member absent.

CONSENT AGENDA-None

PUBLIC HEARING – Proposed FY2009-2010 Budget

There was no presentation. The Town attorney opened the hearing no comments were made. He closed the hearing.

The Town Manager requested the proposed FY2009-2010 Budget is placed on the June 23 agenda for consideration. Council agreed.

Mayor Smith asked that it be placed on the broadcast email requesting public comments regarding the budget.

REPORTS

Planning Board

Nancy Wendt, chairman, provided Council with a document including the Planning Board recap for the May 18, 2009 meeting as well as recommendations on the Land Use Plan, rules and procedures for planning board, transportation, cut-through traffic, storm water, wireless communication and financial planning all of which will be discussed at the joint meeting. She requested Council set the date for the joint meeting with Planning Board on June 11 from 3-5 p.m. which works well for the Planning Board. She stated the original June 1 meeting date was cancelled. She stated the planning board members agreed to be available at that time. She stated other dates are not an option due to working and vacation schedules. Council members stated that was not a good time and they would prefer an earlier time. Following discussion all agreed the meeting would begin at 12:00 p.m. to 2:00 p.m. in the Pitts Center on June 11.

[Clerk's Note: A copy of the Planning Board recap for May 18, 2009 is hereby attached as Exhibit B].

Southern Shores Volunteer Fire Department-None

Police Department

Chief Kole presented the monthly report including an update on a successful one-month long drug investigation. He stated credit goes to all the officers on the way this investigation was handled.

Council Member Pfizenmayer asked if motorized scooters are treated like bicycles in regards to traffic laws. Chief Kole said there are certain specifications but they should be on the side of the road not on the road.

Southern Shores Civic Association

Dan Shields, president, asked everyone to visit the Triangle Park to see the improvements, the volunteers did a great job. He stated the over-look at the wading beach is done and the Hillcrest and N. Dogwood sites have been completed. He stated the nominating committee is looking for volunteers. He thanked the Police Chief for doing a great job.

Chicahauk Property Owners Association (CPOA) - None

Canal Dredging Project

Council Member Hess reported she has been working very hard and is very optimistic in securing a spoil site. She stated she is working with Frank Stone on a spoil site property and with the Duck Woods Country Club (DWCC). She stated DWCC may be interested in taking the spoils after de-watering and the Town may need an easement from CPOA on a small piece of green space property adjacent to the Stone property. She stated the Town advertised for a project manager and following up on that the Town Manager interviewed and selected three possible candidates for the position. Council agreed that she meet with those candidates, which she did and now she is recommending Council appoint Tom Bennett. She stated the Town has a very qualified Town engineer and George Wood, consultant, with EPI, and they have been working with the Town all this time on our permitting process. She stated Tom knows the town, has previously volunteered to work with the Town on this project and he has been involved with it over time. She stated he may not be the most experienced but she thinks he is the one for the job. She stated George Woods needs someone to start working right away.

Council Member Hess moved to appoint Tom Bennett as project manager for Phase I of the canal dredging maintenance project. She stated \$50,000 has been budgeted for this part-time position and he should start immediately.

Council Member Hess stated the Town engineer has confirmed to dredge this fall bids must be advertised by July 1 and all permits must be approved. She stated there are a number of permits needed such as the CAMA permit, a DOT access permit, a storm water management permit, a soil erosion permit and these may take up to thirty days if they are expedited. She stated our consultant is looking into the use of Geo-bags. She is hopeful that the spoil sites will be firmed up by next week. She would like to see Mr. Bennett begin on Monday June 15th. She would like to see him begin on the Phase II permitting process as soon as possible. She stated she would like that to be included as part of the contract. She wants the citizens to know that Council is looking at this as a project for the whole town not just for Phase I.

The Town Attorney suggested Council Member Hess withdraw her motion and recommended making a new motion saying Council authorize the Town Manager to execute an agreement with Tom Bennett. The motion did not need to be withdrawn since there was no second.

Council Member Pfizenmayer stated Tom has not been involved in a project like this and some of the applicants had. Council Member Hess stated Tom's past working experience he was involved in major construction projects.

Council Member Pfizenmayer stated he is concerned that Tom will not be able to answer questions and will need to go the engineer or consultant.

Council Member Hess stated she feels Tom can handle all problems that may come up and upon talking with the engineer and consultant they feel Tom is qualified. She stated once the dredging contract is approved Tom will be overseeing the project as specified in the contract.

Council Member Hess moved to authorize the Town Manager to enter into a contract with Tom Bennett as the canal dredging project manager. 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.

OLD BUSINESS

Auditor Contract

Bonnie Swain, finance officer, stated Mayor Smith asked her to contact the auditor to see if she would be willing to keep her contract price the same. She stated Dowdy & Osborne agreed to keep the contract amount the same over the next three years except in the event the Town moves ahead with the canal dredging project next year and spends a total of \$500,000 or more in state or federal funding then there would be an additional cost for services as related to work associated with the required Single Audit. She stated in contacting the other towns there is a very limited resource for this service. She stated there is only one other accounting firm in Dare County but they provide our payroll services and that would be a conflict of interest.

Mayor Smith moved to approve the three-year auditing contract with Dowdy & Osborne in the amount of \$16,250.00 annually and authorize the Town Manager to execute the contract. 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.

Set date for Joint Planning Board/Council meeting-See Reports

NEW BUSINESS

Emergency Management Plan

The Town Manager stated the Southern Shores Emergency Management Plan is reviewed annually, before the beginning of the hurricane season, and will be evaluated at the end of each season and updated as necessary. The one change for this year is that David Cowan has been removed. Council received a copy of the plan. Council Member Hess asked that the emergency directory be updated accordingly. The plan needs to signed off accordingly.

Municipal Records Retention and Disposition Schedule

The Town Attorney stated the Division of Cultural Resources (DCR) has updated the schedule and by Council approving the schedule as requested allows the Town to dispose of records according to the schedule instead of asking DCR permission or not being able to dispose of any public records.

Council Member Hess moved to approve the Municipal Records Retention and Disposition Schedule 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.

OTHER ITEMS

Town Manager

The Town Manager reported the East Holly cul-de-sac road improvement and Hickory Trail full-depth rebuild each have had requested change orders. He stated E. Holly Trail had additional trees to be removed at a cost of \$1,740 and Hickory Trail required additional pavement at Hickory and Red Bay at a cost of \$3,758. He stated there may be an additional change order for Hickory Trail.

He presented Ordinance 2009-06-01 amending the Town's traffic map to allow the installation of a STOP sign to be placed at the intersection of Hickory and Azalea Lane as approved in the contract for the Hickory Trail full depth rebuild road improvement.

Mayor Smith moved to adopt Ordinance 2009-06-01 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.

[Clerk's Note: A copy of Ordinance 2009-06-01 is hereby attached as Exhibit C].

The Town Manager stated it was his intent to insert a line item in the amount of \$2500 to the FY2009-2010 budget for planning board operating expenses under code enforcement but it was left out it and will be added.

Town Attorney – None

Mayor

Mayor Smith announced David Stick's memorial service will be held on June 15, 10:30 a.m. at the Wright Brother's Monument Pavilion in Kill Devil Hills. He stated he will be out of town and unable to attend. He requested Council members attend if they can. Council Member McDonald stated he will attend.

The Town attorney asked Council if they want him to continue to not reply to Mr. Bierwerth as Council directed the previous Town attorney. Council stated Mr. Bierwerth has been provided with a response and they have not changed their mind.

Mayor Smith prepared a letter addressing the recent Senate bill passed regarding the ban on single-use plastic bags. He read the letter and requested Council agree to forward the letter to Representative Spears. He stated the Town has received public responses and he thanked those who commented. Council agreed to send the letter. Council Member Stroud requested the letter be sent to all the NC House of Representatives since each one of them would be voting on the issue. Council agreed.

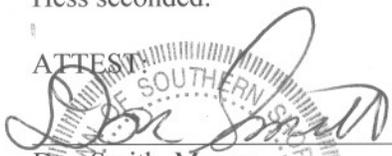
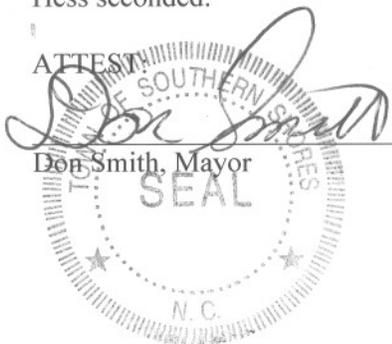
Mayor Smith read a letter received from Mayor Cahoon of the Town of Nags Head thanking the town and staff for their help during the services held for the loss of one of their on-duty police officers, Sgt. Earl Murray. Mayor Smith stated that all the towns help each other during times like this and Nags Head helped us when our Police Chief, Thad Pledger, died.

Council-None

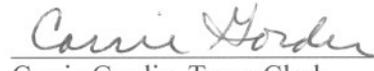
GENERAL PUBLIC COMMENT

Sam Williams, 109 Pudding Pan Lane, recommended to Council it should be included in the canal dredging project manager contract that the person have good communication skills. He stated communication should be given early and often as the project progresses to all those involved.

Hearing no other business Council Member McDonald moved to adjourn at 7:55 p.m. Council Member Hess seconded.

ATTEST

Don Smith, Mayor


Respectfully submitted:


Carrie Gordin, Town Clerk

Mike Hejduk

From: Mike Hejduk [mailto:mhejduk@southernshores-nc.gov]
 Sent: Sunday, February 12, 2006 3:18 PM
 To: 'Car, Clasper'; 'Car,ic'
 Cc: Brian McDonald; Dan Shields; Dave Sanders; Dan Smith; Joe Hess; Cyndy Gabrys [mailto:cgabrys@southernshores-nc.gov]; David Bakken [mailto:dbakken@southernshores-nc.gov]; David C. Cowan; Pat Forrester
 Subject: RE: Request for Public Records

Car,

I thank you for providing the water usage records for the Pitts Center covering the period from being a Blue Sky training facility through its present use as a Town Council meeting hall. Quarterly usage is between 1,500 gallons to 2,500 gallons. It does not appear we have a problem with amount of water going into the septic system due to our use of the building for Town meetings or voting.

I reviewed the building permit file for the original Pitts Center construction and faxed the water records and a copy of the original Health Dept. Permit to Jack Flythe at Dare County for review and comment regarding the usage versus capacity. This is a common practice used in the Restaurant industry to increase the number of seats to serve customers after a place has been in operation for at least a year. When the design flows prescribed by the State rules are very conservative and are not realized in practice.

The 40 person occupancy Mr. Biewert's references appears on the Site Plan by Benjamin Cahoon, Architect under the parking tribulation noted: "Constructor: Mandel Seminar Room - 40 seats. This was the Occupancy noted by Ronnie Dullance on 10/8/97. The fact that Mr. Dullance posted an Occupancy Permit in the room presently used by Town Council proves this space was considered an Assembly Occupancy at that time. Therefore no change in occupancy occurred with the remodeling of the space. NC State Building Code Volume 1 Section 1105.2 in effect at the time the permit was issued states "Signs stating the maximum occupant shall be conspicuously posted by the owner of the building or premises in each type of assembly, assembly room, auditorium or room used for a similar purpose."

The increase from 40 persons to 200 persons was facilitated by the installation of an additional egress door & ramp to meet the code. (Probably an even larger number would have been permitted by the Building Code if they were fixed seats.)

The septic system as designed and installed consisted of a 1,000 gallon tank and (3) 50' drainlines for a total field length of 150'. Design flow was 540 gpd (gallons per day) - quarterly (90 days) would allow 48,600 gallons. The building was and is a mixed occupancy of Business space and "Exhibit Hall / Training Facility". The Laws and Rules for Sewage Treatment and Disposal Systems, Section 1949, use 26 gal./employee for General Business and Offices and 3 gal./seat for Churches without kitchens, food service, day care or camp.

If we use the flow assigned for Churches then our 200 persons would require a design of 67 gpd based on the number of seats at 3 gallons per seat. That leaves 473 gpd for about 18 employees. As we know the Southern Shores Civic Association has 1 staff person during the week.

The total seated space of the building as permitted was 3,000 sq. ft. The Town Council meeting area is approximately 1,781 sq. ft.

Technically, the remodel no permit for the Pitts Center to convert the space to a Town Meeting Hall may have required an endorsement of the existing Health Dept. permit. My fax to the Health Dept. was a belated attempt to do just that.

Copies of pertinent documents are in your inbox for review.

Michael J. Hejduk
 Code Enforcement Administrator
 tel (252) 261-2394
 fax (252) 265-0876
 email mhejduk@southernshores.nc.gov

2/12/2006

021306B

Exhibit B

To: Southern Shores Town Council

Copies: Town Manager (Charlie Read)

Town Staff (Pat Forrester, Carrie Gordon, Alvin Rountree, Merrie Smith, Bonnie Swain)

Planning Board (Mike Florez, Bill Gleason, Larry Lawhon, Bob Palombo, Jay Russell, Nancy Wendt, Sam Williams and ETJ Rep, Ed Overton)

From: Nancy Wendt, Planning Board Chair

Date: May 28, 2009

Re: Recap, Planning Board Meeting May 18, 2009

Attach: Proposed Rules of Procedures
1a CAMA LUP Policy Recommendations
2a Transportation Recommendations
2b Federal Standards Low Speed Vehicles
2c NHTSA Ruling Low Speed Vehicles
2d Cut Through Traffic Ordinance
3a Wireless Recommendations
3b Zoning Options
3c Proposed Conditional Use Requirements
4a Financial Planning Process Next Steps

RECOMMENDED ACTIONS FOR THE TOWN COUNCIL:

APPROVE Proposed Rules of Procedures – These revisions update the procedures to reflect the fact that the Planning Board meets twice a month; on the first Monday of the month for Public Workshops and to work on long range planning activities and on the third Monday of the month to review permit applications and ordinance changes.

RE-SCHEDULE JOINT MEETING WITH PLANNING BOARD – re-schedule the joint meeting with the Planning Board to review the Transportation, Wireless and CAMA LUP Policy recommendations.

MEETING RECAP

- I. **CALL TO ORDER:** Chairperson Wendt called the meeting to order at 7:00pm. Planning Board Members Nancy Wendt, Jay Russell, Mike Florez, Bob Palombo and Sam Williams, alternate members Bill Gleason and Larry Lawhon, and ETJ Representative Ed Overton were present. Also in attendance were Executive Assistant Merrie Smith and Code Enforcement staff members Alvin Rountree and Pat Forrester.
- II. **APPROVAL OF AGENDA:** Chairperson Wendt proposed the following additions to the agenda: Height Calculation Method ZTA and planning recommendations for CAMA LUP, Consistency Test and Capital Project Prioritization. Bob Palombo motioned to approve

the agenda as amended. Mike Florez seconded the motion. The motion passed unanimously.

III. APPROVAL OF MINUTES:

Mike Florez motioned to approve the Minutes from the November 17, 2008 Planning Board meeting. Sam Williams seconded the motion. The motion passed unanimously.

Bob Palombo motioned to approve the Minutes from the March 16, 2009 Planning Board meeting. Jay Russell seconded the motion. The motion passed unanimously.

IV. PUBLIC COMMENT:

None

V. PERMIT APPLICATIONS NEW

None

PERMIT APPLICATIONS OLD

LDA #090115 Pledger Palace – The Public Hearing for this permit application to convert the former Outer Banks Appliance retail store into a Child Day Care Center was held on May 5, 2009. Following the Public Hearing the Town Council approved the application with the conditions as recommended by the Planning Board.

VI. OTHER BUSINESS – OLD

1. Proposed Rules of Procedures – the board reviewed the proposed revisions to the Rules of Procedures for the Planning Board. These revisions update the procedures to reflect the fact that the Planning Board meets twice a month; on the first Monday of the month for Public Workshops and to work on long range planning activities and on the third Monday of the month to review permit applications and ordinance changes. Sam Williams motioned to recommend that the Town Council approve the proposed revisions. Ed Overton seconded the motion. The motion passed unanimously.

2. Proposed ZTA to Change Height Calculation Method – Pat Forrester reported that the proposed zoning text amendment is on hold indefinitely pending the availability of Code Enforcement staff to prepare a draft ordinance for Planning Board review.

VII. OTHER BUSINESS – NEW

None

VIII. PAG COMMITTEES AND PROJECTS

1. Transportation DRAFT Recommendations (Bob Palombo)

The board discussed the Transportation recommendations and identified corrections and suggestions for clarification including:

- Specify May 15 to September 30 as the period for seasonal traffic regulations
- Under Action Item 2.c. clarify what exceptions to weight limits would be permitted (i.e., emergency equipment, construction equipment, etc..)
- Add an action item under Policy 4 to create a base plan for multi-use paths

- Re-write Policy 5 to clarify what is and what is not a low speed vehicle
- Provide a list of all roads in town by road class

These revisions will be incorporated in a new DRAFT to be completed May 28.

2. Wireless DRAFT Recommendations (Larry Lawhon)

The board discussed the Wireless recommendations and identified a number of corrections and suggestions for clarification including:

- Clarify what, if any, impact each zoning approach would have on FEMA credits for open space
- Define conditions for tall towers as a conditional use
- Define requirements for short towers
- Correct outline numbering

These revisions will be incorporated in a new DRAFT to be completed May 28.

3. CAMA LUP DRAFT Policy Recommendations (Sam Williams)

The board discussed the CAMA LUP Policy recommendations and identified corrections and suggestions for clarification including:

- Policy 2 add government and institutional district
- Policy 12 clarify that EMS is Dare County
- Action Item 25.b. add public trust waters
- Determine if and where residential windmills fit in policies
- Determine where policy on the interconnectivity of roads fits; LUP or Transportation Plan or both

These revisions will be incorporated in a new DRAFT to be completed May 28.

4. Consistency Test DRAFT Process (Mike Florez)

The board discussed the need to ensure that all conditional use permit recommendations and changes to the zoning ordinance are consistent with the Town's comprehensive planning. Rather than relying solely on the CAMA LUP of record to support a finding of consistency, the board agreed that each planning board member will review the planning area for which they serve as the point person for any inconsistencies prior to the planning board meeting at which a permit application or proposed ordinance change will be reviewed by the board.

5. Capital Projects DRAFT Recommendations (Bill Gleason)

Bill Gleason reported that the Town's operating budget for the next fiscal year will reflect reduced revenues. This plus the potential financial impact of the canal dredging project will severely limit the funds available for other capital projects over the next several fiscal years. If both phases of the canal dredging project are completed, the capital reserve fund will be substantially depleted unless there is an infusion of additional revenue. Given these constraints and unknowns, discussions regarding CIP projects and priorities will be deferred until the late summer or early fall 2009.

IX. Other Items:

1. **Administrative Items**

None

2. **Code Enforcement Items:**

None

3. **Chairperson Items:**

None

4. **Planning Board Member Items:**

None

X. ANNOUNCEMENTS:

The Planning Board meeting schedule for the next month are:

Thursday, May 28, 2009 at 9am at the Pitts Center

Agenda: Final working session on recommendations for Town Council

Monday, June 1, 2009 at 7pm at the Pitts Center

This meeting has been cancelled by the Town Council.

Monday, June 15, 2009 at 7pm at the Pitts Center

Agenda: Review permit applications and proposed ordinances as needed

XI. ADJOURNMENT:

Jay Russell motioned to adjourn and Bob Palombo seconded. Motion passed unanimously. The Planning Board meeting adjourned at 10:00 pm.

Exhibit C

Ordinance No. 2009-06-01

**AN ORDINANCE OF THE SOUTHERN SHORES TOWN COUNCIL
AMENDING THE OFFICIAL TRAFFIC MAP**

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 Official Traffic Map for the Town of Southern Shores, Dare County, North Carolina, which was originally adopted by the Town Council on September 4, 1979 (Ordinance No. 79-0012) and as may have been subsequently amended.

Article II: Amend Official Traffic Map

The Official Traffic Map for the Town of Southern Shores is hereby amended by installing a STOP sign at the intersection of Azalea Lane and Hickory Trail.

*Town of Southern Shores, NC
Council Meeting
June 2, 2009
Page 10 of 11*

Article V: Severability

If any words, phrases, language, section or other portion of this Ordinance is held invalid by a court of competent jurisdiction, then all remaining words, phrases, language, section or other portion of this Ordinance shall remain in full force and effect.

Article VI: Effective Date

This Ordinance is effective upon adoption by the Southern Shores Town Council.

Adopted this the 2nd day of June 2009.

S E A L

Mayor Don Smith

ATTEST:

VOTE: 5 Aye 0 Nay

Carrie Gordin, Town Clerk

Approved as to form:

Ben Gallop, Town Attorney