



# Town of Southern Shores

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Town of Southern Shores  
Council Meeting  
August 4, 2009  
7:00 P.M.-Pitts Center

## Minutes

The Southern Shores Town Council met on August 4, 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: Charlie Read, Town Manager, Ben Gallop, Town Attorney and Carrie Gordin, Town Clerk.

Mayor Smith called the meeting to order at 7:00 p.m. led the Pledge of Allegiance and asked for a moment of silence for the men and women serving around the world.

### **APPROVAL OF AGENDA**

Mayor Smith moved to amend the agenda under the Presentation to include recognition of Jessica Horbach, Coastland Times reporter and to amend under VIII. New Business to add as Item D. a resolution relating to spoil disposal for canal dredging project and to add a resolution to item VIII.C. regarding the Bridge Inspection Agreement. 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.

### **PRESENTATION**

Police Chief Kole and Lt. Paul Terry awarded Officer's Clark, Hemilright, and Torres a promotion to Senior Patrol Officer. Chief Kole stated with a small police department it is limited on advancement and career opportunities so a Career Development Program was initiated. He read the criteria needed to receive this type of advancement and as part of those requirements the officers needed to be with the town for two years and finish 250 hours of service training.

Mayor Smith presented Jessica Horbach, Coastland Times reporter, with a Certificate of Recognition. He stated she is leaving the area but when she came here she had big shoes to fill in replacing Tony Sylvester. He stated she has done a great job covering the Town's meetings and the town wishes you success in your future endeavors.

## GENERAL PUBLIC COMMENT

Mayor Smith opened the public comment.

Yvonne Sternberg, 57 Hickory Trail, addressed Council with a formal complaint regarding its continued failure to enforce the traffic laws on Hickory Trail. She stated four years ago she wrote Mayor Denny with her concerns about the problem. (She provided a copy of a letter to Mr. Denny dated July 25, 2005). She stated the residents on the stretch between E. Dogwood and Hillcrest have voiced their concerns many times about this very obvious public safety issue and still nothing has been done. She stated we are well aware that we can't do much about the volume of traffic, but that is not the issue here and we are not targeting tourists as the only violators of our traffic laws. This is a problem that exists all year long, not just the summer. Local and out-of-state drivers regularly speed through their area and those who fail to stop at the three-way stop are just as numerous. She stated on several occasions over the years, other drivers have failed to come to a lawful stop; only because she is a defensive driver, has she avoided being hit by them. She has called the police department with complaints about this, but still the problem persists. She stated our fire chief tells us that there are no speeders on Hickory, that we lack a calibrated eye to determine the real speed of drivers. Aside from wondering he e became so all-knowing, she is stating unequivocally that those of us who actually live on this stretch of road and who actually see the speeding cars know that numerous drivers are obviously exceeding the speed limit. She is tired of bringing the same old complaints up again and again. She is frustrated over the cavalier dismissal of resident's complaints. She is angry that, despite repeated complaints and warnings, this town's governmental leaders either lack the desire to address the issues or don't care about the issues because it does not involve them personally. She stated this s a very personal issue with her. She stated on a daily basis she sees these problems; and nothing is being done by those who have the power and the authority to correct the problems. She stated consider this notice that unless something concrete is done to correct theses issues by the end of this year (2009) she will be taking her complaints to the North Carolina Attorney General, the Dept. of Public Safety, and any other entity she thinks might be able to help the residents investigate why Council has flagrantly and willfully put our citizenry in danger by their failure to act for their public safety.

Lynanne St. Laurent, 63 Hickory Trail, addressed Council also on the traffic issues on Hickory Trail. She stated it is her understanding that one of the main purposes of government is to ensure the safety of its citizens and to enforce the laws. She stated if that is the case then she thinks they have failed on both accounts. She stated despite numerous complaints from the residents on Hickory Trail about the speeding, very little has been done to protect the residents from these hazards. She stated last weekend one oft he signs to inform the driver of their speed was placed in the neighborhood about 100 yards from a three-way stop! She can't imagine a more ridiculous place to have put it. At the other end of the street an empty police car was parked at the top of the hill. She stated she is sure all of the people who passed by her as she attempted to take a walk on Saturday morning appreciated the fact that no one was in the car to catch them. She asked, really is that the best you can do to enforce the speed limit of 25 mph and protect your residents. She stated the town also has continued to allow the dumping of wood chips at the crest of East Dogwood. The chips blow onto the road and cause a slipping hazard for anyone who walks there. She stated she knows because she slipped and fell and broke her jaw. She stated just because she didn't sue the town for dereliction doesn't mean that the next person won't. She stated she loves this community but would not recommend anyone live here because you can't depend on your local government to ensure our safety or to enforce the laws.

Betsy Shea, 64 Hickory Trail, provided a detailed description of a vehicle that she observed as she was coming from work on Saturday that never stopped at any of the stop signs from Duck Woods to Hickory Trail. She invited Council or others to come and sit on her porch from 8 a.m. to 10 a.m. on Saturday and count the 50-60 cars that pass. She stated she forwarded an email to the Town this week regarding a baby deer that was hit and the driver did not stop. She stated now we have a wounded deer that can't be helped. What if it was a child or a pet? She stated Council has to do something.

She suggested reducing the speed limit to 15 mph from May to September. She stated when you yell at the drivers to slow down they yell back with obscenities. They need to be made to obey the laws.

Dee Lewis, 62 Hickory Trail, addressed Council by thanking them for the new road but the real matter is the speeding and that no one is doing anything about it. She stated someone is going get hit, not just a deer. She highly recommends the speed limit be reduced to 15 mph year round and asked that Council consider this.

Hearing no other comments Mayor Smith closed public comment.

#### **APPROVAL MINUTES**-Council Meetings June 23, 2009 and July 7, 2009

Council Member McDonald moved to approve the July 7, 2009 minutes with minor corrections he provided to the town clerk. 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.

Council Member McDonald moved to approve the June 23, 2009 minutes as presented. 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.

#### **CONSENT AGENDA**-None

#### **REPORTS**

##### Planning Board-July 20, 2009 (Planning Board and Planning Advisory Group) Reports

Bob Palombo, presented the report.

Council Member Hess stated she doesn't see the need to hold two public workshops on wireless communication as proposed. She recommends Council review the draft wireless communication ordinance and then set a public hearing as is required.

The Planning Advisory Group requests Council place the Transportation Committee actions on the August workshop agenda and a short report on Wireless and place the Storm Water Committee recommendations on the September agenda.

[Clerk's Note: A copy of the Planning Board Recap and the Planning Advisory Group report for July 20, 2009 is hereby attached as Exhibit A].

##### Southern Shores Volunteer Fire Department

Chief Harvey presented monthly report.

Mayor Smith asked if there is a way to warn people about severe weather to try to prevent another fatal lightning strike like the man who was on the beach.

Chief Harvey stated a reverse 911 system is possibly a way but the system is expensive. The lightning strikes on that day were very unusual. He stated the radio and TV stations were reporting the severity of the storm.

Merrie Smith, executive assistant, asked the Police Chief if the life guards tell people to get off the beach. The Town Manager stated he talked to the life guard supervisor that day and the beach was cleared.

#### Police Department

Chief Kole presented the monthly report and reminded everyone the report was only up to the 4<sup>th</sup> week of July.

#### Southern Shores Civic Association (SSCA)

Dan Shields, president, announced the annual picnic will be held September 26 beginning at noon at the North Marina and the September General Meeting will address the budget.

#### Chicahawk Property Owners Association (CPOA)-None

#### Canal Dredging Project

Tom Bennett, project manager, stated as reported in his broadcast emails we are moving ahead with preparing the bid documents, acquiring additional permits getting the necessary agreements for access to various properties for spoil sites with the help from our Town manager and Town engineer. He stated the release of the bid documents are on hold until we receive the additional permits. He stated the Town manager and Town engineer and he attended a meeting in Washington, NC with representatives from DENR with the Division of Water Quality to obtain additional needed permits. He stated he was satisfied with the meeting and they received positive feedback. He stated Joe Anlauf did a great presentation and the permits should be received within two weeks instead of the normal thirty day time period. He stated the permits are needed for each spoil site and it would be helpful to have the permits before the bid package goes out. He stated a pre-bid conference is scheduled for August 24 with the bid opening to be held on September 10 but will depend on receiving the permits. He stated there will be a public information meeting following the August 25 Council meeting.

The Town Manager stated this is a team project and he was happy with the response and outcome from the meeting with the Division of Water Quality who were very willing to work with us.

### **OLD BUSINESS**

#### Filling Council Vacancy Process

Mayor Smith stated a past Council took action to change the process to fill council vacancies but the process was never finalized. He stated on February 8, 2006 Council approved an Act to change the process to fill a vacancy by holding a special election not by appointment by Council. He stated it was approved 4 to 1. He stated he has always felt this is the right way to fill a vacancy and get away from the 'good ole boy' network. He stated he talked with the Town Attorney and he recommended bringing this to Council again. Mayor Smith would like to see this finalized.

The Town Attorney stated if Council agrees they can re-authorize the Act and forward to Representative Spear. He stated however, the timing is off for legislation consideration. He stated the long session is usually when they consider approval of local acts. He stated the long session is two years away. He is not sure if there is a way to accelerate the process.

Council Member Hess commented that if it is going to be two years to get it on the legislative calendar then should we wait until the next election when there may be a different Council.

Mayor Smith wants to see this moved ahead now which gives the public the right to make the decision.

Mayor Smith moved to re-authorize the Act and forward to Representative Spear. 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.

Council Member Stroud questioned if the 90 days as stated in the Act is a sufficient amount of time.

Mayor Smith read the portion in question and stated a cut off time needs to be addressed. He wants to get away from Council making an appointment.

Council Member Stroud stated he has some concern that if a vacancy occurs and it is close to the time of an upcoming election and there would be a cost for the special election that person elected would need to run again at the time of the election. He doesn't agree with this. He asked if the 90 days could be extended to 150 days.

Mayor Smith explained the Council terms are set up for staggered years.

Council Member Hess stated there may be certain election laws that may apply. She asked if Council could go the extra time without a council member if what Council Member Stroud is referring to would happen. The Town Attorney stated he does not know.

[Clerk's Note: A copy of the Local Act for filling Council vacancies is hereby attached as Exhibit B].

Re-Codification of Town Code-Second Reading (Ordinance 2009-07-xx)

This ordinance was presented to Council at the July 7, 2009 meeting as the first reading.

Council Member Hess stated she did review the new Code and looked at the changes and she found nine things to look at. She stated Council can approve the ordinance but knowing there will be some corrections. She stated one of the items is the Cable Franchise was removed but the construction standards section remained. When MCC was asked why that was they stated it is routine to take out franchise ordinances because they have an inherit time limit meaning expiring at some point but the terms remaining are defined by the Cable Franchise. She stated the question is do we need these construction standards. She provided the town clerk and town attorney with her noted concerns and she supports approval of the ordinance.

The Town Attorney stated he agrees with the cable franchise agreement language being removed. He stated he has reviewed the whole document in its draft form. He also reviewed Council Member Hess's list of proposed changes. He stated the construction standards are the only thing Council has authority for cable services. He stated the franchise agreement, itself, is not repealed by the approval of the resolution adopted tonight. He stated there will be some needed language changes and he recommends Council approve the ordinance at this time. He stated staff will bring needed changes to Council as an amendment to the new Code in the near future.

Council Member Hess moved to adopt the ordinance with the appropriate ordinance number provided by the town clerk. Mayor Smith 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 is hereby attached as Exhibit C].

Licensing of Solid Waste collectors (Haulers)-Second Reading (Ordinance 2009-07-xx)

This ordinance was presented to Council at the July 7, 2009 meeting as the first reading

The Town Attorney stated this ordinance meets the agreement previously approved by Council. He stated a hauler provider will only need one sticker not individual stickers for each truck.

Council Member Hess stated she addressed concerns with Bobby Outten, County Manager, and he assured her this ordinance will be addressed by the County Commissioners.

Council Member Hess moved to adopt the ordinance with the appropriate ordinance number provided by the town clerk. 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 is hereby attached as Exhibit D].

**NEW BUSINESS**

Resolution 2009-08-01-Update 401(k) Agreement

The Town Manager stated in 1986 Council approved, by resolution, to enter into an agreement with BB&T for a State 401(k) plan since that time the Town most recently replaced the third party administrator with Prudential. Staff request Council adopt Resolution 2009-08-01 and approve the 401(k) agreement with Prudential.

Council Member McDonald moved to approve Resolution 2009-08-01 and the agreement as presented. Mayor Smith 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 2009-08-01 is hereby attached as Exhibit E].

Resolution 2009-08-02-Update Family Medical Leave Act

The Town Manager presented a resolution to update the Town's Personnel Policy as applicable to the Family Medical Leave Act (Section 17). Staff requests Council adopt as presented. Mayor Smith moved to adopt Resolution 2009-08-02 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 Resolution 2009-08-02 is hereby attached as Exhibit F].

Resolution 2009-08-03-Adopting and Ratifying Agreements Related to Spoil Disposal for Canal Dredging Project

The Town Attorney prepared this resolution and presented to Council for approval.

Council Member McDonald moved to adopt Resolution 2009-08-03 as presented. Mayor Smith 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 2009-08-03 is hereby attached as Exhibit G].

Bridge Inspection Agreement (NCDOT) and Resolution 2009-08-04

The Town Manager stated every two years the Town's bridges are required to be inspected by North Carolina Department of Transportation (NCDOT). In the agreement there are three "options" offered in the way the bridges may be inspected. He stated always in the past Council has selected option "C" and his recommendation is to authorize the Town Manager to enter into a contractual agreement with NCDOT using Option "C" for inspecting the Town's bridges.

Council Member Hess moved to authorize the Town Manager to enter into an agreement with NCDOT using Option "C" for bridge inspections and to adopt the resolution 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.

[Clerk's Note: A copy of Resolution 2009-08-04 is hereby attached as Exhibit H].

**OTHER ITEMS**

Town Manager

The Town Manager announced there will be a canal dredge information meeting will follow the August 25 Council workshop. Also the Town is holding an emergency management table top exercise jointly with the Town of Nags Head on August 13 with DRC Emergency Services conducting the exercise at no cost.

Merrie Smith stated the Town Hall will be closed during this exercise so all staff can attend.

Town Attorney

The Town Attorney stated there are more property issues to be addressed. He recommended Council consider appointing someone to follow up on these for the canal dredging project. He stated Council can discuss specific terms regarding this appointment in a closed session but the appointment needs to be made in open session. Council agreed to discuss in closed session before making an appointment.

Mayor

Mayor Smith stated the Mayor's Chats will resume in September.

Council

Council Member McDonald stated he is concerned about the comments made about the speeding on Hickory Trail. He stated he regrets not putting in the multi-use path. He stated it should have been put in over the objections of the residents for the safety of the citizens. He stated we should have a policy and Council should stick to it. He would like to task the Police Chief to continue addressing the speeding issues and he supports putting in speed bumps.

Norm St. Laurent asked if there has ever been a speeding ticket given on Hickory Trail. Chief Kole stated he had already talked to Mr. Laurent about this. He stated he has one officer on duty per weekend per shift and they can't be everywhere at the same time. They do the best they can with what they have.

Council Member McDonald stated if speed bumps are a consideration then other streets not just Hickory needs to be addressed. He stated the Transportation Committee will be providing recommendations and Council will look at those before making a decision.

Chief Kole stated he doesn't believe reducing the speed limit will help and if speed bumps are placed on the road reflective signs need to be placed warning motorcyclist and kids on bikes to prevent them from getting hurt.

Council Member Stroud asked if additional money was put in the budget for extra officer duty when needed. The Town Manager said no.

Council Member Hess advised Council to read the NC League newsletter regarding the state's proposal to cut the local municipalities wine and beer tax revenues for this budgeted year.

Council Member Pfizenmayer stated he supports the use of temporary speed bumps but they need to be placed on several streets, Hickory, E. Dogwood and S. Dogwood. He would like to see more multi-use paths.

The Town Manager stated previous statistics don't support that speeding is an issue. He would be willing to try using speed bumps and reducing the speed limit if directed by Council. He asked Council to allow him to discuss with the Town Engineer to see what engineering recommendations he may come up with.

Mayor Smith stated as a trial basis we may want to put an additional officer on Saturday and Sunday to give speeding tickets so the people will know we are serious about reducing speeding.

### **PUBLIC COMMENT**

Mayor Smith opened the public comment section.

David Sanders, 158 Beech Tree Trail, stated he finds it ironic that Council is talking about filling council vacancies. He stated Council Member McDonald was originally appointed by Council to fill a vacancy and then he ran for election and he probably doesn't feel he was part of the 'good ole boy' network. He also stated as related to holding special elections at the time Council first discussed being compensated it was suggested that a referendum be held for the citizens to vote but it was dismissed because the expense of a special election could be as much as \$3,000.

Hearing no other comments Mayor Smith closed the public comment section.

Hearing no other regular business Mayor Smith moved to go into closed session pursuant to N.C.G.S. 143-318.11. (a) (3) to consult with the attorney retained by the Town in a manner preserving the attorney-client privilege with regard to matters not yet in litigation, (6) to discuss a confidential personnel matter relating to a public employee or officer and section, (1) to prevent the disclosure of information that is privileged or confidential pursuant to the common law attorney-client privilege and NCGS 143-318.10 (e) and (5) to establish or to instruct staff or negotiating agents concerning the position to be taken in negotiating the price and other material terms of a contract or proposed contract for the acquisition of the following real property: 1) the parcels of property commonly known as Loblolly Marina, North Marin, East Side and the Azalea Land Property under the record ownership of the Southern Shores civic Association, Inc. for the purpose of obtaining a lease or an easement for the use in facilitating access to the Town's canals for the contractor engaged to perform the Town's canal dredging project and 2) the parcel of property known as 267 Hillcrest Drive under the record ownership of Warren B. Davis for the purpose of obtaining a lease or an easement for use in facilitating access to the Town's canals for the contractor engaged to perform the Town's canal dredging project. 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.

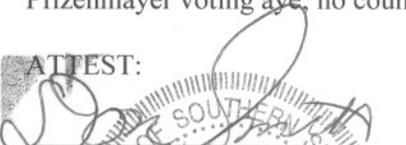
Upon returning to open session Council Member Hess moved to adopt Resolution 2009-08-07 releasing town attorney billing as request by the Sentinel. Council Member Pfizenmayer seconded. The motion passed with Mayor Smith and Council Members McDonald, Hess, and Stroud and Pfizenmayer voting aye; no council member voting no and no Council Member absent.

[Clerk's Note: Resolution 2009-08-07 is hereby attached as Exhibit I.

Council Member Stroud moved to authorize Council Member Hess to negotiate and execute the lease or easement with the Southern Shores Civic Association as applicable for the canal maintenance dredging project for the North Marina, East side, Loblolly Marina and Azalea Lane properties to be used for spoil sites. 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.

Mayor Smith moved to authorize Council Member Hess to negotiate and execute the lease or easement with Warren Davis at 267 Hillcrest Drive to be used for canal maintenance dredging spoil site. 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.

Hearing no other business Council Member McDonald moved to adjourn at 10:05 p.m. Mayor Smith 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.

ATTEST:  
  
Don Smith, Mayor



Respectfully submitted:  
  
Carrie Gordin, Town Clerk

Exhibit A Planning Board/Planning Advisory Group

**To:** Southern Shores Town Council (Don Smith, Brian MacDonald, Jodi Hess, Jim Pfizenmayer, Kevin Stroud); Town Attorney (Ben Gallop)

**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:** July 24, 2009

**Re:** Recap, Planning Board Meeting July 20, 2009

**Attach:** 090720 Gallop RE Zoning Approach

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**RECOMMENDED ACTIONS FOR THE TOWN COUNCIL:**

**APPROVE** – Planning Board recommendation for a zoning text amendment to permit wireless facilities in any zoning district within Southern Shores with conditions depending on the height of the supporting tower.

Recommended next steps include:

1. Complete an in-depth legal review of the proposed ordinance text (Ben Gallop indicates in his letter that he expects to do this prior to implementation of this recommendation)
  2. Conduct a public workshop to educate the community and gauge their response to the proposed wireless ordinance
  3. Schedule the required public hearing.
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**MEETING RECAP**

- I. **CALL TO ORDER:** Chairperson Wendt called the meeting to order at 7:00pm. Planning Board Members Nancy Wendt, Mike Florez, Bob Palombo and Sam Williams, alternate member Bill Gleason substituting for Jay Russell and alternate member Larry Lawhon were present. Board member Jay Russell and ETJ Representative Ed Overton were absent with excuse. Also in attendance was Executive Assistant Merrie Smith.
- II. **APPROVAL OF AGENDA:** Sam Williams motioned to approve the agenda. Mike Florez seconded the motion. The motion passed unanimously.

**III. APPROVAL OF MINUTES:**

Bob Palombo motioned to approve the Minutes from the May 18, 2009 Planning Board meeting. Mike Florez seconded the motion. The motion passed unanimously.

**IV. PUBLIC COMMENT:**

None

**V. PERMIT APPLICATIONS**

None

**VI. OTHER BUSINESS**

**WIRELESS FACILITIES**

Wireless Team Lead Larry Lawhon and Planning Board Chair Nancy Wendt opened the discussion with a brief summary of the Wireless Team findings and recommendations that were distributed to the Planning Board and presented to the Town Council on June 11, 2009. Key points included:

Wireless Committee Key Findings

1. Cellular service in Southern Shores is poor due to inadequate coverage (existing antennas on the Duck and Southern Shores water towers are too far apart) & capacity (existing antennas do not have enough capacity to handle peak demand.)
2. The cellular signal "dead zone" identified by the Wireless Committee has been independently corroborated by the RF engineers of every cellular carrier who has a license to operate in this area.
3. The current ordinance does not serve either citizens or carriers very well because it does not permit additional wireless facilities (towers, antenna arrays & accessory buildings/structures) within the area where the carriers' RF engineers want to put them.
4. Expansion of wireless infrastructure within Southern Shores is inevitable. The choice is whether to be proactive and work with the carriers to find a solution that balances community priorities and carrier priorities OR wait until a permit application / request for variance forces the issue.

Different Types of Wireless Facilities

Nancy Wendt reminded the Board of the distinction the Wireless Committee is recommending between short and tall towers in the definitions section of the proposed ordinance.

1. Short Tower – A wireless antenna support structure that is less than 70' tall and that is capable of supporting at least 1 wireless antenna array plus emergency communications antennas for SSPD and SSVFD.
2. Tall Tower – A wireless antenna support structure between 70' and 195' tall and that is capable of supporting at least 3 wireless antenna arrays plus emergency communications antennas for SSPD and SSVFD.

The policy questions before the Planning Board are:

1. Should the Town of Southern Shores permit wireless facilities (short towers, tall towers, cellular antenna arrays and associated accessory buildings or structures) any place within Southern Shores other than the commercial C1 district and on the Dare County water tower in the R1 district?
2. If so, where should wireless facilities be permitted?
3. If so, how should Southern Shores define the boundaries of the areas where wireless facilities will be permitted? (i.e., Use existing district boundaries? Create a new district? Create one or more overlay zones?)
4. If so, what if any conditions should apply to wireless facilities?

Objectives to be met in answering these policy questions:

1. Encourage the infrastructure investments that are needed to eliminate the "dead zone" without causing any unnecessary proliferation of wireless facilities throughout the residential areas of town.
2. Ensure that wireless facilities are sited and constructed in a manner that is:
  - a. Safe for residents, especially adjacent property owners
  - b. Effective in enabling a full spectrum of wireless services
  - c. Respectful of aesthetic character of Southern Shores
3. Maintain a level playing field for all wireless carriers, tower companies and property owners to compete for potential revenues associated with wireless facilities and services.

Zoning considerations related to these questions:

Ben Gallop, the Town Attorney reviewed the pros and cons of 3 zoning options for wireless facilities:

1. Modification of the uses allowable in residential zone(s)
2. Create an overlay district in the "dead zone"
3. Create an open space zoning district

For detailed comments on these three options, see the attached letter from Ben Gallop to the Planning Board dated July 20, 2009.

Summary of Planning Board Discussion

Larry Lawhon stated after reviewing Ben Gallop's letter he felt that modifying the permitted uses in the residential zone would be the most expedient, least costly solution.

Nancy Wendt explained that all of the carriers' RF engineers were in agreement that additional facilities are needed approximately half way between the antenna arrays that are located on the Duck and Southern Shores water towers. This midpoint area is where the "dead zone" is. Larry Lawhon stated that since the RF engineers' preferred sites fall

in the middle of a residential district, the conditions that are stipulated under the conditional use will be very important.

Sam asked what the significant costs in advertising, surveying and title work that Ben Gallop referred to in his letter would amount to. The amount of these expenses has not been estimated.

Sam Williams feels wireless facilities should be conditional use wherever they are permitted. He also expressed concern about the possible unnecessary proliferation of facilities within residential neighborhoods. Larry Lawhon feels that proliferation can be managed with careful attention to the conditions. He elaborated that conditions related to tower height, setback limits, fall zones etc. would have the effect of limiting the number of sites that could be used for a wireless facility within the residential zones.

Sam Williams agreed with Larry that modifying the uses in the residential zone is the best zoning option. Mike Florez asked if we allowed tall towers in the overlay would that help out with the dead zone issue. Larry Lawhon explained that all three zoning options would allow tall towers to be sited in a way that would strengthen coverage in the "dead zone". Bob Palombo stated the conditions recommended in the DRAFT ordinance are extensive and should produce the desired results. Larry Lawhon stated that Ben Gallop expects to review them again in depth before the Council takes action.

Bill Gleason asked if any zoning option is better than the others in the long run. Larry Lawhon feels this is a moot point because it is unlikely that more than one tall tower will be needed or proposed by the carriers. Nancy Wendt explained that from the point of view of current or future Town Councils there is more flexibility to accommodate future technological changes or other types of wireless infrastructure (such as wireless facilities for broadband internet access or wifi) with the first zoning option because it opens up all zones and controls proliferation through conditions rather than through district boundaries.

The Town Council can change the specific conditions that are applied to any conditional use permit application. The Council can also modify the conditional uses that are permitted in the zoning ordinance with a zoning text amendment. With either of the other zoning options, zoning district boundaries are part of the proliferation control mechanism and therefore a zoning map amendment plus a zoning text amendment would be required to accommodate a future wireless use that is unknown today.

Bob Palombo made a motion and Bill Gleason seconded the motion to recommend that the Town Council proceed to adopt the proposed Ordinance for Wireless Facilities. The motion passed unanimously.

Sam Williams made a motion and Bob Palombo seconded the motion to recommend that the Town Council apply the proposed Ordinance as follows:

1. Wireless facilities that meet the definition of "short towers" shall be permitted uses in every zoning district
2. Wireless facilities that meet the definition of "tall towers" shall be conditional uses in every zoning district.

The motion passed unanimously.

**VII. OTHER ITEMS**

None

**VIII. ANNOUNCEMENTS:**

Regularly scheduled meetings for the next month are:

August 3, 2009 at 7pm at the Pitts Center  
PAG working session - Transportation  
Review Transportation Plan revisions to policy 5 & all policy action items

August 17, 2009 at 7pm at the Pitts Center  
Planning Board meeting – CANCELLED  
(No applications are pending review at this time)

August 17, 2009 at 7pm at the Pitts Center  
PAG working session - Wireless  
Review & finalize wireless public workshop plan  
Prepare a “consistency” statement for the wireless ordinance  
Review any comments from Ben Gallop regarding proposed ordinance

**IX. ADJOURNMENT:**

Mike Florez made a motion and Bill Gleason seconded the motion to adjourn.  
The Planning Board meeting adjourned at 7:45 pm.

**To:** Southern Shores Town Council (Don Smith, Brian MacDonald, Jodi Hess, Jim Pfizenmayer, Kevin Stroud); Town Attorney (Ben Gallop)

**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:** July 24, 2009

**Re:** Recap, PAG Working Session July 20, 2009

**Attach** PAG Summary Sheet as of July 20, 2009  
Information & Reference Guide to Vertical Axis Wind Turbines

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**RECOMMENDED ACTIONS FOR TOWN COUNCIL**

**REQUESTS FOR TIME ON TOWN COUNCIL AGENDA**

8/04/09 – none

## **PAG MEETING RECAP JULY 20, 2009**

The Planning Advisory Group working session convened at 7:45pm immediately following adjournment of the Planning Board meeting. Planning Board Members Nancy Wendt, Mike Florez, Bob Palombo, Sam Williams and alternate member Bill Gleason and Larry Lawhon were present. Also in attendance was Executive Assistant Merrie Smith.

Guests included: Council Member Jodi Hess; resident Jim Millis and his attorney John Gaw; and resident Joe Archibald. Since the resident guests were primarily interested in the wind generation project, the PAG team agreed to move this item to the top of the Agenda.

### Wind Generation Facilities

Jim Millis, a long term resident of Southern Shores, stated that he is interested in this subject because he believes alternative energy is an essential part of our future. He explained that Southern Shores' wind profile favors wind as an alternative energy source. Consequently, Jim and his wife have installed a vertical axis wind turbine at their home and they would like to connect it if it becomes a permitted use in the residential zone.

Jim Millis favors vertical axis wind turbines which have been in use on yachts for some time because of their many benefits. Some of the benefits he enumerated include it is quiet, it presents no threat to birds, it captures wind energy from any direction and it is designed to be efficient even at low speeds. Jim handed out an Information and Reference Guide on Vertical Axis Residential Wind Turbines and offered to assist the PAG project team in any way that he can.

Joe Archibald is interested in all forms of alternative energy generation including wind and solar. He and his wife are part-time residents of Southern Shores with a goal of becoming full time residents when they retire.

Mike Florez is the project team lead for this project. Joe Archibald, Jim Millis, John Gaw, Merrie Smith and Nancy Wendt have volunteered to work on this team. Mike will check everyone's calendar and set it up an initial meeting sometime in the next couple of weeks.

### Planning Board Rules of Procedure

Merrie Smith will close out this item with Carrie Gordin, Town Clerk, to make sure the revised Rules of Procedure are on file in the Clerk's office and on the Town website.

### CAMA LUP Update Project

Sam Williams reported that the Town Council approved the goals, policies & action items as recommended. He is currently working on the futures section and expects to have a draft ready for review shortly. He will circulate the draft to Town Council, Planning Board / PAG for comments as soon as it is ready.

### Transportation Plan Project

Bob Palombo reported the Town Council approved all recommended policies except the one for low speed vehicles. He is preparing a presentation to facilitate a follow-up session with the Council to discuss the policy on low speed vehicles and the recommended action items associated with each of the seven Transportation policies.

Merrie Smith will request time on the Council agenda for August 25, 2009 for this purpose. Bob Palombo will review his presentation with the PAG on August 3, 2009 in preparation for the Council session on August 25, 2009.

#### Cut Through Traffic Proposal

It was agreed this activity is not on the PAG schedule. If the Council decides that cut through traffic on town owned roadways needs to be reduced, the PAG supports the three step process outlined in the Cut Through Traffic recommendation.

#### Wireless Facilities Project

Larry Lawhon reported that the Town Council approved the recommendation to proceed with a proposed ordinance. Based on this approval he reviewed zoning options with Ben Gallop and presented them with the DRAFT ordinance to the Planning Board. The Planning Board voted unanimously to send the proposed ordinance to the Town Council.

Recommended next steps include:

1. Complete an in-depth legal review of the proposed ordinance text. Ben Gallop indicated in his letter to the Planning Board that he expects to do this prior to implementation of this recommendation.
2. Conduct a public workshop to educate the community and gauge their response to the proposed wireless ordinance.
3. Schedule the required public hearing.

Larry Lawhon will follow-up with Ben Gallop regarding a legal review of the ordinance language and he will prepare an agenda for the public workshop. He will review these items with the PAG on August 17, 2009 in preparation for a presentation to the Town Council on August 25, 2009. Merrie Smith will request time on the Town Council agenda for August 25<sup>th</sup>.

#### Stormwater Management Plan

This item from the June 11 packet is still pending discussion with the Town Council. Jay Russell is scheduled to review this recommendation with the PAG on August 17<sup>th</sup> in preparation for presentation to the Council in September.

#### Financial Planning SOW

Nancy Wendt reported that this proposal was not accepted by the Town Council. The project was dropped from the PAG schedule of work effective 6/23/09.

#### CIP Task Force

Bill Gleason reported that the Town Manager is considering changing this town project from a task force to a permanent committee. During this transition the composition of the CIP team may change and one or more members of the Planning Board may be asked to volunteer their services. Work will begin in September and continue through the fall.

NOTE – Once the CIP project establishes its schedule, the PAG will provide input for all capital projects that are associated with the implementation of the LR Plans that the PAG develops &/or maintains. Specifically the PAG will provide written recommendations to the CIP Task Force regarding:

- a. Project interdependencies, synergies, timing considerations & priorities
- b. Proposed capital funding estimates
- c. Proposed project funding strategies

The PAG will provide this input regardless of whether or not the CIP Task Force includes any members of the Planning Board.

#### Planning Board Appointment Process

The Town Council decided to strengthen the process for qualifying and appointing new Planning Board members by beginning with the existing process (step 1 below) and testing the proposed additional steps (steps 2 and 3 below.)

1. Volunteer applications will be received and reviewed by Carrie Gordin the Town Clerk. If an applicant is a resident of Southern Shores and is willing serve, then their name will be added to the list of qualified applicants in the order in which their application was received. This is the existing process required by the Town Code.
2. Two seated members of the Planning Board will meet with each new applicant to answer questions, to discuss the nature of the Board's work and to give the applicant an idea of the number of hours board members typically spend on Planning Board / PAG business in an average month. Assuming that the applicant is still interested, their name remains on the list of qualified applicants. To the extent practical, these discussions will be scheduled within 30 days of receiving a new application.
3. When a Planning Board opening occurs the Town Clerk will advise the Planning Board of the names of the qualified applicants and the order in which their applications were received.
4. The Planning Board will review the list and recommend appointment of the next qualified applicant on the list (the current process) unless appointment of that applicant would result in an imbalance on the Board.

Potential imbalances that the Planning Board wishes to avoid are three or more members who live in the same neighborhood, represent the same industry (e.g., all realtors, all developers, all landscapers, etc.) or pose a potential conflict of interest because they all serve as leaders in another organization that may wish to influence Planning Board decisions (e.g., all three are Board members of the same Civic Association, the Duck Woods CC, the SS Boat Club, the SS Tennis Club etc..)

In the event of a potential imbalance the Planning Board would move down the list of qualified applicants in the order that applications were received until an applicant who does not create an imbalance is found.

5. The Planning Board will document its findings and provide a written recommendation to for the Town Council's consideration when they vote on an appointment to fill the opening(s) on the Planning Board.
6. When an applicant is skipped over due to a potential imbalance in the Board, their name will remain on the list of qualified applicants in the order in which their original application was received until they appointed or they ask to have their name removed from the list. Thus, whenever there is another opening to fill anyone who was previously skipped will

be considered again. If the potential for imbalance no longer exists, they will be recommended for appointment.

NOTE – The Martin's Point ETJ Representative to the Planning Board is appointed by Dare County. Therefore, this process does not apply to that position on the Planning Board.

Nancy Wendt will update the volunteer brochure DRAFT by the end of September to reflect this process and will review the updated DRAFT with the Planning Board and Board of Adjustments prior to sending it to the Council for adoption.

#### Citizen Communications SOW

Nancy Wendt reported that the Town Council accepted the statement of work for this project. Bob Palombo and Merrie Smith have both volunteered to serve on this project team. This project will begin in the fall.

#### Regularly scheduled meetings for the next month are:

August 3, 2009 at 7pm at the Pitts Center  
PAG working session

##### Transportation Plan (Bob Palombo)

- Discuss presentation of revisions to policy 5 & action items to Council

August 17, 2009 at 7pm at the Pitts Center  
Planning Board meeting – CANCELLED  
(No applications have been submitted for review)

August 17, 2009 at 7pm at the Pitts Center  
PAG working session

##### Wireless Facilities Plan (Larry Lawhon)

- Review & finalize wireless public workshop plan
- Review any comments from Ben Gallop regarding proposed ordinance

##### Wind Generation Plan (Mike Florez)

- Discuss team composition
- Discuss project plan & schedule

September 8, 2009  
PAG working session

##### Stormwater Management Plan (Jay Russell)

- Prepare for discussion with Town Council September 1

##### CAMA LUP Plan (Sam Williams)

- Review DRAFT of Futures Section
- Review new / revised map work

##### Community Communications Plan (Team Lead To Be Determined)

- Organize team Fall 2009
- Prepare project plan and schedule

Meeting Adjourned 8:50PM

**Exhibit B AN ACT TO REVISE THE CHARTER OF TOWN OF SOUTHERN SHORES AND CHANGE THE METHOD BY WHICH VACANCIES IN THE OFFICES OF MAYOR OR COUNCIL MEMBER ARE FILLED**

The General Assembly of North Carolina enacts:

Section 1: If a vacancy occurs in the office of mayor or any council member, it shall be filled by election, notwithstanding 160A-63, as follows:

- (A) If the vacancy occurs within ninety (90) days, including the ninetieth (90<sup>th</sup>) day, before the last date for filing Notices of candidacy pursuant to G.S. 163-292<sup>1</sup> before the next regular municipal election than a successor shall be elected at the next regular town election. The elected successor shall serve the remainder of the unexpired term of the office in which the vacancy occurs unless the term of said office expired at the next regular town election in which case the elected successor shall serve the full four year terms as provided in Section 3-3 of the Charter of the Town of Southern Shores: or
- (B) If the vacancy occurs more than ninety (90) days before the last date for filing notices of candidacy pursuant to G.S. 163-294.2 for the next regular town election then a successor shall be elected in a special election to fill said vacancy. In such event, the Town Council shall meet within ten (10) days of the event creating the vacancy and shall notify in writing the Dare County Board of Elections, who shall conduct a special election at the Town's expense within ninety (90) days in accordance with the procedures for conducting a municipally mixed beverage special election [G.S. 18B-601(c)].
- (C) If by reason of a vacancy there shall be two (2) seats to be filled in the same election then candidates shall declare for the specific seat or office which said candidate is seeking in the notice of candidacy. Each seat shall be a single office and the successor elected as provided in G.S. 163-292

No person may be so elected to the office of mayor or council member unless said person is a resident and qualified voter of the town.

If the mayor or any council member should change his or her residence from the town, his or her term of office shall immediately expire upon such change and a vacancy as to that office shall immediately occur.”

Section 2. To the extent any provisions of Chapter 203 of the Session Laws of 1979)<sup>2</sup> is inconsistent with any provision of this act, this act prevails.

Section 3. This act is effective upon ratification.

Adopted this 8<sup>th</sup> day of February, 2006.

<sup>1</sup> The Southern Shores Town Charter (§4-1) provides that elections shall be held in accordance with Section 163-292, which is the plurality method of election.

<sup>2</sup> Charter for the Town of Southern Shores.

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

ATTEST:

S E A L

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

Exhibit C

ORDINANCE 2009-07-02

AN ORDINANCE ADOPTING AND ENACTING A NEW CODE FOR THE TOWN OF SOUTHERN SHORES, NORTH CAROLINA; PROVIDING FOR THE REPEAL OF CERTAIN ORDINANCES NOT INCLUDED THEREIN; PROVIDING A PENALTY FOR THE VIOLATION THEREOF; PROVIDING FOR THE MANNER OF AMENDING SUCH CODE; AND PROVIDING WHEN SUCH CODE AND THIS ORDINANCE SHALL BECOME EFFECTIVE.

BE IT ORDAINED BY THE TOWN COUNCIL:

Section 1. The Code entitled "Code of Ordinances, Town of Southern Shores, North Carolina," published by Municipal Code Corporation, consisting of chapters 1 through 36, each inclusive, is adopted.

Section 2. All ordinances of a general and permanent nature enacted on or before February 3, 2009, and not included in the Code or recognized and continued in force by reference therein, are repealed.

Section 3. The repeal provided for in section 2 hereof shall not be construed to revive any ordinance or part thereof that has been repealed by a subsequent ordinance that is repealed by this ordinance.

Section 4. Unless another penalty is expressly provided, every person convicted of a violation of any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished in accordance with Section 1-6 of the new code of ordinances. Each act of violation and each day upon which any such violation shall continue or occur shall constitute a separate offense. The penalty provided by this section, unless another penalty is expressly provided, shall apply to the amendment of any Code section, whether or not such penalty is reenacted in the amendatory ordinance. In addition to the penalty prescribed above, the town may pursue other remedies such as abatement of nuisances, injunctive relief and revocation of licenses or permits.

Section 5. Additions or amendments to the Code when passed in such form as to indicate the intention of the town to make the same a part of the Code shall be deemed to be incorporated in the Code, so that reference to the Code includes the additions and amendments.

Section 6. Ordinances adopted after February 3, 2009, that amend or refer to ordinances that have been codified in the Code, shall be construed as if they amend or refer to like provisions of the Code.

Section 7. This ordinance shall become effective upon adoption.

Passed and adopted on this 4<sup>th</sup> day of August, 2009.

1<sup>st</sup> Reading: July 7, 2009

2<sup>nd</sup> Reading: August 4, 2009

S E A L

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

ATTEST:

VOTE: 5 Aye 0 Nay

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

Exhibit D

**Ordinance No. 2009-07-03**

**AN ORDINANCE OF THE SOUTHERN SHORES TOWN COUNCIL  
AMENDING CHAPTER 8 SOLID WASTE**

***A. Article I: Purpose***

The purpose of this Ordinance is to amend the Town Code of Southern Shores, Dare County, North Carolina, which was originally adopted by the Town Council on October 2, 1979 and subsequently amended.

**Article II. Amendment of Chapter 26 of the Town Code of Southern Shores**

NOW THEREFORE, BE IT ORDAINED by the Town Council for the Town of Southern Shores, North Carolina that Chapter 26 of the Code of Ordinances of the Town of Southern Shores, North Carolina as now exists or as re-codified is hereby amended to add the following:

**Sec. 26-21: Licensing of Solid Waste Collectors**

**(a) The following definitions shall apply to this Section.**

Board: The Town Council for the Town of Southern Shores

Collection: The act of removing solid waste to the Transfer Stations or the Facility.

Facility: The East Carolina Environmental Landfill in Bertie County, North Carolina.

Person: Any individual, corporation, company, association, partnership, unit of local government, state agency, federal agency or other legal entity.

Solid waste: any solid wastes that may be disposed of in sanitary landfills, including, without limitation, garbage, refuse, trash and other discarded material, whether from residential, commercial, industrial or institutional sources, which wastes are typically found in household, commercial or municipal refuse.

Solid waste collector means any person who collects, transports or disposes of solid wastes for compensation, other than one who removes solid waste from his own premises.

Solid waste license or license means a license for the collection, transportation and disposal of solid waste pursuant to Section 2 of this article.

Transfer Stations means the following three transfer stations: Chowan/Gates/Perquimans Counties Transfer Station, Currituck County Transfer Station and Dare County Transfer Station.

**(b) Solid waste license required.**

It shall be unlawful for any person to engage in business as a solid waste collector within any area of the Town, without first having procured a solid waste license from the Board. All solid waste collectors within the Town shall dispose of all solid waste generated within any area of the Town at the Facility or the Transfer Stations.

**(c) Application, issuance, revocation of license.**

- a) *Application.* All applicants for solid waste licenses shall file a written application with the Board's authorized representative and shall furnish the following information:
  - 1) The name and address of the applicant, and whether the applicant is a sole proprietorship, corporation, partnership or other entity;
  - 2) A list of the collection vehicles the applicant plans to use in the Town; and
  - 3) Any other information the Board's authorized representative may reasonably request.
- b) *Five-year license.* Solid waste licenses shall be issued for five-year periods. Licenses may be renewed with the information designated in subsection (a) of this section being presented to the Board's authorized representative at least thirty (30) days prior to the expiration of the existing and valid license.
- c) *Selection of applicants; granting of licenses.* The Board's authorized representative shall review applications for solid waste licenses and license renewals, and shall issue licenses and renewals to applicants meeting the requirements of this article.
- d) *Investigation of solid waste collectors prior to license issuance.* Before issuing a license pursuant to this article, the Board's authorized representative may inspect the facilities, equipment and solid waste collection vehicles the applicant plans to use in the solid waste collection business.
  - 1) The Board's authorized representative shall issue the applicant a license when the Board's authorized representative determines that the application is complete and the applicant is in compliance with this article.
  - 2) When a license is issued to a solid waste collector, the solid waste collector shall affix a sticker indicating that the solid waste collector has a valid license to all of its solid waste collection vehicles that are to be operated in the Town. The Board's authorized representative shall issue stickers to the solid waste collector at the time the license is issued. Licensees may obtain additional stickers from the Board's authorized representative.
  - 3) If the Board's authorized representative denies an applicant a license, the applicant may request a hearing before the Board by giving written notice of appeal to the Town Manager within (5) five working days of receipt of the Board's authorized representative's decision denying the license. After a hearing on the appeal, the Board shall either affirm the denial or direct the Board's authorized representative to issue the license.

- e) *Revocation.* When the Board's authorized representative finds that a licensee has violated this article or the conditions of the license, the licensee shall receive written notice of the violation and be informed that if another violation occurs within (30) thirty-working days, or in the case of continuing violation if it is not corrected within (10) ten-working days, the license will be revoked. If another violation occurs within the (30) thirty-working day period, or if the continuing violation is not corrected within (10) ten-working days, the Board's authorized representative shall give the licensee written notice that the license is revoked. Upon receipt of the revocation, the licensee shall cease collecting, transporting or disposing of solid wastes in any area of the Town immediately. The Board's authorized representative may reinstate a revoked license after the revocation has been in effect for (30) thirty working days if the Board's authorized representative finds that the conditions causing the violation have been corrected. A licensee whose license has been revoked may appeal the revocation to the Board by giving written notice of the appeal to the Board's authorized representative within (5) five working days of receiving notice of revocation from the Board's authorized representative. After a hearing on the appeal, the Board shall either affirm the revocation or direct the Board's authorized representative to reinstate the license.

**(d) License fee.**

The licensee shall pay to the Town or its authorized representative, the sum set by the designated representative, not to exceed fifty dollars (\$50.00), for the issuance of the license, and the sum of one dollar (\$1.00) for each sticker to be affixed to each solid waste collection vehicle.

**(e) Non-transferability of licenses.**

Solid waste licenses are non-transferable and non-assignable.

**(f) Responsibilities of licensee.**

- a) The licensee shall serve every person who contracts with it for solid waste collection in such a manner that the licensee does not cause the person to be in violation of this article.
- b) The licensee shall dispose of all solid waste generated within any area of the Town at the Facility or the Transfer Stations.
- c) A licensee shall submit an annual report to the Board's authorized representative containing the following information:
  - 1) A list of the collection vehicles the licensee used in the Town during the reporting year;
  - 2) The total amount of solid waste collected in the Town and the locations where the solid waste was disposed of during the reporting year;
  - 3) A certification that all solid waste the license collected in the Town was disposed of at the Facility or the Transfer Stations; and
  - 4) Any other information the Board's authorized representative may reasonably request.

**(g) Enforcement.**

- a) *Penalty.* Any person who is found in violation of this article shall be subject to a civil penalty of not to exceed \$500.00 as provided in N.C.G.S. § 153-123. Each day's violation shall be treated as a separate offense.
- b) *Remedies.* This article may be enforced by equitable remedies, and any unlawful condition existing or in violation of this article may be enforced by injunction and order of abatement in accordance with N.C.G.S. § 153A-123.

**Article III. Severability**

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

**Article IV: Effective Date**

This Ordinance is effective immediately upon adoption.

Adopted this the 4<sup>th</sup> day of August 2009.

1<sup>st</sup> Reading: July 7, 2009

2<sup>nd</sup> Reading: August 4, 2009

S E A L

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

ATTEST:

VOTE: 5 Aye 0 Nay

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

Approved as to form:

\_\_\_\_\_  
Ben Gallop, Town Attorney

Exhibit E

Resolution 2009-08-01

**THE SUPPLEMENTAL RETIREMENT INCOME PLAN  
OF NORTH CAROLINA EMPLOYER-THIRD PARTY ADMINISTRATOR  
AGREEMENT**

WHEREAS, the State of North Carolina (the "State") has adopted the Supplemental Retirement Income Plan of North Carolina (herein called he "Plan"), pursuant to which the State of North Carolina and its department, agencies and political subdivision are authorized to provide a supplemental retirement plan established in conformance with section 401 (k) of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, the State's Supplemental Retirement Board and the State's Retirement Systems Division of the Department of State Treasure have selected Prudential to be the Third-Party Administrator of the Plan.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained within the said agreement the receipt and sufficiency of which are hereby acknowledged, the Employer and the Third-Party Administrator hereby agree.

Adopted this the 4<sup>th</sup> day August, 2009.

S E A L

ATTEST:

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

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

**Town of Southern Shores Resolution to Approve**

**Personnel Policies**

**WHEREAS**, the Town of Southern Shores Personnel Policies require revisions periodically in order to ensure their compliance with current laws and practices; AND

**WHEREAS**, the Council desires to adopt a resolution approving revised/updated personnel policies; AND

**WHEREAS**, the Council is authorized to approve the revised Personnel Policies; AND

**WHEREAS**, the following personnel policy has been presented to the Council for its consideration and acceptance:

Article VII, Section 17. Family and Medical Leave

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the Town of Southern Shores that the Town Manager is hereby authorized to implement the revised Personnel Policy as presented.

Adopted this the 4th day of August 2009.

S E A L

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

ATTEST:

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

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHERN SHORES,  
NORTH CAROLINA ADOPTING AND RATIFYING AGREEMENTS RELATED TO SPOIL  
DISPOSAL FOR THE TOWN'S CANAL DREDGING PROJECT**

**WHEREAS**, in support of the Town's Canal Dredging Project, the Town Council previously authorized Council Member Deanna J. Hess to negotiate and enter into agreements for the acquisition of interests in land with Southern Shores Realty Company, Inc., Chicahawk Property Owners Association, Inc. and Duck Woods Country Club, Inc. pursuant to certain terms; and

**WHEREAS**, Council Member Hess has executed and entered into agreements with all of the above-referenced parties for the acquisition of interests in land consistent with the Town Council's prior authorization and within the terms directed by the Town Council; and

**WHEREAS**, the Town Council wishes to clarify Council Member Hess's authority to enter into said agreements, to ratify the execution and entry into those agreements and to further acknowledge its support for the same.

**NOW, THEREFORE BE IT RESOLVED**, the Town Council hereby reiterates and ratifies the authorization of Council Member Deanna J. Hess to execute on its behalf and bind the Town to the terms of the following agreements for acquisition of interests in land:

1. Lease Agreement and Grant of Easements between the Town of Southern Shores and Southern Shores Realty Company, Inc. dated June 18, 2009;
2. License Agreement between the Town of Southern Shores and Duck Woods Country Club, Inc dated July 31, 2009; and
3. Deed of Temporary Easement between the Town of Southern Shores and the Chicahauk Property Owners Association, Inc. dated June 25, 2009;

Adopted this 4th day of August, 2009.

S E A L

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

Attest:

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

Exhibit H

Resolution 2009-08-04

North Carolina Department of Transportation To Inspect Town Bridges In Accordance With The National Bridge Inspection Standards

The following resolution was introduced and Council Member Hess moved that it be adopted. The motion was seconded by Council Member Pfizenmayer and upon being put to a vote the resolution unanimously was carried.

WHEREAS, the Town of Southern Shores has requested the Department of Transportation to perform certain work under the Federal-Aid Highway Bridge Replacement and Rehabilitation Program, said work to consist of the inspection and analysis of all public bridges on the Municipal Street System in the Town of Southern Shores; and

WHEREAS, the Town of Southern Shores proposes to enter into an agreement with the North Carolina Department of Transportation for said work wherein the Department of Transportation or a Consulting Engineering firm retained by the Department of Transportation will inspect and prepare the necessary reports for all public bridges on the Municipal Street System in accordance with the National Bridge Inspection Standards; and

WHEREAS, under the proposed agreement the Federal Highway Administration shall reimburse the Department of Transportation for eighty (80) percent of the cost of the work subject to compliance with all applicable federal policy and procedural rules and regulations; and

WHEREAS, under the proposed agreement the Town of Southern Shores shall reimburse the

Department of Transportation for all costs of the work incurred by the Department of Transportation not paid by the Federal Highway Administration.

NOW THEREFORE, BE IT RESOLVED that the agreement for the herein above referenced bridge inspection work is hereby formally approved by the Town of Southern Shores and the Mayor and or the Manager of this Municipality are hereby empowered to sign and execute the required agreement between the Town of Southern Shores and the Department of Transportation.

This Resolution was passed and adopted the 4<sup>th</sup> day of August, 2009.

ATTEST:

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

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

Approved to form:

\_\_\_\_\_  
Ben Gallop, Town Attorney



# 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

## RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHERN SHORES, NORTH CAROLINA RELEASING CERTAIN ATTORNEY BILLING RECORDS (Resolution #2009-08-7)

WHEREAS, the Town Council of the Town of Southern Shores has recently received from the Outer Banks Sentinel a request pursuant to the North Carolina Public Records Act for copies of the Town's attorney billing records received during the six months preceding July 15, 2009; and

WHEREAS, the Town Attorney has provided the Outer Banks Sentinel with redacted copies of the requested billing records; and

WHEREAS, the Town Council does not wish to waive its attorney client privilege with regard to any material in the billing records being provided to the Outer Banks Sentinel; and

WHEREAS, the Town Council intends to act in the most transparent manner that it possibly can and seeks to comply with the North Carolina Public Records Act to the maximum extent possible.

NOW, THEREFORE BE IT RESOLVED, the Town Council hereby ratifies the release of redacted billing statements by the Town Attorney and authorizes the Town Clerk, in consultation with the Town Attorney, or the Town Attorney alone to disclose any attorney billing information responsive to the above-referenced request of the Outer Banks Sentinel which is reasonably required to be disclosed pursuant to the North Carolina Public Records Act and to remove any redactions on information already provided so long as the Town Attorney reasonably believes that doing so will not materially prejudice the Town in any ongoing or future litigation. Any such a disclosure shall not be deemed to be a waiver of the Town's attorney-client privilege.

Adopted this 14 day of August, 2009.  
  
Don Smith, Mayor  
Attest:  
  
Carrie Gordin, Town Clerk

