



Town of Southern Shores

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Council Meeting
October 27, 2009
8:00 a.m.-Pitts Center

The Southern Shores Town Council met on October 27, 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 8:00 a.m. and led the Pledge of Allegiance. He asked that a moment of silence be held for the fourteen troops killed in Afghanistan as well as all our men and women serving around the world.

APPROVAL OF AGENDA

Council Member Hess moved to approve the agenda 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.

PRESENTATIONS

Dare County Visitor's Bureau, Lee Nettles, Director

Mr. Nettles stated he previously worked for the city of Wilmington and was able to bring people to the beach. He stated he loves the area and is looking forward to working with everyone. He stated he welcomes council to approach him with their ideas and their concerns.

Dominion Power, Ken Barker, Vice President and Bryant Brooks, Governmental Affairs Manager

Bryant Brooks stated Dominion Power hosted a jurisdictional meeting with the coastal communities at the Hilton with approximately fifty people in attendance including Mayor Smith and Charlie Read. He stated following the meeting they asked if he could come to speak at a town meeting.

Mr. Barker stated Dominion Power provides service to 2.5 million people in Virginia and North Carolina and North Carolina is a very important customer. He discussed the options of placing the service lines overhead or underground. He stated liability is an important issue. He stated right-of-way trimming of trees is done in a three-year cycle with 1300 miles of trimming done in a year. He stated reliability of service is the key factor and in 2009 to date the average customer has been out of power only about forty minutes. He stated the North Carolina Utilities Commission (NCUC) released a study in 2003 of collected data from all the electric utilities in the state to determine the cost of putting everything underground relating to the distribution of electricity to every customer and that it would cost \$41 billion and take 25 years to complete.

He stated it would dramatically impact the electric rates. He stated it would cost \$2-3 million to underground the remainder of the lines in Southern Shores. He stated the circuits are reviewed every year to determine performance and reliability issues and as long as the circuit is performing to high standards there is no reason to place the lines underground.

He stated the cost of placing the lines underground for aesthetic purposes lies with the customers. He stated the underground facilities generally experience about 50% of the outages that overhead facilities may incur but the underground repair takes about 60% longer which extends the outage. He stated if there were special situations or specific issues that require additional review, Dominion would work with Town officials and the customer on a case by case basis. He stated Dominion is reconditioning some of its' existing overhead lines to perform even better in the future and they are very satisfied with the reliability of the overhead system on the Outer Banks during the past five years.

Council Member McDonald asked what Dominion does to prepare for an upcoming storm. Mr. Barker stated local resources are pre-staged, other resources from other areas are deployed and mutual aid is established.

Council Member Stroud asked if the area received several storms in a year with outages would Dominion consider placing the lines underground.

Mr. Barker stated one third of the system in town is underground. He stated the areas of outages would be reviewed and engineers would make recommendations. He stated there are areas where underground placement is required; subdivisions and heavily treed areas but areas with repeated outages would be a consideration for placement underground.

Council Member McDonald asked is there a life safety issue with overhead lines.

Mr. Barker stated all lines are required to be safe and Dominion feels the systems in place are safe.

Mayor Smith asked if a homeowner can pay to have lines put underground.

Mr. Barker said yes but it is very costly hundreds of thousand of dollars.

Several residents addressed certain problem areas where they think the lines should be placed underground i.e. Beech Tree, Skyline Road and at the north marina (S. Dogwood Trail).

Mr. Barker stated Dominion would send an engineer to look at these areas and if determined there is a performance issue recommendations would be discussed with the Town Manager.

The Town Manager extended an invitation to Dominion to attend the town's table top 2010 hurricane exercise.

Mayor Smith thanked them for coming.

FY 2008-2009 Audit Report-Teresa Osborne, Dowdy & Osborne, CPA

T. Osborne presented the FY2008-2009 Audit and reported the FY08-09 audit shows revenues over expenditures in the amount of \$206,400 which brings the total fund balance as of June 30, 2009 to \$3,873,862. She stated there will be some required changes to next year's audit such as reporting the fund balance will no longer be referred to as designated and undesignated but will be referred to as spendable and non-spendable and there will be a required actuarial study for retired employees.

She thanked the staff for their help during the audit process.

Mayor Smith thanked her for the presentation.

[Clerk's Note: A copy of the FY 2008-09 Audit is available for review at Town Hall].

GENERAL PUBLIC COMMENT

Mayor Smith opened the public comment.

Dan Shields, Southern Shores Civic Association president, stated the SSCA had begun the process to burn the cut diseased pine trees when it was learned that the trees could not be burned. He stated the SSCA and the Town's Public Works Department together worked with Atlantic Tree to remove the trees. He thanked Deputy Fire Chief Shrader and Charlie Read, town manager, for their help.

Hearing no other comments Mayor Smith closed the public comment

APPROVAL OF MINUTES-September 22, 2009

Council Member Hess moved to approve September 22, 2009 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

Budget Amendment FY 2009-2010 #3

Council Member McDonald moved to approve budget amendment 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.

REPORTS -None

OLD BUSINESS

Wireless Committee

Nancy Wendt, Planning Board chair, provided a power point presentation on the draft wireless ordinance set for public hearing on November 4, 2009 as well as additional materials for Council. She stated a public information workshop was held by the planning board on October 14 but Council members in attendance were not allowed to participate in discussion at that time. She stated this time will allow Council to address their comments and concerns.

Following the presentation the Town Attorney clarified a tower cannot stand alone on a lot it must be considered as an accessory use to a primary use. He stated the Wireless Committee has made some changes to the proposed ordinance dealing with setbacks and changing all structures (short or tall towers) to require the application as a conditional use in all zoning districts rather than short towers being a permitted use and tall towers being a conditional use.

Council Member Hess reminded Council there is a scheduled 10:00 a.m. canal maintenance dredge bid opening and this presentation may take longer than time allows. She requests the public hearing not be held as advertised (November 4) since there are proposed changes being made to the ordinance. She recommends a new public hearing be set when the ordinance is complete.

Mayor Smith stated he supports having the public hearing and there is no reason to put this off. He stated the committee requested an hour for their presentation and Council may need to recess this meeting so council and staff can attend the canal maintenance dredge bid opening.

N. Wendt stated she is not asking for an approval from Council at this time she would just like to get through the presentation.

Council Member Hess stated she would like to have materials in advance of the meeting to have time to review before providing comments.

N. Wendt stated it is her intention to provide Council with documents so they can have time to read them.

Council Member Stroud asked why there isn't an overlay district and stated he is concerned allowing towers in any zoning district.

The Town Attorney stated additional requirements are needed and it is a complicated procedure for an overlay district and the way that it is presented is the better way.

Council Member Stroud asked where the designated sites are located for tower use.

The Town Attorney stated it would be preferred not to identify the sites due to the aspect of a spot zoning issue.

Council Member Stroud stated he isn't sure about approving an ordinance if he doesn't know where the towers may be placed.

The Town Manager stated Council will have control over the placement of the towers through the conditional use process.

Council Member McDonald stated there would not be a proliferation of towers the town would need no more than one or two. He stated it would not be feasible to have more.

Mayor Smith stated in order for those who need to attend the canal maintenance dredge bid opening beginning at 10:00 a.m. this portion of the meeting needs to be put on hold in order to have a canal dredge update from Tom Bennett, canal project manager. Mayor Smith stated this meeting will recess for a short period and upon returning the wireless discussion will continue.

Tom Bennett reported at this time the town currently has received one bid for the 4th bid opening. He stated we have received the Submerged Aquatic Vegetation Transplanting permit as required and the project is complete and submitted. He stated the new methodology option presented to CAMA has caused some concern on their part since they are not familiar with this type of dredging and this may require additional approval. He stated once the bid is awarded CAMA wants to work with the contractor to see how the turbidity and ph balance is going to be controlled. He stated the Marine Fisheries will also want to see how the process works. He stated since this a new methodology a number of people will be watching.

Council Member Hess stated the town has a signed agreement with the Southern Shores Civic Association (SSCA) to use the North Marina but the town would like to also include the South Marina. She stated as the Council's appointee to negotiate certain terms for the canal project and in talking with Dan Shields, SSCA president on changes to the initial agreement the SSCA has requested a monetary amount of \$50,000. She stated the town is trying to keep cost down and she is bringing this to Council.

Council Member Hess moved to continue with the original agreement with SSCA and not agree to the \$50,000 request. Council Member Stroud seconded. The motion passed with Mayor Smith and Council Members McDonald, Hess, and Stroud and Pfizenmayer voting aye; no council member voting no and no Council Member absent.

Council Member McDonald stated this is very disturbing since the SSCA agreed to deed the canal bottoms to the town so the dredging could be done. He stated as agreed the property used would be put back into good standing.

Council Member Hess stated the town would be paying \$40-60,000 to restore the property at the North Marina.

Council Member Pfizenmayer stated he doesn't support the request that the town and the SSCA should be working as one group and cost should not be an issue.

Council agreed that Council Member Hess continue negotiations with the SSCA and advise them that the requested amount is not acceptable and report back to Council at the November 4 Council meeting.

Council Member Hess moved to recess the meeting for the 10:00 a.m. canal dredge bid opening. 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.

Council reconvened at 10:25 a.m. The Wireless presentation continued.

N. Wendt stated this presentation is to allow Council to ask questions and prepare for the public hearing. She stated a shorter presentation would be given at that time.

Fire Chief Harvey asked if a taller tower (195') could be approved for the East fire station.

N. Wendt stated if approved it would need to be signed off by an engineer.

Council Member McDonald asked how many changes from the proposed ordinance for public hearing are now being suggested.

The Town Attorney stated the co-locations would need to meet new state regulations and a change to make all towers a conditional use from short towers being a permitted use and tall towers being a conditional use and other changes such as towers are an accessory use only and allowed in limited districts.

Council Member McDonald asked if the proposed amended ordinance could be ready for public hearing.

The Town Attorney stated a clean amended ordinance could be available and once Council sees the changes they can decide if another public hearing is in order.

N. Wendt stated we need to make sure all statutory entities are covered.

Mayor Smith stated he wants to see the public hearing held on November 4 as scheduled.

Council Member Hess stated by announcing the public hearing it means we feel comfortable with the proposed ordinance but we are now making changes.

The Town Attorney stated Council has not had time to discuss this draft and could have the opportunity to say they would like some changes send it back to the planning board or ask him to submit changes to the document.

The Town Manager stated he agrees both; short and tall towers, should be addressed as conditional uses to allow Council to have full control and staying away from what would appear as "spot zoning".

Mayor Smith moved to hold the public hearing as advertised for November 4. Council Member McDonald seconded. The motion passed with Mayor Smith and Council Members McDonald, and Stroud and Pfizenmayer voting aye; Council Member Hess voting no and no Council Member absent.

Council requested the Town Attorney submit the revised draft ordinance to them by Monday.

NEW BUSINESS

Resolution 2009-10-14 Employee Light Duty Policy amendment

The Town Manager read the resolution.

Council Member Hess moved to approve Resolution 2009-10-14 as presented. Council Member McDonald seconded.

[Clerk's Note: A copy of Resolution 2009-10-14 is hereby attached as part of the minutes as Exhibit A].

Resolution 2009-10-13 Town Hazard Mitigation Plan to merge with Dare County's Hazard Mitigation Plan

Alvin Rountree, Code Enforcement Administrator, stated the Town has the opportunity with its Hazard Mitigation Plan to fall under the umbrella of the Dare County Hazard Mitigation Plan. Already the other five municipalities have joined with Dare County in this matter. It makes good common sense to follow through with this so we, as a county, can have a sense of uniformity and not try to re-invent the wheel. We will still have and keep our Hazard Mitigation Plan, but we will more closely model our plan to that of Dare County for the purpose of uniformity and simplicity. He stated there also may be some funding advantages as well.

Council Members Hess and McDonald both had concerns regarding the use of the word *merge* in the resolution in that all the town's plans would be merged into one plan. They suggested someone talk to Dare County Emergency Management to see if the resolution could be amended to read the town's hazard mitigation plan is to be *included* as part of the county's plan. This item will be placed on the November 4th agenda for re-consideration.

Copier Lease Agreement

Merrie Smith, Executive Assistant, provided Council with information regarding the town's current copier lease agreement with COECO has expired. In the past the county has provided our copier lease agreement. Recently the county has signed a new lease agreement and allows the other towns to become a part of that agreement. The other towns are participating and the agreement is with a company called ESI. Staff recommends that we change our copier service which includes new copiers for town hall and the police department with a considerable cost savings.

The Town Attorney addressed several concerns on the proposed electronic lease agreement.

Mayor Smith addressed the Town Attorney's concerns and he asked why the town doesn't buy the equipment instead of leasing.

Council Member McDonald stated there is a big cost savings advantage by joining with a group.

The Town Attorney stated if Council wants to sign the lease knowing what risks are involved they can. He would recommend making changes to the lease agreement and sending it to the company to see if they would agree to the changes.

Council agreed to place this item on the next agenda.

OTHER ITEMS

Town Manager

The Town Manager reported the cut diseased pine trees were taken to the Hillcrest Parking lot and were removed by Atlantic Tree at a cost of \$950 which the town and the SSCA shared.

Town Attorney-None

Mayor-None

Council

Council Member Hess stated Dare County is holding a meeting today to discuss the approval of the 800 MHz radio communication system as phase one.

Council Member McDonald stated the Town Manager should look into what the other towns are going to do and to inquire if the radios are considered capital expenditures and the property would belong to the town.

He provided Council with a copy of the current 2009 Dare County Economic Summary.

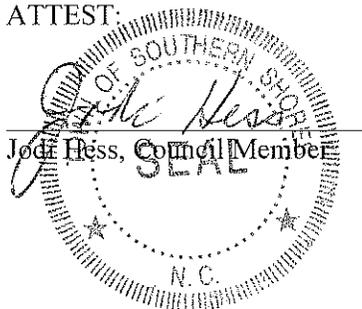
PUBLIC COMMENT-None

Hearing no other regular business Mayor Smith moved to go into closed session pursuant to NCGS 143.318.11 a. (3) & (6). 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.

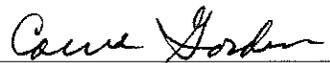
Upon returning to open session Mayor Smith moved to authorize the Town Manager to prepare a budget amendment for a five per cent salary increase for Sheila Kane.

Hearing no other business Mayor Smith moved to adjourn the meeting at 11:55 a.m. 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.

ATTEST:



Respectfully submitted:


Carrie Gordin, Town Clerk

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHERN SHORES,
NORTH CAROLINA, AMENDING PERSONNEL POLICY ARTICLE V, CONDITIONS OF
EMPLOYMENT-LIGHT DUTY**

WHEREAS, the Town Council for the Town of Southern Shores approved and adopted a personnel policy on August 5, 2003 (the "Town Personnel Policy"); and

WHEREAS, the Town Council approved and adopted the Town Personnel Policy in order to provide certain protections for the Town of Southern Shores and its employees; and

WHEREAS, the adoption and approval of an amendment to the Town's Personnel Policy detailing the eligibility, options and procedures associated with light-duty status would be in the best interests of the Town of Southern Shores and its employees.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of Southern Shores that the Town Personnel Policy Article V – Conditions of Employment hereby amend Section 3. Eligibility for Light-Duty Status and Section 6. Return from Light-Duty Status to Regular Duty as stated below in italics:

Section 3. Eligibility for Light-Duty Status

An employee is eligible for light-duty status when the following conditions are met:

- a. *A job related or non-job related injury or illness which restricts the employee's ability to perform the essential functions of his or her job. The employee must provide the Town with the certification of a licensed physician knowledgeable about the employee's condition(s) and the requirements of the job, which sets out a definite time after which the employee should be able to return to full duty. The physician must also certify that in the interim the employee can safely perform duties as described.*
- b. ~~The employee suffers from a job related injury or illness and their claim is accepted by the worker's compensation administrator for the Town. In a worker's compensation situation, if the examining physician certifies that the employee is able to safely resume light duty work, upon the Town's request that the employee return to light duty work, the employee must do so.~~
- c. ~~The injury or disease temporarily restricts the employee's ability to perform the essential functions of his or her job. The employee must provide the Town with the certification of a licensed physician knowledgeable about the employee's condition(s) and the requirements of the job, which sets out a definite time after which the employee should be able to return to full duty. The physician must also certify that in the interim the employee can safely perform light-duty as described. In a non-worker's compensation situation the employee must submit an evaluation by a physician that certifies the employee is capable of light duty work and the employee must report for light duty work upon the Town's request.~~
- d. ~~Work beneficial to the Town must exist with duties which can safely be performed by a person within the restrictions indicated by the physician. In order to be allowed light duty status, duties must exist which can safely be performed by a person with the restrictions indicated by the physician.~~

Section 6. Return from Light-Duty Status to Regular Duty

An employee will be returned to regular duty as soon as the employee's conditions permit. However, before an employee placed on light-duty status may be transferred back to regular duty, the employee must provide a physician's certification that he or she can return to work without restrictions. Return to regular duty must be approved by the Town Manager, following consideration of recommendations by the department head and the Personnel Officer. Once approved, the employee must immediately return to regular duty. Failure to comply with any requirements during a light-duty assignment or to perform adequately while on light-duty is grounds for discipline, including dismissal.

In no event will an employee be allowed to remain on light-duty for longer than 6 1/2 months. Employees who are unable to return to duty on their usual schedule and perform the essential functions of their usual position with or without a reasonable accommodation for a period of 6 consecutive months will be terminated except in those situations where additional leave is required by the ADA.

If all of these conditions are met, the Town may request and require the employee to return to light-duty work. An employee eligible for FMLA under the Town's FMLA policy may accept, but may not be compelled to accept, a light-duty position during their FMLA leave. An employee who elects not to accept a light-duty assignment while on FMLA leave will not be terminated for such election during their FMLA leave, but could be subject to a suspension or decrease in their worker's compensation benefits as determined by the worker's compensation administration.

The Town is under no obligation to create a position in order to offer any employee light-duty.

Adopted this 27th day of October, 2009.

ATTEST:

Carrie Gordin, Town Clerk

Don Smith, Mayor