



Town of Southern Shores

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Council Meeting
November 4, 2009
7:00 p.m.-Pitts Center

The Southern Shores Town Council met on November 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. and led the Pledge of Allegiance. He held a moment of silence for the family of Ruth Welch, long time resident, and for all the men and women serving around the world.

APPROVAL OF AGENDA

Mayor Smith moved to amend the agenda under Reports to hear the canal maintenance dredging report by switching item A to item F and following the Consent agenda the Town Manager has an introduction. Council Member Pfizenmayer seconded. The motion passed with Mayor Smith and Council Members McDonald, Hess, Stroud and Pfizenmayer voting aye; no Council Member voting no and no Council Member absent.

GENERAL PUBLIC COMMENT-None

APPROVAL OF MINUTES-October 6, 2009 and Emergency Meeting October 9, 2009

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

CONSENT AGENDA-Budget Amendment FY 2009-2010 #4

Council Member McDonald moved to approve Budget Amendment #4 as presented. Council Member Hess seconded. The motion passed with Mayor Smith and Council Members McDonald, Hess, Stroud and Pfizenmayer voting aye; no Council Member voting no and no Council Member absent.

The Town Manager addressed everyone by introducing Wesley Haskett the Town's new Town Planner. He stated Wes comes to us with a great amount of experience and we are happy to have him and we welcome him.

[Clerk's Note: A copy of Budget Amendment FY 2009-2010 #4 is hereby attached as Exhibit A].

REPORTS

Canal Maintenance Dredging Project Update

Tom Bennett, Project Manager, reported the canal bid opening was held on October 27. He stated we are waiting for final approval on our Submerged Aquatic Vegetation (SAV) Plan but we have been told that the plan would be accepted. We have been told we will need to go through a minor limit permit application process with CAMA to use the new hydrocyclonic dewatering method.

The dredge team will meet with Sampson Contracting and their sub-contractor on Thursday and Friday. He presented the canal maintenance dredge contract to Council for their consideration. (Council previously received a copy).

The Project Manager provided a copy of a report to Council before the meeting but submitted an update which is provided here:

Canal Dredging Contract Town Council Meeting, November 4, 2009

The canal dredging team comprised of Charlie Read, Joe Anlauf, George Wood, Jodi Hess and I believe the contract proposal submitted by Sampson Contracting, Inc. is a proper document and should be accepted by the Council.

The base bid, using the Stone Property for dewatering the spoil and the DWCC as a spoil disposal site, is \$2,777,625. The hydrocyclonic dewatering bid with an alternate spoil disposal site in Currituck County is \$1,683,940.

The proposed contract is based on an estimate of 17,500 cubic yards at a unit price of \$66 per cubic yard. Using the unit price, it is possible for the final cost of the phase 1 dredge to be more or less than the proposed amount depending on the actual quantity of spoil dredged.

Looking at the projected financials for this project is important at this time. The 2009/2010 budget, a dredging expense of \$2,250,000 was estimated with a projected State grant of \$1,800,000. In order to meet the Town's 20% share, \$420,000 was transferred from the undesignated fund.

Currently we have \$627,665 left of the \$800,000 grant money we were promised for this year. We have since learned that there probably will not be additional funds from the State. This means that in order to complete this project we will have to transfer an additional \$818,516 will have to be transferred from the undesignated fund.

The Council also needs to remember that before we can actually start the dredging we need the final approval of the Corps of Engineers and CAMA to use the new methodology.

Tonight we need a motion to approve the hydrocyclonic method of dredging and to authorize the Town Manager to execute the contract with Sampson Contract, Inc, using this method of dredging for the Phase 1 of the project once the approvals are in place.

Mayor Smith asked if we have checked with the state to see if additional funds are available. He stated originally the state was providing 80% of the first two million but now they are offering a 50/50 grant beginning the first of the year due to the state's budget problems.

The Project Manager stated he talked to Mr. England and was told there were no additional funds available. The Project Manager stated a letter would be sent requesting additional funds but the Town would need to apply for a grant for the next phase which would be a 50/50 grant.

Council Member McDonald asked how this affects the 75% fund balance resolution.

Bonnie Swain, Finance Officer, stated she contacted the Town Attorney to ask if the fund balance resolution would need to be amended and was told we could do a budget amendment when needed.

Council Member Hess moved to authorize the Town Manager to execute the canal maintenance dredge contract with Sampson Contracting, Inc. using the new hydrocyclonic method for Phase I once permit approvals are in place. Council Member McDonald seconded. The motion passed with Mayor Smith and Council Members McDonald, Hess, Stroud and Pfizenmayer voting aye; no Council Member voting no and no Council Member absent.

Council Member Hess stated she met with Dan Shields, SSCA President, regarding their monetary request for allowing the Town's use of the North Marina for a spoil site. The SSCA would like to complete the bulkheading at that site. Council Member Hess recommends amending the lease agreement to agree that upon the SSCA completion of bulkheading the east side of the North Marina from the existing bulkhead to the bridge that the Town would pay 50% of the costs but not to exceed \$15,000 and to add a date for completion (within 12 to 18 months following the dredge completion). Council Member Hess stated the SSCA is agreeable to this and she would ask Council to authorize her to make those arrangements. Council Member Hess stated no payments would be made until the bulkheading is completed.

Council Member McDonald moved to allow Council Member Hess to negotiate with the SSCA/Boat Club to provide fifty percent (50%) of the bulkhead costs not to exceed fifteen thousand dollars (\$15,000). Council Member Pfizenmayer seconded. The motion passed with Mayor Smith and Council Members McDonald, Hess, Stroud and Pfizenmayer voting aye; no Council Member voting no and no Council Member absent.

Southern Shores Volunteer Fire Department-None

Police Department

The Town Manager reported there would be no report since Chief Kole is in mandatory training.

Southern Shores Civic Association (SSCA)

Leo Holland stated the diseased pine trees have been removed. The Board is working on their 2010 budget and their next meeting will be held Monday, November 9.

Chicahauk Property Owners Association-None

Planning Board-Planning-Board Recap and Planning Advisory Group Recap for October 19, 2009

Nancy Wendt, Chairman, reported LDA 090917 proposed subdivision-109 Osprey Lane preliminary plat application is complete and the Planning Board recommends approval.

The Town Attorney stated there is a question if a public hearing was being held at this meeting but that it was not made part of this agenda. He would advise Council since this is a quasi-judicial hearing to set the public hearing for the next meeting.

Council Member Hess stated this issue appears to require approval of a preliminary and final plat. She asked is a public hearing required for both. The Town Attorney said yes.

Council agreed to set a public hearing for the December 1 Council meeting.

Chairman Wendt addressed item LDA 2009-08-01 proposed Wireless Ordinance regarding certain changes being made due to discussion held by the public, staff and Town Attorney with the Planning Board and the Wireless Committee.

[Clerk's Note: A copy of the Planning Board Recap and the Planning Advisory Group Recap for October 19, 2009 and Planning Advisory Group Recap for October 5, 2009 is hereby attached as Exhibit B, C and D respectively].

PUBLIC HEARING

Proposed Wireless Ordinance LDA 2009-08-01

The Town Attorney stated before he opens the public hearing on the placement of telecommunication towers within the Town Planning Board Chairman Wendt has a presentation and proposed changes to the ordinance will be discussed.

Chairman Wendt provided some history on this issue and what this ordinance would do to improve our telecommunication service. She stated it is important to note the Town does not choose the site for a tower; the carrier and the tower company do. In the presentation she covered such issues as what is needed:

1. Cellular phones & personal wireless services have become necessities today
2. Cellular reception weak &/or unavailable parts of Town
3. Peak season volume exceeds infrastructure capacity
 - a. No signal
 - b. Dropped calls
4. Current ordinance limits new towers & new antennas to sites that will not improve coverage or capacity
 - a. Top of water tower
 - b. Commercial Zone
5. Current ordinance needs to be amended to allow infrastructure upgrades to reduce/eliminate the "hole"

and the objectives of the proposed ordinance as listed:

1. Encourage *just enough investment* to reduce or eliminate "the hole" with the least negative impact
2. Prevent unnecessary proliferation. "Just enough" means 1-2 tall and/or 3-5 short towers
3. Comply with Federal & State statutes regarding wireless infrastructure build-out
4. Ensure that all wireless infrastructure is:
 - a. safe for residents
 - b. enables access to wireless signals and services
 - c. respectful of aesthetic character of Southern Shores
5. Ensure level playing field for ALL stake-holders

She also provided a list of what the Town can regulate: location, height, permitted structures, general aesthetics, setback, lighting, fencing, signage, application documentation and the planning board review process as well as the proposed language changes to the original draft ordinance.

[Clerk's Note: A copy of the complete Wireless Power Point presentation can be seen on the Town's website].

The Town Attorney opened the public hearing.

Peter Bruck, 15 Soundview Trail, stated he thinks this is a wonderful piece of legislation, however; we now have a Town Planner and he should look at the height requirements from a zoning aspect and where the towers will go. He stated a 150' tower may be the right requirement and is a good stream of revenue for the property owner but how is the Town going to handle it on the tax basis.

Lisa Murphy, Attorney for AT&T and Industry Consultant commended the Wireless Committee and the Town Attorney for their effort, time and consideration in working on this draft ordinance. She stated she is glad to see they listened to the public and AT&T representative comments and incorporated them into the proposed ordinance. She stated her comments are directed at the latest amended proposed ordinance not the one presented for public hearing. She stated there are two things needed for consideration (1) to streamline co-location process and (2) to provide flexibility for creative solutions like using stealth. She stated regarding the use of co-location it is recommended to allow antennas where something is already there. She would like to exclude language from the section addressing emergency communication antennas from the height limitation due to they are usually "sticks" that need to be higher than cell towers. She would recommend adding these antennas to the streamline co-location process. She stated regarding the use of stealth structures it may impose a limit to find a site as defined in the draft ordinance. She recommends including language that the fall zone requirements would be deemed from what the structural engineer recommends and once a structure is constructed other co-locators will come. She also recommended changing the section regarding the validity of the permit by tying it with the issuance of the building permit not the way the section currently reads going through a conditional use process.

She closed her comments by saying she appreciated having the time to address Council and being a part of the process and she feels this is a good product.

Fire Chief Harvey commented he has a concern in that the proposed ordinance limits to only one emergency antenna when currently the fire department is using three.

Hearing no other public comments the Town Attorney closed public hearing.

The Town Attorney addressed some of Ms. Murphy's comments. He stated this ordinance is drafted by the committee with upon his review he included current legislative changes. He stated Council has had little input but you can make changes or direct him to make changes before ordinance approval. He stated he added the streamlined co-location process from the original draft. He stated the North Carolina General Statute was amended in 2007 to require the streamlined co-location process and as he wrote it to be the most restrictive the statute would allow but Council can reduce some of the restrictiveness.

The Town Attorney stated he agrees that the emergency antennas should be included in the language for the streamline co-location process but he would not consider reducing the height requirement and a change should be included to accommodate the necessary antennas for emergency services as addressed by Fire Chief Harvey.

Council Member McDonald stated he is concerned with seeing a 200' tower overlooking the ocean. He stated a 70' or 80' tower may be something he could live with.

Council Member Stroud stated he agrees with Council Member McDonald and he asked can you use the roadway as part of the setback. The Town Attorney stated that Council could consider that if they feel it is appropriate.

Council Member Stroud asked would it be possible to drop the 1/3 setback rule.

[Clerk's Note: Clerk has included the language addressing setbacks as amended from the original draft ordinance for clarification]:

(d) Setbacks.

(i) The base of a telecommunications tower shall be at least located at least one (1) foot from the nearest property line for every one (1) foot of proposed tower height. The Town Council may reduce the setback requirement from this 1:1 setback ratio to a setback of 1/3 provided that:

- OPTION A – No dwelling unit is within the fall zone of a wireless facility
- Town owned and state owned roadways may be counted as part of a fall zone provided that the appropriate Town and/or state official agrees to the reduced setback.
- OPTION B If a dwelling unit is within the fall zone: the applicant submits a written risk assessment from a NC certified engineer that the proposed tower installation will not fall on an occupied dwelling in any conditions up to and including 135 mph wind and any adjacent property owner affected by a fall zone that extends beyond their property line agrees to the reduced setback.

~~OPTION B of the height of the proposed tower provided the applicant submits a written risk assessment from a NC certified engineer that the proposed tower installation has a risk of failure no greater than currently established best practice.~~

(ii) Telecommunications accessory equipment structures, any equipment enclosures and any other structures shall be set back a minimum of fifty (50) feet from all property lines and rights of way.

The Town Attorney stated there is more risk of a law suit by being too restrictive because it would restrict the number of location sites.

Chairman Wendt stated if the 1/3 rule was dropped most areas would be prohibited from placing a tower. She stated that each permit application should be considered on its own merit and it may be found to not be a viable site.

Council Member Stroud stated he is concerned, since he doesn't know where the towers are to be located, in allowing tall towers. He does not want to see a tall tower and if changing the language to read a 1:1 ratio for the setback reduces the number of tall towers so be it. He stated he would not mind a tall tower in an undeveloped area but not in view of the ocean.

Chairman Wendt asked Mr. Lusk, AT&T representative, to provide comment regarding the height of towers. He responded by saying towers less than 100'-120' tall are less desirable due to the topography.

Council Member Stroud stated as technology changes and once a tower is put in place and is not used anymore it will remain. He stated he doesn't want to see this.

Chairman Wendt stated the difference between a short or tall tower is not an either/or. Chairman Wendt stated it is better for the Town to guard against aesthetics by not using or reducing setback but to decrease the height of the tower and emphasize the use of stealth towers. In reviewing a permit application on a case-by-case basis gives Council more flexibility.

Council Member McDonald asked would multiple short towers be better than one tall tower.

Ms. Murphy stated the ordinance does not allow "cluster" towers.

Council Member McDonald asked the Town Attorney if an applicant meets all the conditional use requirements must Council grant approval. The Town Attorney said yes. He stated Council could add reasonable conditions based on public safety and aesthetics conditions should be considered on a case-by-case basis but Council could require in the ordinance that only stealth towers be used.

Council Member Hess stated she would like to hear from the Planner since he has experience on this issue to look at this draft ordinance and provide his comments. Council Member Hess stated she is not ready to approve this ordinance at this time. She wants to see a final draft with the changes addressed tonight.

Council Member Stroud asked why the proposed tower site locations can't be known. The Town Attorney stated the certain properties could change and other properties could become available but he has no problem with releasing the locations.

Chairman Wendt listed the current available sites: Cypress Pond, several sites belonging to Southern Shores Civic Association, Duck Woods Country Club, Azalea Lane and at the East Fire Station.

The Town Attorney stated Council has not had sufficient time to review and discuss the draft ordinance and they should hear comments from the planner. He suggested Council direct staff and the Town Attorney to prepare the changes and bring back to the December 1 Council meeting but it may be January before the ordinance is approved since there will be new Council Members.

[Clerk's Note: A copy of the draft Wireless Ordinance is hereby attached as part of these minutes as Exhibit E].

OLD BUSINESS

Resolution 2009-10-13 Hazard Mitigation Plan

The Town Manager stated this resolution was presented to Council at their October 27 Council meeting and upon discussion a question was raised if the Town's plan was to be merged or to be included with Dare County's Hazard Mitigation Plan. He contacted Sandy Sanderson, Dare County Emergency Management Director, to clarify the intent of the resolution and the Director agreed to amend the word "merge" by using the word "include" as shown on line 31 of the resolution. Staff has prepared the resolution addressing this change.

Council Member Hess moved to approve Resolution 2009-10-13 as amended. Mayor Smith seconded. The motion passed with Mayor Smith and Council Members McDonald, Hess, Stroud and Pfizenmayer voting aye; no Council Member voting no and no Council Member absent.

[Clerk's Note: A copy of Resolution 2009-10-13 Hazard Mitigation Plan is hereby attached as part of these minutes as Exhibit F].

NEW BUSINESS

Local Firemen's Relief Fund Board Appointment

The Town Manager stated staff previously provided Council with information regarding the appointment to fill a vacancy on this board. Al Smith's term expires December 31, 2009 and he has informed the Town he does not wish to be re-appointed for another term.

Council Member Pfizenmayer stated he would volunteer if there are no other candidates.

Mayor Smith moved to appoint Council Member Pfizenmayer to the Local Firemen's Relief Fund Board to fill the vacancy. There was no second.

Fire Chief Harvey stated usually two members are retired fire personnel.

The Town can put on the Broadcast Email asking for volunteers.

The Town Attorney stated he will research to see if there is any reason a Council Member can't be on this Board. This item will be placed on the next agenda.

OTHER ITEMS

Town Manager

The Town Manager requested Council cancel the November 24 meeting. Council agreed but it was stated there may be a need to call a special meeting if something comes up regarding the canal dredging project.

Town Attorney

The Town Attorney prepared and presented a resolution (2009-11-02) regarding the Attorney/Client Privilege which he read.

Mayor Smith moved to approve Resolution 2009-11-02 as presented. Council Member McDonald seconded. The motion passed with Mayor Smith and Council Members McDonald, Hess, Stroud and Pfizenmayer voting aye; no Council Member voting no and no Council Member absent.

[Clerk's Note: A copy of Resolution 2009-11-02 Attorney/Client Privilege Policy is hereby attached as part of these minutes as Exhibit G].

Mayor

Mayor Smith stated this would be his last meeting. He thanked the Town staff, all the volunteers, Council and Council Member McDonald his right-hand man for the last four years.

Council

Council Member McDonald thanked the citizens and stated he thought he did an adequate job if nothing less potentially not since he was not re-elected, twenty-right votes is just twenty-eight votes. He wishes Hal (Denny) and George (Kowalski) the best of luck and hopes they take good care of the Town.

Council Member Hess thanked the citizens for the great voting turn out.

Corrected

Council Member Pfizenmayer stated a 50% voting turn out was good but he thought it would be more. He stated he is looking forward to working with Hal and George the next two years and looking forward to working with all of Council.

PUBLIC COMMENT-None

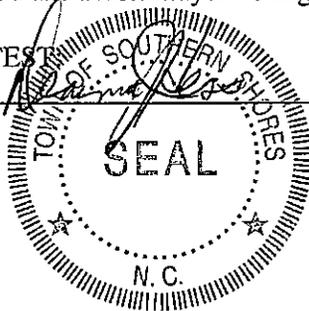
Hearing no other regular business Mayor Smith moved to go into closed session pursuant to NCGS 143-318.11 a. (3), (1), (6) and 143-318.10 (e). Council Member McDonald seconded. The motion passed with Mayor Smith and Council Members McDonald, Hess, Stroud and Pfizenmayer voting aye; no Council Members voting no and no Council Member absent.

Returning to open session Mayor Smith moved Council to approve an amendment to the Town Manager's contract. Council Member McDonald seconded. The motion passed with Mayor Smith and Council Members McDonald and Pfizenmayer voting aye; Council Members Hess and Stroud voting no and no Council Member absent.

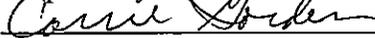
[Clerk's Note: A copy of the Town Manager's contract amendment is hereby attached as part of these minutes as Exhibit H].

Hearing no other business Mayor Smith moved to adjourn the meeting at 10:00 p.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

**Town of Southern Shores
Budget Amendment Number # 4**

| Increases | | | Decreases | | |
|-----------------------|---------------------|---------------|-----------------------|--------------------|---------------|
| <u>Account Number</u> | <u>Description</u> | <u>Amount</u> | <u>Account Number</u> | <u>Description</u> | <u>Amount</u> |
| | Expenditures | | | | |
| 42-50010 | Salaries | \$1,500 | | | |
| | Revenues | | | | |
| 40-39909 | Undesignated FB | \$1,500 | | | |
| | | | | | |
| | | | | | |
| | | | | | |

Explanation: Salary Increase for Sheila Kane

Recommended By:

Charles B. Read, Jr, Town Manager

Approved By:

Don Smith, Mayor

Date

Exhibit B

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: October 28, 2009

Re: Recap, Planning Board Meeting October 19, 2009

Attach: LDA 090917 Proposed Subdivision

PLANNING BOARD RECOMMENDATIONS FOR THE TOWN COUNCIL:

APPROVE LDA 090917 Proposed Subdivision – Walton, 109 Osprey Lane

APPROVE LDA 2009-08-01 proposed Wireless Ordinance – The Planning Board recommended that the Town Council approve this ordinance at its September Meeting.

The Town Attorney is amending the Proposed Ordinance to stipulate:

- Wireless facilities (short or tall) are allowed as conditional uses accessory to any primary permitted use in the R1, RS1, G&I and C districts other than a single family dwelling unit.
- No wireless facilities will be allowed as either permitted or conditional uses in either the RS8 or RS10 zones due to high density land uses that cannot meet setback requirements and
- Conditions under which the Town Council may grant an exception to the 1:1 setback (what safety data is required to reduce the setback to 1/3 of tower height).

The attorney will provide an amended version of the proposed Wireless Ordinance to the Town Council and Planning Board as soon as possible.

MEETING RECAP

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

III. APPROVAL OF MINUTES:

Mike Florez motioned to approve the minutes from the September 21, 2009 Planning Board meeting. Larry Lawhon seconded the motion. The motion passed unanimously.

IV. PUBLIC COMMENT:

None

V. PERMIT APPLICATIONS

LDA 090917 Walton, 109 Osprey Lane, Subdivision
Preliminary Plat of Olivola Pennisula (Walton)

Alvin Rountree, Code Enforcement Officer, reported that the Code Enforcement Department found this application complete and recommends approval. He also reported that Dare County has approved the planned location of an on site septic system. Mr. Rountree took questions from the Planning Board regarding soil testing and potential building sites outside of the floodplain after reviewing Code Enforcement's Summary-of-Facts for this application. He stated that the proposed new lot, currently wooded, does have some high ground for a potential building site. Code Enforcement will review detailed site development plans along with a final plat if/when the property owner applies for a building permit.

Doug Styons, Land Surveyor, represented the property owner. He briefly explained that the owner wishes to subdivide the existing 3.93 acre property into two lots (3.01 and .92 acres) to create one new residential lot. Access to both lots will be via a private driveway with the required 30' access and utility easement. In response to a Planning Board question about the easement, Mr. Styons stated that his initial design included a turnaround at the end of the proposed private road. (A turnaround is one of the design standards called for in the current code for permanent dead end roads.) When Mr. Styons reviewed his initial design with Eddie Valdivieso (President, Quible & Associates, the Town's engineering firm) Mr. Valdivieso advised Mr. Styons to remove this turnaround.

A motion for the Planning Board to recommend that the Town Council approve LDA090917 was made by Jay Russell and seconded by Mike Florez. The motion passed unanimously.

VI. OTHER BUSINESS

WIRELESS FACILITIES

LDA 2009-08-01 - Since there was nothing that required a Planning Board vote on this item, the status report for this project was moved to the PAG meeting at the conclusion of the Planning Board meeting.

VII. OTHER ITEMS

None

VIII. ANNOUNCEMENTS:

None

IX. REGULAR MEETINGS:

Regularly scheduled meetings for the next month are:

1. PAG working session rescheduled from November 2 to October 29, 2009 at 7pm at Pitts Center
 - Status updates all projects
2. Planning Board meeting November 16, 2009 at 7pm at the Pitts Center
 - 2. Permit Applications as required
3. PAG working session November 16, 2009 following PB meeting at Pitts Center
 - 3. Status updates all projects

X. ADJOURNMENT:

Larry Lawhon made a motion and Bill Gleason seconded the motion to adjourn. The Planning Board meeting adjourned at 7:25 pm.

Exhibit C

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: October 28, 2009

Re: Recap, PAG Working Session October 19, 2009

PAG MEETING RECAP OCTOBER 19, 2009

The Planning Advisory Group working session convened at 7:30pm after the Planning Board meeting adjourned. Planning Board Members Nancy Wendt, Jay Russell, Mike Florez, alternate members Bill Gleason and Larry Lawhon, and ETJ Representative Ed Overton were present. Planning Board members Bob Palombo and Sam Williams were absent with excuse. Also in attendance was Planning Board Administrative Assistant Merrie Smith.

WIRELESS PLAN (Larry Lawhon)

Larry Lawhon reported that the Pre-Public Hearing Workshop to review the proposed text of the Wireless Ordinance with the community was held as planned on October 14, 2009. Twenty two people attended the workshop.

The members of the Town Council were in attendance but had been advised by the Town Attorney not to participate since the official notice of the workshop did not specify that the Council Members would be at the meeting.

Public comments at the workshop covered a wide range of subjects and demonstrated that general understanding of both the current and proposed ordinances is uneven at best. After a number of wordsmith suggestions, substantive comments were as follows.

- Bob Harvey (SSVFD Chief) observed that the ordinance is “no good” because the proposed setback (1 ft. setback from the property line for every 1 ft. of tower height) precludes a tall tower at the East Fire Station site unless the Council grants a special exception for a reduced setback.

The proposed ordinance specifies the industry standard setback ratio of 1:1 with a provision that the Town Council may reduce this setback to 1/3 of the tower height provided that an NC Engineer certifies that the proposed tower meets or exceeds public safety best practices with the reduced setback.

- Pete Bruck (15 Soundview Trail) observed that FAA lighting requirements are insufficient and Southern Shores should require more lighting on towers. Mr. Bruck, a private pilot, supported his argument by citing an accident in Currituck where multiple lives were lost when a MedEvac helicopter collided with a tall telecommunications tower. A number of years ago a MedEvac helicopter collided with a broadcast tower more than 500’ tall that was under construction at the time and that was not lighted.

The proposed Wireless Ordinance that is under review requires compliance with:

1. FAA lighting requirements which include a white strobe during the day and a continuous red light at night for all towers in excess of 200’, and with
 2. Southern Shores outdoor lighting regulations (Sec. 36-166) for towers below 200’ which prohibits unshielded vertical lighting, flashing lights and spill over glare in excess of 1 foot candle at the property line for adjacent property.
- Lisa Murphy (ATT attorney) made a number of suggestions based on her 11 years of experience working on wireless ordinances for ATT. Most of her suggestions had already been discussed and resolved with ATT’s Site Acquisition Manager earlier this year. For example, Ms. Murphy was not aware that Southern Shores does not own any land and therefore cannot create a list of Town preferred sites for new towers. The Wireless Team will review Ms. Murphy’s detailed comments with Ben Gallop and will recommend amendments to the proposed ordinance if appropriate.

Larry reported that since the Town Council was not able to participate in the workshop Q&A, a special presentation will be made to the Council at their regular meeting on October 27, 2009.

WIND GENERATION PLAN (Mike Florez)

Mike Florez reported on his team’s progress and focused in depth on the Public Workshop they have scheduled for October 28, 2009. Mike walked the PAG through the workshop agenda and asked for comments on the DRAFT presentations.

PAG comments ranged from spelling suggestions and presentation style preferences to substantive comments on workshop content and flow. Mike will share this feedback with his team at their next working session on October 22, 2009.

TRANSPORTATION PLAN (Bob Palombo)

Absent - No report

STORMWATER MANAGEMENT PLAN (Jay Russell)

Jay Russell reported no major changes since the last meeting. He continues to collect feedback and revise DRAFT guidelines for stormwater.

CAMA LUP UPDATE PROJECT (Sam Williams)

Absent - No report.

UPCOMING MEETINGS & PROPOSED AGENDA ITEMS

1. PAG working session rescheduled from November 2 to October 29, 2009 at 7pm at Pitts Center
 - Status updates all projects
2. Planning Board meeting November 16, 2009 at 7pm at the Pitts Center
 - Permit Applications as required
3. PAG working session November 16, 2009 following PB meeting at Pitts Center
 - Status updates all projects

The PAG meeting adjourned at 9:00pm.

Exhibit D

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: October 9, 2009

Re: Recap, PAG Working Session October 5, 2009

PAG MEETING RECAP OCTOBER 5, 2009

The Planning Advisory Group working session convened at 7:00pm. Planning Board Members Mike Florez, Larry Lawhon, Bob Palombo, Jay Russell, Nancy Wendt and Sam Williams were present. Also in attendance was Planning Board Administrative Assistant Merrie Smith.

WIRELESS PLAN (Larry Lawhon)

Larry Lawhon reported that the Planning Board has requested that the Town Council set November 4, 2009 for the Public Hearing on the proposed Wireless Ordinance. On October 14 Larry will conduct a public workshop to give the community an opportunity to review, discuss and comment on the proposed ordinance prior to this Public Hearing.

As is customary once a proposed ordinance is under review, typographical corrections and any proposed revisions to the text will be noted for the Town Council's consideration, but the document will not be changed until the Town Council votes. At that time, whatever corrections and/or amendments the Town Council includes in their vote will be incorporated in the FINAL text of the ordinance.

WIND GENERATION PLAN (Mike Florez)

Mike Florez reported that his team is making good progress preparing for their October 28, 2009 public workshop on wind. He will brief the PAG on the format and content for this workshop at the next PAG meeting. Other works in progress items include:

- DRAFT table of contents for the Wind Project Report
- DRAFT definition of terms
- DRAFT proposed wind ordinance
- A review of the Generator Interconnection Standard published by Virginia Electric and Power Company (Dominion Power here on the Outer Banks)

Mike shared his team's initial findings and asked for PAG's input. Discussion items included: scale of wind facilities, output ratings, potential for proliferation, stand alone/off grid vs. interconnected/on grid facilities, height, minimum setbacks, requirements for support structures and foundations, environmental impacts, nuisance impacts (noise, vibration, lighting and shadowing), and aesthetics. For PAG's feedback to the wind team see the attached notes.

Three wind team members (Jim Millis, Merrie Smith and Nancy Wendt) attended the September 25, 2009 presentation of the UNC Chapel Hill Coastal Wind Study. Nancy reported that this study, commissioned by the NC General Assembly, assessed the feasibility of installing wind turbines in the sounds and off the coast of North Carolina. Even though offshore locations and utility scale facilities are outside of the scope of the wind project, the methodology used by UNC to identify and evaluate potential conflicts has applicability for land based residential scale turbines. These ideas will be incorporated into the wind team's thinking about mitigating potentially negative impacts of wind facilities within Southern Shores.

TRANSPORTATION PLAN (Bob Palombo)

Bob Palombo reported that 4th quarter is still a reasonable target for completing a DRAFT LR Transportation System Plan. Part of this plan will include a more extensive analysis of existing roads. On behalf of the Planning Board and the PAG, Bob Palombo and Nancy Wendt asked the Roads Evaluation Committee chaired by Dave Peckens to provide input on two questions:

1. Is the surface condition of roadways in Southern Shores today essentially the same as it was when the Roads Evaluation Report was submitted in July 2008? If not, what changes have occurred that might warrant an update particularly with respect to urgent maintenance needs and/or project priorities?

2. Is the Roads Evaluation Committee willing to have the Planning Board expand its original charter from May 21, 2007 to include evaluating Town owned roads' compliance with the roads design standards stipulated in the Town code? If so, how would the committee like to proceed and over what timeframe?

The Committee reaffirmed that the July 2008 assessment data on the surface condition of Town roads is still accurate and can be relied on for planning and maintenance project priority setting purposes. The Committee will consider the request to expand its scope at their next meeting. Per Dave Peckens, this meeting will be scheduled in November.

If the Roads Evaluation Committee accepts an expansion of its scope, the next step is for the PAG to work with the Committee to develop a Statement of Work. As is customary, once the Statement of Work reflects the thinking of the project team (in this case the Committee) and the PAG/Planning Board, it will be circulated to Town Staff and Town Council. If the Committee declines a change in scope, the PAG will consider other alternatives to complete this work.

STORMWATER MANAGEMENT PLAN (Jay Russell)

Jay Russell reported that Joe Anlauf, Quible & Associates' has received the Town's purchase order to proceed with drafting a Stormwater Management Plan based on the Stormwater Policy Advisory Committee's recommendations from April 4, 2007. Joe Anlauf expects to complete a first draft of the plan in the November timeframe.

Jay is also making progress on the stormwater guidelines. He is updating the DRAFT based on feedback from Alvin Rountree, Joe Anlauf and Robert McClendon. Jay asked about the status of the proposed ZTA on the calculation method for the maximum height of structures within the residential zoning districts. Alvin feels that the current method of using the lowest corner contributes to stormwater drainage problems on some lots. Merrie Smith reported that Code Enforcement will be working on this ZTA as soon as the new planner is on board next month.

Jay attended the LID Workshop sponsored by the NC State Cooperative Service on October 1, 2009. Jay observed that while LID practices are not always applicable to coastal areas like Southern Shores due to high water tables, some of the ideas in a proposed LID development in the City of Wilmington such as narrower roads to reduce impervious surface and promote "greener" development are worth noting. Jay picked up other ideas for improving stormwater management in a "post development" situation like Southern Shores. In particular he recommends the Center for Watershed Protection.org website. Jay reaffirmed that when roads maintenance or repair projects are submitted, outstanding stormwater management issues need to be addressed before any project is approved or funded by the Town Council.

CAMA LUP UPDATE PROJECT (Sam Williams)

Sam Williams reported progress on the final edit of the CAMA LUP update. He has met with the Charlie Read to review the changes that need to be made to the LUP maps. Sam will follow up with a written description of these changes that Charlie can use in the discussion of and preparation of a purchase order to have these corrections made by EarthTech or another CAMA certified land use planning consultant.

Sam thanked PAG members for their comments on the DRAFT and indicated that he had made the suggested corrections and/or requested clarifications as needed. Sam asked the group to re-confirm his logic on three of these items.

- According to the July 2009 re-codified Town Code, the maximum height for buildings is 35' in all zones within Southern Shores except the R1 Low Density Zone.

In the Low Density Zone the maximum height depends on the specific land use as follows: houses up to 35', schools up to 55' and churches or country club buildings up to 65'. Table 20 in the CAMA LUP will be corrected to match these height limits.

- A Town Road Maintenance Plan will be a chapter in the LR Transportation System Plan being prepared by Bob Palombo. The wording of Action Item 9-a in the LUP will remain unchanged. It will reference rather than duplicate this plan.
- Stormwater action items in the CAMA LUP will be drafted by Jay Russell as soon as the Stormwater Management Plan and Guidelines that he is working on are available to be referenced by and integrated with the CAMA LUP.

Sam expects to have a complete document ready for review some time in November or early December. He will circulate the new draft to the PAG, Planning Board, and Town Council for comments as soon as it is ready.

UPCOMING MEETINGS & PROPOSED AGENDA ITEMS

Planning Board meeting October 19, 2009 from 7pm to 9pm at the Pitts Center

4. Permit Application LDA 090917 Walton, 109 Osprey Lane, Subdivision
5. Wireless Ordinance LDA 2009-08-01

PAG working session October 19, 2009 following PB meeting at the Pitts Center

- Wireless Ordinance public comments from workshop – L. Lawhon
- Wind Workshop planned format and content – M. Florez
- Status updates – All

PAG working session November 2, 2009 from 7pm to 9pm at Pitts Center

- LR Transportation System Plan – R. Palombo
- ITRE Report Update – N. Wendt
- Status updates – All

The PAG meeting adjourned at 9:15pm

Exhibit E

LDA 2009-08-01

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE TOWN OF SOUTHERN SHORES

ARTICLE I. Purpose(s) and Authority.

WHEREAS, the Town of Southern Shores (the "Town") may enact and amend ordinances to protect the health, safety, and welfare of its citizens under North Carolina General Statutes § 160A-174; and

WHEREAS, the Town may enact and amend ordinances regulating the zoning and development of land within its jurisdiction under North Carolina General Statutes § 160A-381; and

WHEREAS, the Town may regulate the use and construction of wireless telecommunications sites, towers and facilities within its jurisdiction under North Carolina General Statutes §§ 160A-400.50 – 400.53; and

WHEREAS, the Town Council for the Town of Southern Shores (the “Town Council”) finds that telecommunications and in particular cellular telephone communications are an integral part of today’s society and will continue to be an integral part of society including the lives of the citizens of the Town; and

WHEREAS, the Town Council finds that wireless telecommunications sites including antennae, towers and other structures may potentially endanger the citizens and visitors of the Town or damage the aesthetics and historical nature of the Town unless regulated; and

WHEREAS, the Town Council finds that it is in the interest of the public's health, safety, morals and general welfare that the Town’s Zoning Ordinance be amended as stated below.

ARTICLE II. Construction.

For purposes of this Ordinance, underlined words (underline) shall be considered as additions to existing Town Code language and strikethrough words (~~strikethrough~~) shall be considered deletions to existing language. Any portions of the adopted Town Code which are not repeated herein, but are instead replaced by a “...” shall remain as they currently exist within the Town Code.

ARTICLE III. Amendment of Zoning Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Town Council that the Town’s Code of Ordinances shall be amended as follows:

PART I. That Chapter 36 Section 36-202 be amended as follows:

(b) *Permitted uses.* The following uses shall be permitted by right:

- ...
- (8) Collocated wireless facilities in compliance with Section 36-175.
- ...

(c) *Conditional uses permitted.* The following uses are permitted subject to the requirements of this district and such additional regulations and requirements as may be imposed by the Town Council as provided in article X of this chapter:

- ...
- (6) Wireless telecommunications sites in compliance with Section 36-175.

PART II. That Chapter 36 Section 36-205 be amended as follows:

(b) *Permitted uses.* The following uses shall be permitted by right:

- ...
- (4) Collocated wireless facilities in compliance with Section 36-175.
- ...

(c) *Conditional uses permitted.* The following uses are permitted subject to the requirements of this district and such additional regulations and requirements as may be imposed by the Town Council as provided in article X of this chapter:

...

(6) ~~Telecommunication array and accessory equipment~~ Wireless facilities on publicly owned water towers, with the approval of the public entity which owns the water tower ~~and in accordance with section 36-207(c)(8)b and e~~ in compliance with the requirements and conditions of Section 36-175.

(7) Wireless telecommunications sites in compliance with Section 36-175.

PART III. That Chapter 36 Section 36-206 be amended as follows:

(b) *Permitted uses.* The following uses shall be permitted by right:

...

(7) Collocated wireless facilities in compliance with Section 36-175.

...

(c) *Conditional uses permitted.* The following uses are permitted subject to the requirements of this district and such additional regulations and requirements as may be imposed by the Town Council as provided in article X of this chapter: ~~community recreation facilities, including golf courses, tennis courts, community centers, libraries, picnic areas, and concessions integral thereto, provided that there is no open commercial activity, and no sign other than a directional noncommercial sign is allowed.~~

...

(1) Community recreation facilities, including golf courses, tennis courts, community centers, libraries, picnic areas, and concessions integral thereto, provided that there is no open commercial activity, and no sign other than a directional noncommercial sign is allowed.

(2) Wireless telecommunications sites in compliance with Section 36-175.

PART IV. That Chapter 36 Section 36-207(b) be amended as follows:

(b) *Permitted uses.* The following uses shall be permitted by right:

...

(8) Collocated wireless facilities in compliance with Section 36-175.

...

PART V. That Chapter 36 Section 36-207(c)(8) and all of its subsections be replaced in their entirety with the following:

(8) Wireless telecommunications sites in compliance with Section 36-175.

...

PART VI. That Chapter 36 Section 36-57 be amended as follows:

Sec. 36-57. Definition of specific terms and words.

...

~~Collocation of telecommunication antennas means the siting of two or more providers' wireless communication antennas on the same telecommunication tower.~~

~~Communications tower, municipal and fire station means a customary accessory structure to a fire station or municipal building consisting of a tower 80 feet or less in height measured from ground level to the highest point which provides emergency, municipal, fire and/or police communications services only and serving as an accessory structure to either a fire station or municipal building.~~

...

~~Geographic antenna coverage area means the general vicinity within which an antenna serves the transmission requirements of a cellular or other broadcasting network.~~

...

~~Telecommunications accessory equipment structure means a building or cabinet-like structure located adjacent to, or in the immediate vicinity of a wireless telecommunications tower or antenna to house equipment incidental to the receiving or transmitting of wireless broadcasts, cellular telephone calls, voice messaging and paging services.~~

~~Telecommunication tower means a freestanding structure intended to support one (1) or more telecommunication antennas.~~

...

~~Tower, monopole means a slender self-supporting tower used to support telecommunications equipment.~~

...

PART VII. That Chapter 36 Section 36-175 be added as follows.

Sec. 36-175. Wireless telecommunications sites and towers.

(a) Definitions. The following definitions shall apply to all portions of the Town Code relating to the use or construction of any portion of a wireless telecommunications site within the Town.

(1) Antenna: Communications equipment that transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.

(2) Application: A formal request submitted to the city to construct or modify a wireless support structure or a wireless facility.

(3) Building permit: An official administrative authorization issued by the city prior to beginning construction consistent with the provisions of NC G.S. 160A-417.

(4) Collocation: The installation of new wireless facilities on previously-approved structures, including towers, buildings, utility poles, and water tanks.

(5) Equipment enclosure: An enclosed structure, cabinet, or shelter used to contain radio or other equipment necessary for the transmission or reception of wireless communication signals.

(6) Fall zone: The area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.

(7) Geographic antenna coverage area: The general vicinity within which an antenna serves the transmission requirements of a cellular or other broadcasting network.

(8) Land development regulation: Any ordinance enacted pursuant to this Part.

(9) Monopole: A slender self-supporting telecommunications tower consisting of a single pole.

(10) Search ring: The area within which a wireless facility must be located in order to meet service objectives of the wireless service provider using the wireless facility or wireless support structure.

(11) Stealth Structure: A wireless support structure designed to look like or incorporated within a structure which has a primary purpose as something other than a wireless support structure, including, but not limited to trees, flag poles, clock towers, bell towers or church steeples.

(12) Telecommunications accessory equipment structure: A building or cabinet-like structure located adjacent to, or in the immediate vicinity of a wireless support structure or antenna to house equipment incidental to the receiving or transmitting of wireless broadcasts, cellular telephone calls, voice messaging and paging services.

(13) Tower, short telecommunications: A telecommunications tower with a height that is less than seventy (70) feet.

(14) Tower, tall telecommunications: A telecommunications tower with a height that is seventy (70) feet tall or greater up to a height of one hundred ninety five (195) feet tall.

(15) Tower, telecommunication: A freestanding wireless support structure intended to support one (1) or more wireless facilities.

(16) Utility pole: A structure that is designed for and used to carry lines, cables, or wires for telephone, cable television, or electricity, or to provide lighting.

(17) Wireless facility: The set of equipment and network components, exclusive of the underlying support structure or tower, including antennas, transmitters, receivers base stations, power supplies, cabling, and associated equipment necessary to provide wireless data and telecommunications services to a discrete geographic area.

(18) Wireless support structure: A new or existing structure, such as a monopole, lattice tower, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole is not a wireless support structure.

(19) Wireless telecommunications site: The combination of all of the materials and equipment on a site used to provide wireless telecommunications service including, but not limited to, any wireless support structures, telecommunications towers, wireless facilities, antennae, ground based communications equipment, telecommunications accessory equipment structures and equipment enclosures.

(b) Streamlined Collocation Procedures. Applications for collocation entitled to streamlined processing under this section shall be reviewed for conformance with applicable site plan and building permit requirements, but shall not otherwise be subject to zoning requirements, including design or placement requirements, or public hearing review. To be entitled to streamlined collocation procedures an applicant must meet the requirements of subsection (1), subsection (2) or the requirements of both. Otherwise, applications for collocation shall be treated as an application for a new wireless telecommunication site, telecommunication tower or wireless facility.

(1) An application for collocation meets the requirements entitling an applicant to streamlined collocation procedures if the addition of the additional wireless facility does not exceed the number of wireless facilities previously approved for the wireless support structure on which the collocation is proposed and meets all the requirements and conditions of the original approval. This provision applies to wireless support structures which are approved on or after December 1, 2007.

(2) An application for collocation meets the requirements entitling an applicant to streamlined collocation procedures if all of the following conditions exist:

(a) The collocation does not increase the overall height and width of the tower or wireless support structure to which the wireless facilities are to be attached.

(b) The collocation does not increase the ground space area approved in the site plan for equipment enclosures and ancillary facilities.

(c) The wireless facilities in the proposed collocation comply with applicable regulations, restrictions, or conditions, if any, applied to the initial wireless facilities placed on the tower or other wireless support structure.

(d) The additional wireless facilities comply with all federal, State and local safety requirements.

(e) The collocation does not exceed the applicable weight limits for the wireless support structure.

(3) An application for collocation is complete when all the necessary grounds stated in this section for entitlement to streamlined processing have been certified to by the

applicant in writing or forty five (45) days after its submittal to the Town if the Town has not provided the applicant with written notice identifying the deficiencies in the application which, if cured, would make the application complete. The application shall be deemed complete on resubmission if the additional materials cure the deficiencies identified.

- (4) The Town shall issue a written decision approving or denying an application entitled to streamlined processing within forty five (45) days of the date the application is complete. Failure to issue such a decision shall be deemed an approval of the application.

(c) Requirements for wireless telecommunications sites. All wireless telecommunications sites located within the Town must comply with all of the following requirements:

- (1) Safety standards. All proposed telecommunication towers and wireless facilities shall comply with all applicable federal, state and local laws including specifically the following:

- (a) Federal Communications Commission standards, rules and regulations
- (b) Federal Aviation Administration standards, rules and regulations
- (c) N.C.G.S. § 160-400.50 et seq.
- (d) The North Carolina Building Code
- (e) Accepted industry standards for wind loading, base stabilization and other critical engineering characteristics as defined by American National Standards Institute (ANSI), Telecommunications Industry Association (TIA) and Electronic Industry Alliance (EIA) 222-G or its successors.

(2) Use guidelines and dimensional requirements.

(a) Permissible Uses. Wireless telecommunications sites and facilities shall only be permitted as follows:

- (i) As an accessory use to an existing non-residential permitted primary use.
- (ii) As a collocation of wireless facilities upon an existing permitted wireless telecommunications site.

(b) Collocation.

- (i) Collocation of new antennas, wireless facilities and other equipment on an existing structure or structures within the applicant's search ring shall be required whenever reasonably feasible. Collocation is not reasonably feasible if an applicant can show it is technically or

commercially impractical for the applicant to collocate or if the owners of all of the telecommunication towers within the applicant's search ring where collocation would be technically practical are unwilling to enter into a contract for such use at fair market value.

(ii) Short telecommunications towers including the structure and fenced compound shall be designed to accommodate the wireless facilities of at least one (1) provider plus space for emergency communication antennas used by the Town's police and fire service provider.

(iii) Tall telecommunications towers including the structure and fenced compound shall be designed to accommodate collocation of the wireless facilities of at least three (3) providers plus space for emergency communication antennas used by the Town's police and fire service provider.

(c) Location.

(i) Tall telecommunications towers shall not be located within one half (1/2) mile of any other tall telecommunications tower or within two hundred fifty (250) feet of any other wireless support structure located within the expected geographic antenna coverage area of the proposed telecommunication tower.

(ii) Short telecommunications towers and stealth structures shall not be located within two hundred fifty (250) feet of any other wireless support structure located within the expected geographic antenna coverage area of the proposed wireless support structure unless the applicant can show that locating the structure within the prescribed distance is necessary to insure adequate coverage and capacity. In the case of stealth structure, the Town Council may reduce or disregard the distance requirement stated herein.

(d) Height. The height of a wireless support structure includes any attached or proposed to be attached wireless facilities and shall be measured vertically from the pre-disturbance ground level at the center of the tower, but shall not include any lightning rod(s) attached to the top of the wireless support structure, which shall not exceed four (4) feet.

(i) The height of tall telecommunications towers shall not exceed one hundred ninety five (195) feet.

(ii) The height of short telecommunications towers shall not exceed seventy (70) feet.

(iii) The height of stealth structures shall not exceed the height allowed for the structure in which they are hidden or the height allowed for the type of structure they are designed to look like. If a stealth structure is designed to look like a naturally occurring thing, i.e. a tree, the structure may not

exceed the typical height in the vicinity of the Town for such a naturally occurring thing.

(iv) In no case shall a wireless communication structure of any kind or any attached wireless facilities exceed the minimum height necessary to accomplish the purpose it is proposed to serve. When measuring the height of a wireless communication structure, the purpose of the structure may include maximizing the ability for collocations upon the structure and shall include ensuring that the structure is capable of supporting at least the minimum number of collocations required by this ordinance.

(c) Permitted structures. Stand alone wireless support structures whether stealth structures or otherwise shall be monopoles. Stand alone stealth structures shall be consistent with the overall appearance of the Town and of the area of Town in which they are located. Stealth structures may be incorporated within or upon any existing or permitted structure if otherwise consistent with this ordinance. Wireless support structures using other designs, including, but not limited to guyed towers and lattice type towers shall not be permitted.

(d) Setbacks.

(i) Unless otherwise provided by this ordinance, the dimensions of the entire lot shall be used to determine if a wireless telecommunications site meets the dimensional and setback requirements of this section.

(ii) The base of a wireless support structure shall be located at least one (1) foot from the nearest property line for every one (1) foot of proposed height. The Town Council may in its discretion consider publicly maintained roadways as providing additional property for calculation of set backs and/or reduce the setback requirement from this 1:1 setback ratio to a setback of 1/3 of the height of the proposed structure. The 1:1 setback requirement may only be reduced to 1/3 of the height of the proposed structure when a North Carolina registered professional engineer certifies that the wireless support structure's fall zone is equal to or less than the setback requested and that the structure is designed to collapse within the setback requested provided any or all of the following are also shown by the applicant:

(1) No dwelling unit is located or can be constructed within the fall zone of the wireless support structure; or

(2) Where a dwelling unit is located or can be constructed within the fall zone of the wireless support structure, all property owners within the fall zone have agreed in writing or through sworn testimony that they are willing to accept the risks of the reduced setback.

(iii) When stealth structures are incorporated within or upon an existing or otherwise permitted structure, the setbacks associated with the structure shall apply.

(iii) Telecommunications accessory equipment structures, any equipment enclosures and any other structures shall be set back a minimum of fifty (50) feet from all property lines and rights of way.

(e) General aesthetics.

(i) Telecommunication towers, wireless facilities, accessory equipment structures and equipment enclosures shall be constructed and maintained to minimize visual obtrusiveness in color and finish.

(ii) Accessory equipment structures, equipment enclosures and related structures at telecommunication tower sites shall be of such design, materials and colors to blend with surrounding structures.

(iii) Outdoor storage of equipment or related items shall be prohibited at all wireless telecommunication sites.

(iv) Electrical and telephone lines serving a wireless telecommunication site shall be installed underground from the point of existing service.

(v) Sound emissions, such as alarm bells, buzzers and the like, shall not be permitted. Nothing contained herein shall prohibit the reasonable use of emergency generators at wireless telecommunications sites.

(f) Fencing. All telecommunication towers, their accessory equipment structures and equipment enclosures shall be enclosed by chain link fencing, not less than six (6) feet nor more than ten (10) feet in height. Such fences may be equipped with anti-climbing devices. The gate into the fenced area shall be located so that it is not easily visible from a street or adjacent property.

(g) Screening/landscaping and buffers.

(i) The base of a wireless support structure, to a minimum height of ten (10) feet above average grade at the tower base, shall not be visible from any publicly owned or maintained roadway.

(ii) Screening is required along all exterior sides of the fence described above excluding the gate. Screening shall be a minimum width of twenty (20) feet with two (2) rows of planting material placed ten (10) feet on center, that are a minimum of five (5) feet in height when planted, and that are expected to reach a height of eight (8) feet within three (3) years. Suitable plant types shall be those recommended by the U.S. Department of Agriculture to achieve a mature growth height of eight (8) to ten (10) feet in the coastal area. The Town Council may waive or modify this

requirement where existing trees, vegetation and/or structures provide suitable screening and buffering.

(h) Lighting.

(i) Telecommunication towers shall be lighted only if specifically required by the Federal Aviation Administration, in which case, Federal Aviation Administration minimum lighting requirements shall be applied.

(ii) When lighting is required by the Federal Aviation Administration, strobe lights shall be avoided unless specified by Federal Aviation Administration. When strobe lights are required on telecommunication towers, a dual lighting system of white strobes for daytime lighting and a red flashing light atop the tower for nighttime lighting shall be used unless other lighting is specifically required by the Federal Aviation Administration, the U.S. Fish and Wildlife Service or any state or federal agency having regulatory authority over the applicant.

(iii) Except for lighting described in (ii) above, all lighting at a wireless telecommunications site shall be shielded and shall comply with the provisions for outdoor lighting contained in section 36-166.

(i) Signage. Wireless telecommunication sites shall not display signage, logos symbols or any messages of a commercial or non-commercial nature. A sign, not visible from a public right-of-way or adjacent residences, shall be posted on the fence gate identifying the current owner of the tower, emergency contact person or agency, and applicable contact numbers. This provision shall not preclude the applicant from posting any additional signage required by federal or state law.

(3) Application requirements. An application shall not be deemed complete until all of the following items required have been submitted:

(a) Documentation showing the reasonable feasibility of collocating new antennas, wireless facilities and equipment on an existing structure or structures within the applicant's search ring. If an applicant contends that collocation on an existing structure is not reasonably feasible he shall submit documentation that (1) collocation is technically or commercially impractical; or (2) the owner of the telecommunication tower is unwilling to enter into a contract for such use at fair market value. At a minimum, technical documentation shall include a map of the search ring displaying all potential collocation sites and stating why each is suitable or unsuitable. Where an applicant contends that the owner or an existing wireless support structure or other feasible structure will not contract for its use for fair market value, the applicant must submit, in writing (1) a declaration from owners of all technically feasible collocation sites stating the price at which they are willing to negotiate space; (2) evidence that the applicant has tried in good faith to negotiate market value terms for the collocation at each site and (3) an licensed appraiser's certified opinion on the market value of collocation at each technically feasible collocation site.

(b) A scaled site plan, scaled elevation view, and supporting drawings, calculations and other documentation, prepared and sealed by appropriate licensed professionals, showing the location and dimensions of all improvements for the wireless telecommunications site including topography, wireless supports structure height requirements, setbacks, access driveways or easements, parking, fencing, landscaping, adjacent uses and any other information necessary to assess compliance with this article and compatibility with surrounding uses.

(c) Documentation that Federal Aviation Administration's minimum lighting standards have been met for the wireless telecommunications site.

(d) Documentation that the proposed wireless telecommunications site will comply with all applicable FCC rules and regulations.

(e) Documentation, prepared and sealed by a professional engineer registered in North Carolina, that the proposed wireless support structure and any attached wireless facilities and antennae meet or exceed accepted industry standards for wind loading, base stabilization and other critical engineering characteristics required by this ordinance, the North Carolina Building Code and as defined by American National Standards Institute (ANSI), Telecommunications Industry Association (TIA) and Electronic Industry Alliance (EIA).

(f) Documentation, prepared and sealed by a professional engineer registered in North Carolina, that the proposed wireless support structure and any attached wireless facilities and antennas do not exceed the minimum height necessary to accomplish the purpose for which they are constructed.

(g) Documentation, prepared and sealed by a professional engineer registered in North Carolina, stating the number of collocations that the proposed wireless support structure is designed to accommodate once constructed.

(h) Documentation, prepared and sealed by a professional engineer registered in North Carolina, to demonstrate that the wireless support structure has sufficient structural integrity for its intended uses. Documentation shall include a certification that all wireless support structures and attached wireless facilities shall be capable of withstanding sustained winds of at least one hundred thirty five (135) miles per hour whether or not all of the collocations the structure has been designed to accommodate have been attached to the structure.

(i) If the proposed wireless telecommunications site is to be located on lands owned by a party other than the applicant or the Town, a copy of the lease agreement with the property owner along with copies of any easement agreements necessary for ingress, egress and use of the property.

(j) Documentation consisting of a certificate of insurance verifying the existence of a general liability insurance coverage of at least one million dollars (\$1,000,000.00) at no cost to the Town. The certificate shall contain a requirement

that the insurance company notify the Town thirty (30) days prior to the cancellation, modification, or failure to renew the insurance coverage required.

(k) A copy of the approved National Environmental Policy Act of 1969 (NEPA) compliance report for all wireless support structures, antennas, wireless facilities, accessory structures or equipment proposed for the site.

(l) A memo of understanding regarding removal of abandoned structures and equipment located at the proposed wireless telecommunication site. Any wireless telecommunications site that is not operated for one hundred eighty (180) continuous days in a twelve (12) month period shall be considered abandoned. The owner of an abandoned wireless telecommunications site shall be responsible for the removal of all structures and equipment on the site within ninety (90) days of receipt of such notification by the Town. Failure to remove abandoned equipment will result in its removal by the Town at the owner's expense. In its discretion, the Town may condition approval of a permit for building of the proposed wireless support structure on the applicant providing a bond or letter of credit sufficient to allow the Town to remove the proposed structure if it is abandoned and not removed within the allowed time period by the applicant.

(m) Any other documentation necessary to ensure compliance with this section.

(4) *Review process.* The planning board will use the following criteria in its review of an application for any wireless telecommunication site, telecommunication tower, wireless facility, antennae or accessory structure.

(a) The use will not materially endanger the public health, safety or welfare if located where proposed and developed according to the plan submitted.

(c) The required conditions, specifications, and actions described in this article have been met.

(d) The location and character of the facility will be in harmony with the area in which it is to be located.

(5) *Consultants.* The Town may fix and charge an application fee, consulting fee, or other fee associated with the submission, review, processing, and approval of an application to site or modify wireless support structures or wireless facilities that is based on the costs of the services provided and does not exceed what is usual and customary for such services. Any charges or fees assessed by the Town on account of an outside consultant shall be fixed in advance and incorporated into a permit or application fee and shall be based on the reasonable costs to be incurred by the Town in connection with the regulatory review of an application. The Town may impose additional reasonable and cost based fees for costs incurred should an applicant amend its application. On request, the amount of the consultant charges incorporated into the permit or application fee shall be separately identified and disclosed to the applicant.

(6) Conditions. The Town Council may place reasonable conditions on the issuance of a conditional use permit pursuant to this section regarding public safety, land use, or zoning issues, including, but not limited to, aesthetics, landscaping, land-use based location priorities, structural design, setbacks, and fall zones.

(7) Validity of Permits. A conditional use permit or zoning permit issued pursuant to this section shall expire if the improvements permitted are not completely constructed within twenty four (24) months of the date of the approval of the permit.

(8) Waiver or Modification of Requirements: If upon the review of any application submitted pursuant to this section, the Town Council determines that denial of a permit based on any requirement or requirements of this section as applied to the application before the Town Council may be contrary to federal or state law, the Town Council may in its sole discretion vary, modify or disregard any such requirement in a manner which complies with the relevant law. The Town Council may continue any public hearing on a permit application for a reasonable time to consider such a determination and its actions thereon.

ARTICLE IV. Severability.

All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed. Should a court of competent jurisdiction declare this Ordinance or any part thereof to be invalid, such decision shall not affect the remaining provisions of this Ordinance nor the Zoning Ordinance of the Town of Southern Shores, North Carolina which shall remain in full force and effect.

ARTICLE V. Effective Date.

This ordinance shall be in full force and effect from and after the ____ day of _____, 2009. .

Mayor

ATTEST:

Town Clerk

Date: __/__/__
Vote: __Ayes __Nayes

Approved as to form:

Town Attorney

Exhibit F

Resolution 2009-10-13

Resolution of the Town of Southern Shores Council Requesting Action By the Dare County Board of Commissioners to Merge The Hazard Mitigation Plan for the Town of Southern Shores with the Dare County Hazard Mitigation Plan

WHEREAS, on October 30, 2000, the President of the United States signed into law the Disaster Mitigation Act of 2000 to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988 to reinforce the importance of pre-disaster mitigation planning to help reduce disaster losses; and

WHEREAS, North Carolina Senate Bill 300 requires all local governments to have an approved Hazard Mitigation Plan in order to receive state public assistance funds (effective for state-declared disasters after November 1, 2004); and

WHEREAS, the Town of Southern Shores Hazard Mitigation Plan was approved on February 15, 2005 by the Southern Shores Town Council and subsequently approved by the Federal Emergency Management Agency (FEMA) and the North Carolina Division of Emergency Management (NCEM) and revised September 23, 2008; and

WHEREAS, the Town of Southern Shores has to update the Town of Southern Shores Hazard Mitigation Plan as required every five (5) years by FEMA and NCEM; and

WHEREAS, the Town of Southern Shores, in accordance with guidance provided by FEMA, NCEM, and the County of Dare, now desires to include said Plan with the County of Dare as part of their Hazard Mitigation Plan update which is currently in process.

NOW, THEREFORE, BE IT RESOLVED that the Town of Southern Shores Council hereby requests that the Dare County Board of Commissioners incorporate the Town of Southern Shores Hazard Mitigation Plan as part of a Multi-Jurisdictional Hazard Mitigation Plan Update for Dare County.

Adopted this 4th day of November 2009

Don Smith, Mayor

ATTEST:

Carrie Gordin, Town Clerk

Exhibit G

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHERN SHORES,
NORTH CAROLINA ADOPTING ATTORNEY-CLIENT PRIVILEGE POLICY
(Resolution #2009-11-02)**

WHEREAS, the attorney-client privilege as interpreted by the Courts of North Carolina and the United States of America represents a fundamental protection of the clients of attorneys such as the Town of Southern Shores; and

WHEREAS, The Town Council finds that best interests of the Town and citizens of the Town can, in most cases, be best served by preserving the attorney-client privilege to the fullest extent possible; and

WHEREAS, the attorney-client privilege may only be waived by the client; and

WHEREAS, the Town Council of the Town of Southern Shores does not want to waive the attorney-client privilege inadvertently or without careful deliberation and good reason; and

WHEREAS, the Town Council of the Town of Southern Shores recognizes that North Carolina Public Records Act codified in N.C.G.S. 132-1 et seq., the North Carolina Open Meetings Law codified at N.C.G.S. 143-318.9 et seq. and other similar laws may require production from time to time of materials that could be subject to the attorney-client privilege; and

WHEREAS, the Town Council wishes to comply with and abide by the provisions of the North Carolina Public Records Act codified in N.C.G.S. 132-1 et seq., the North Carolina Open Meetings Law codified at N.C.G.S. 143-318.9 et seq. and other similar laws, and adopts this Resolution for that purpose.

NOW, THEREFORE BE IT RESOLVED, the Town Council hereby adopts the following policy with regard to waiver of the Town's attorney-client privilege:

1. The Town's attorney-client privilege shall not be deemed waived absent an affirmative vote by a majority of the Town Council to expressly waive the privilege made in open or closed session at a duly held meeting of the Town Council.
2. Any waiver of the Town's attorney-client privilege pursuant to such a vote shall be deemed to waive the privilege to the narrowest extent possible and only with respect to the precise subject matter or information for which the privilege is expressly waived.
3. Disclosure of information subject to the attorney-client privilege by the Town's Council Members, officials, employees, agents, independent contractors or attorneys shall not be deemed a waiver of the Town's attorney-client privilege unless expressly waived in the manner required by this policy.
4. Without further action of the Town Council, the Town Attorney or the Town Clerk, in consultation with the Town Attorney, may disclose any information when reasonably required to do so pursuant to any act of the North Carolina General Assembly, including, but not limited to the North Carolina Public Records Act and North Carolina Open Meetings Law, the United States Congress or any other legislative or rule making body to which jurisdiction the Town is subject so long as the Town Attorney reasonably believes that doing so will not materially prejudice the Town in any ongoing or future litigation, negotiation or other legal matter.
5. Without further action of the Town Council, the Town Attorney or the Town Clerk, in consultation with the Town Attorney, may disclose any information when reasonably required to do so pursuant to the order of any court of competent jurisdiction so long as the Town Attorney reasonably believes that doing so is required to comply with said order.
6. Even if disclosed pursuant to an affirmative vote of the Town Council the disclosure of information subject to the attorney-client privilege shall not be deemed a waiver of the attorney-client privilege unless expressly waived in the manner required by this policy if such disclosure was made pursuant to any act of the North Carolina General Assembly, including, but not limited to the North Carolina Public Records Act and North Carolina Open Meetings Law, the United States Congress or any other legislative or rule making body to which jurisdiction the Town is subject or pursuant to the order of any court of competent jurisdiction.
7. A certified copy of this signed resolution may be submitted at any trial or other proceeding, and may be used to foster an objection by the Town to the consideration, introduction or admission

Corrected

of any information subject to the attorney-client privilege unless the party opposing the Town's objection proves that the privilege has been expressly waived in the manner required by this policy.

8. This policy applies retroactively to all prior disclosures of information subject to the attorney-client privilege by the Town's officials, employees, agents, independent contractors or attorneys unless the privilege has been expressly waived in the manner required by this policy.
9. This policy shall be construed so as to waive the Town's attorney-client privilege to the least extent possible.
10. If any word, phrase, language, section or other portions of this policy are held invalid by a court of competent jurisdiction, then all remaining words, phrases, language, sections or other portions of this policy shall remain in full force and effect.
11. Any and all other policies previously adopted by the Town which are inconsistent with this policy are hereby revoked.

Adopted this 4th day of November 2009.

Don Smith, Mayor

Attest:

Carrie Gordin, Town Clerk

Exhibit H

ADDENDUM TO EMPLOYMENT AGREEMENT BY AND BETWEEN
TOWN OF SOUTHERN SHORES AND CHARLES B. READ, JR, DATED JANUARY 2, 2008

WHEREAS, Town of Southern Shores ("Employer") and Charles B. Read, Jr. ("Employee") wish to, as of the date set forth below, hereby amend and revise certain aspects of the above-captioned Agreement as follows:

Section 2. Term.

Subsection B. shall be revised and amended in relevant part to state: "The term of this Agreement shall be extended for an additional period of thirteen (13) months, concluding on July 30, 2012.

Section 3. Termination and Payment for Past Service Rendered.

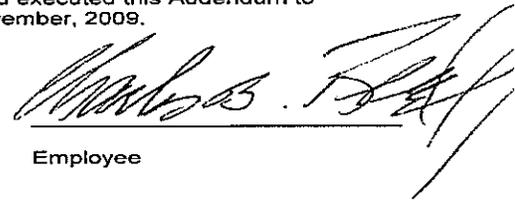
Subsection A. Shall be amended to state: In the event the Employee is terminated prior to July 30, 2012, for any reason other than "just cause" as defined under Section 13 of the subject Agreement, the Employer's Town Council agrees to pay Employee a lump sum cash payment equal to his salary for the remainder of time from the date of termination to July 30, 2012. Employee shall also be compensated for all earned vacation, holidays, compensatory time and all other benefits, monetary or otherwise, accrued up to the date of termination, calculated at the then-prevailing rate of pay.

Intending to be legally bound, all other terms and conditions of employment as set forth in the subject Agreement shall remain in full force and effect as stated.

IN WITNESS WHEREOF the Employer has caused this Addendum to Employment Agreement to be signed and executed in its behalf by the Mayor for the Town of Southern Shores and duly attested by its Town Clerk, and the Employee has signed and executed this Addendum to Employment Agreement, both in duplicate this 4th day of November, 2009.



Mayor



Employee



Town Clerk

APPROVED AS TO FORM



Town Attorney