



Town of Southern Shores

"A Town of Volunteers"

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Recessed Council Meeting

June 25, 2002

7:00 p.m.-Pitts Center

1. Mayor Sutherland called the meeting to order at 7:00 p.m.
2. Mayor Sutherland led the Pledge of Allegiance.
3. Mayor Sutherland asked that a moment of silence be held for the family of James Rogers.
4. Public Comment

Sally Meagher, president of SSCA, addressed three items for Council's consideration. 1) She stated that people are unhappy with the current chipping program in that piles of brush are not being picked up in a timely manner, 2) garbage cans and recycle cans are blowing over and trash is laying around and 3) dog feces is left along the road and on private property. She stated that the town is not looking as good as it could and asked that Council review these issues.

Sarah Tyler, 19 Pompano Court, stated that several months ago Council talked about the "dog" situation and she had suggested a committee be set up to review some of the issues (contractors bringing their dogs and letting them run free, tourist bringing their dogs, dogs fighting or hurting someone). She had asked if it would be possible to have a dog park. She is willing to be on the committee and feels it is a safety issue as well as helping the town in its appearance. She would like to see this resolved by next tourist season.

5. Public Hearing

- a. Consideration of zoning amendment-Conditional use to allow swimming lessons in the RS-1 zone. Article VII. Section 7.01.C.

Mayor Sutherland read the draft amendment. He opened the public hearing at 7:10 p.m.

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Public Hearing- draft zoning amendment to allow swimming lessons in RS-1 zone as a conditional use

Chip Vincent, attorney for the applicant, explained that the draft amendment is being presented for Council's approval so that his client, Christen Buchert of 151 Holly Trail can request Council's approval to allow swimming lessons to be given at her home. He reviewed the procedures that have been taken up to this point. (see list)

He stated that swimming lessons are valuable to the children and meet the health, safety and welfare in accordance to the Town's zoning ordinance. He pointed out that there are three places currently where children in Dare County can receive lessons: 1) Dare County Parks and Recreation, where the kids go to the sound or at Nautilus in Manteo to the pool, 2) YMCA or 3) the Duck Woods Country Club, in which you need to be a member. There are no services for the northern beaches and particularly in Southern Shores.

He stated that C. Buchert is certified by the Red Cross as an instructor and she instructs the Dare County instructors and has done so for years in the water safety program. They use her because she is the most qualified person in this County to teach water safety. If not for her, people would have to send their children to Pasquotank County because that is where the nearest Red Cross certified instructor is located. Since she has participated in this program for three years she has been responsible for indirectly training more than four hundred children in this county.

He stated that swimming pools are a permitted use in Town in accordance with the Town's zoning ordinance. He read a portion of the home occupation language Section 3.02 Home Occupation (f&g). He then stated that if teaching swimming lessons in a private pool is not a permitted use and is not covered within the home occupation statute it is otherwise considered a business in a residential district then there is no distinction between the many rental homes that have swimming pools as an amenity for increased rental and these rentals are a business activity in the RS-1 zone and do not meet the requirements of the home occupation requirement and operate in violation of the zoning ordinance. He stated that a reasonable analysis is to say that swimming lessons for six children in a private pool for the months of June and July is not more burdensome than the large cottages that sleep fourteen plus people, twelve months out of the year who burden our roadways, sewage capacity, trash/recycle collection, parking facilities and our beaches. He stated that as a governmental unit you can't distinguish between rentals and C. Buchert, you can't deny C. Buchert the same privilege.

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He stated that the message here is the safety, health and welfare of the children and our community above revenue. Once children are taught to swim they may save their own life as well as others, it effects us all.

He stated that Council should not be concerned that a flurry of activity of conditional use requests will come in for teaching swimming lessons. He stated that it didn't happen when day cares were approved as a conditional use. He stated that Ms. Buchert will be submitting a petition with 429 names supporting the request and he asks that the amendment be approved.

Christen Buchert, 151 Holly Trail stated that she has been teaching American Red Cross swimming lessons for eight years, the last three years at her home. She stated she doesn't advertise her clients spread the word. She stated that she performs a needed educational service to the Town and the community that is needed. She trains the local lifeguards also. She stated that she spent many hours contacting everyone personally and almost everyone signed the petition. She submitted a petition with 429 signatures. She stated that there were only about ten people who would not sign the petition but everyone was in support. She has signatures from everyone but one on Holly Trail. She could not catch them at home. She stated that swimming is great exercise and therapy and can be done by all up into their nineties. She covers all areas of water safety including weather, boat safety, life jackets, helping someone to get out of the water without endangering you, CPR, and stroke mechanics. She believes that every child needs to swim and deserves to swim and not everyone can afford a membership to the YMCA or country club. She stated that swimming gives you life saving skills also. She stated that there are not enough classes to go around. She asks that Council adopt the zoning ordinance so she can continue to provide this educational service at her home at 151 Holly Trail. She thanked Council for allowing her to speak.

Cliff Ogburn, Dare County Parks and Recreational Department Director stated that he supports the request and does not look at the service as a business. He stated that she provides all Dare County residents with a skill of life saving. He stated that being in an area surrounded by water you would be surprised at how many children and adults who do not have the ability to swim. He stated that the Parks and Rec. Dept. Advisory Council recently revised its priority list and moved the need for a public pool from number 6 to number 3. The need for this pool is not for recreational use but to teach swimming and water safety.

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C. Ogburn stated that Ms. Buchert certifies his staff with WSI certification, (water safety instruction) and they have taught an estimated four hundred children plus over the last four years the ability to swim.

C. Ogburn stated that he is sure that everyone would want to have a qualified coach or instructor for your child who participates in any program. He stated that without WSI there would not be the ability to teach swimming lessons at the proper standard. He stated that he hopes when Council considers swimming lessons as a conditional uses they will make their decision based on the importance of the service provided and on the difference that these lessons can make on the lives of those who take part. He asked Council to look at the value that she has directly and indirectly reached and has affected and enabled the Dept. to teach children in all parts of the County to swim.

Jack Sheehan, 301 N. Dogwood Trail, asked the question should this business be permitted in a residential zone? He stated that this is a residential community and should be enhanced under all circumstances. He stated that the commercial activity is in a specific area for a reason and should it be expanded to include the residential zone. He stated that it was tried with great effort to get a liquor license at the golf club but was rejected. If approved it could have set a precedent. If you could have that kind of activity why not others? He stated that her qualifications are of a professional nature but is not what this is about. He stated that the Town is a residential community and an attribute to be protected. He stated that this is an in-road that should be resisted.

Richard Mapp, 143 W. Holly Trail, stated that he supports the request and that he is a neighbor and he had no idea that this many people were trained there and it is well controlled and there is no problem there.

Jean Snow, 284 N. Dogwood Trail, stated that she agrees with Jack Sheehan. She stated that the residential area should remain a residential area and a precedent should not be set. She stated that people move here because of the zoning unlike other areas like Stumpy Point or Kitty Hawk Village. She stated that each person has an idea and might want to pursue an idea (like a Japanese teahouse) so that many kinds of business would be operating in the residential zone. She thinks swimming is good but not teaching it in a residential area. She stated there are other places in the area that have pools where she could teach lessons as C. Buchert stated she had done in the past.

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Ruth Smith, 161 Holly Trail, stated that she supports the applicant's request. She stated that she is a member of the Town's Planning Board and that they worked hard on the amendment to allow swimming lessons as a conditional use and it cannot open a Pandora's box. She stated that C. Buchert applied to the Planning Board to get approval so that she would be legal in her operation. She stated that C. Buchert is an extremely professional person. She stated that there are business operations on her street that are not allowed. She stated that it should be a consideration that C. Buchert is following this procedure.

Mary Berntsen, 141 W. Holly Trail, stated that she totally supports the request if the Bucherts' agree to obey all the ordinances.

Mickie Jenkins, 10 Soundview Trail, stated that she is an active nurse practitioner in her home but is not here for asking permission. She stated that what she does is a community service that everyone appreciates. She stated that Southern Shores is a town full of families and when she is asked where can kids get swimming lessons she says Christen. She's the best. She stated that not everyone could join a country club or the "Y". She stated that C. Buchert taught her daughter life saving, which in turn she taught at the Outer Banks Swim Club. She stated that in other communities where she lived the schools provided swimming lessons. How can we live next to the ocean and sound and not teach our children to swim. There are not enough facilities or instructors here and this service is provided by C. Buchert.

Karl Cubler, 3 Fern Lane, stated that he supports the applicant. He stated that she has taught both of his children and that she is very professional and this is an attribute to the Town.

Rob Holmes, 22 Spindrift Trail, stated that he has three children who have benefited from C. Buchert's service. He stated that she is doing the Town a favor (like the SSCA) gives the citizens a recreational outlet and a need, which the Town does not give. It saves the Town countless dollars. He stated that if Council does not approve this request then a need for a community pool is in order.

Debbie Briet, 2 Ocean View Loop, stated that she also has three children whom have benefited from the swimming lessons provided by C. Buchert. She felt comfortable with installing a pool due to the lessons her children received. She stated that she is not a member of the country club or the Y and she wants her kids to learn to swim in a pool not the sound to give them confidence. She stated that rental homes are a business and they are not chastised.

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D. Briet stated that C. Buchert does this for the educational benefits for the kids not the money and she is asking that Council be open-minded when making their decision and consider parents are using this service to protect their children.

Ginger Endreson, 165 Chicahauk Trail, stated that she supports C. Buchert. She stated that the lessons given at the Duck Woods Country Club are not half as qualified like the ones she teaches. She asked Council to allow the lessons.

Blake Buchert, 151 Holly Trail, stated that it is 100% necessary for the kids, community and Town and that is why he gives his backyard and his privacy for this service and appreciates Council's support.

Jim Connors, 83 Duck Woods Drive, stated that he supports C. Buchert and her valuable service. He stated that he has read the zoning ordinance meticulously regarding home based business since he runs a home based business. He stated that no precedent would be set in allowing this. He also stated that "home based business" is a way of life. Count him as a strong supporter.

Barney Garland, 1 Live Oak Lane, stated that he supports C. Buchert for the service she provides. It is a valuable service. The kids are living around hazardous waters and anything that can be done to prevent a death if should be done. He stated that he lives next door and there is no noise issue. He also stated that most everybody he knows that lives in Southern Shores has a home based business.

Mike Hejduk, 163 Happy Indian Trail, resident and Town Code Enforcement Administrator/Building Inspector stated that as a resident he can pay her to come to his house to teach swimming lessons, or have a window cleaner or maid service and many other services can come to his home and it is allowed by the zoning ordinance. He stated that C. Buchert is following the procedure for a conditional use request and that the approved request runs with the land. He stated that the zoning ordinance is not a static document and changes are sometimes needed. He supports the request. He stated that there is no community pool in town but other conditional uses have been approved such as day care, tennis courts and marinas.

Anna Stedman, 113 High Dune Loop, stated that she has two special need children and C. Buchert is an excellent teacher and this is a special case that requires an exception. A. Stedman stated that there is no undue negative strain ecological or aesthetically on the Town. There is no increase in traffic on the street when lessons are in force.

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A. Stedman stated that the alternative for parents is to teach their children to swim in the ocean and the burden falls on the lifeguard to save us all.

Mayor Sutherland asked if there were anyone else wishing to speak and hearing from no one he closed the public hearing at 7:50 p.m.

Councilman Kennedy moved to adopt the amendment to the zoning ordinance to allow swimming lessons in the RS-1 zone as presented. Councilman Smith seconded.

Mayor Sutherland stated that sixteen (16) people spoke tonight and a petition with 429 signatures was presented also in support of the request to allow swimming lessons. He stated that he also received emails in support and he had received no commentary against. He stated that two people spoke against it tonight. He stated that this knd of support is a very powerful argument.

Councilman Denny stated that when the subject first came up he said that he was not for it. He felt that it is a home business and needs to be regulated. The purpose of regulating is to control traffic and allow people maximum enjoyment of their property. He stated that he agrees that the Planning Board did do their homework and now he has changed his mind. He stated that the Town does very little for the kids and relies on the civic associations for parks and recreational activity and is grateful for it. He stated the community is changing and more attention needs to be paid to the kids. He stated that he remembered a time when anyone under 55 years of age appeared in Town, people wondered what they were doing here. He stated that he supports allowing the kids to have swimming lessons in our Town.

Councilman Campbell stated that he lives directly across the canal from the applicant. He stated that he has been a resident for 18 years and C. Buchert has been at 151 Holly Trail for 11 years. He stated that he only hears joyful noises from her yard. He stated his complaint is due to businesses being in the Town. He stated he understands the service that she provides but the County has a responsibility to the citizens. The County should be looking at the northern beaches for recreational activities. He stated that he hopes the citizens have the same enthusiasm to vote against other people who want to start a business without a conditional use. He stated that he was prepared to vote against it tonight but that he will now abstain from voting and that automatically gives it a plus vote.

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Mayor Sutherland stated that he too was prepared to vote against the request but due to the overwhelming community support he has changed his mind. He stated that he doesn't want the community to think it is the retired against the young population, we do what is right. He called for a vote. 4 ayes, 1 abstention. Approved unanimously. *Note: An abstention is counted as a yes vote.

- b. Request for conditional use to allow swimming lessons in the RS-1 zone specifically located at 151 Holly Trail (Christen Buchert).

Mayor Sutherland explained that a conditional use hearing is a quasi-judicial procedure in that it acts like a court and anyone wishing to speak needs to be sworn in and any witness can be cross-examined. He called the public hearing to order.

Mayor Sutherland asked Dan Shields, Planning Board chairman to review their recommendation to Council.

D. Shields stated that the Board reviewed in detail and submitted the amended language to allow swimming lessons in the RS-1 zoning district as a conditional use, which Council approved tonight and the Board further recommends the approval of the request.

Carrie Gordin, Town Clerk swore witnesses in for the applicant. Mike Hejduk, Town Code Enforcement Administrator, Christen Buchert, applicant and Cliff Ogburn, Dare County Parks and Recreational Director.

Chip Vincent, attorney for the applicant asked M. Hejduk if there have been any complaints regarding this activity? M. Hejduk said no. He asked him if there are codes that need to be met? M. Hejduk stated there was a gate issue on the fence surrounding the pool but that has been remedied.

C. Vincent asked if the request meets the Land Use Plan? M. Hejduk said yes.

C. Vincent asked M. Hejduk if pools are a permitted use? M. Hejduk said yes.

C. Vincent asked if there are any of the Town's zoning requirements in accordance to Section 10.05.5. (a-d) application for permit for conditional use requirements that the applicant does not meet? M. Hejduk said no.

No one had further questions of M. Hejduk.

Conditional use request to allow swimming lessons

C. Vincent asked Christen Buchert to answer the following questions? Her address: 151 Holly Trail, is this location where the swimming lessons are given? She said yes. She stated her qualifications. She stated that she is an approved provider by the Red Cross to teach swimming lessons. She stated that she has an agreement with the American Red Cross as an approved provider to teach swimming lessons at her facility. She also stated that she has the qualifications to maintain pools for the last four years.(see list) Pictures were submitted of the pool and the surrounding area, including the fence and gate. She stated that the pool is 20'x 40'x 48'with the depth from 3' to 8'.

C. Vincent asked her to give the schedule for the swimming lessons? C. Buchert stated that typically she starts in July for seven weeks. The lessons are eight classes held four days a week, no more than six children in a class. She stated that she starts at 8:30 a.m. and ends the class at 12:15 p.m. She stated they have a 15-minute break and she holds 3-4 classes a day.

C. Vincent asked her if parking is a problem? She stated that she has a long driveway and that there have been no problems. She stated that a couple of parents parked on the street but after being told to use the driveway there have been no problems. He asked her if there have been any injuries? She said no. He asked her if she has liability insurance and with whom? She said yes with Deering and Assoc. and she stated that it is a two million dollar bodily injury policy that she has had for years. He asked her if she has had any noise, traffic or any other complaints? She said no.

Councilman Campbell asked C. Buchert if the lessons are in conflict with the Town's Land Use Plan? He stated that the plan states the Town intends to remain predominately low density, single family detached community and retain its quiet residential character for the residents and property owners and does not want this character to change. He asked is there a conflict with the LUP statement? She said no. She stated that she has five children of her own and they can be noisy for playtime but that during swimming lessons it is quiet.

C. Vincent asked Cliff Ogburn to explain what C. Buchert's services do for the County? C. Ogburn stated that she certifies the County employees with WSI certification. C. Vincent asked what are C. Buchert's qualifications to teach this? C. Ogburn stated that she is Red Cross certified.

He stated that she is very qualified. He stated that he took his lessons from her and found her to be professional, detailed and experienced.

Conditional use request to allow swimming lessons

C. Vincent asked him if there are other Red Cross certified person in the area? C. Ogburn stated not in this area, Elizabeth City. He stated that the issue is that a valuable service is being provided for life safety.

Mayor Sutherland asked if there are any other towns in Dare County that provide swimming lessons? C. Ogburn said no, that swimming lessons are given in the sound water by the county.

Mayor Sutherland asked if there is any other factual evidence to be presented? There was none. There was no further cross-examination.

Mayor Sutherland asked if there is anyone present who would like to make any recommendations or additional conditions authorized by the ordinance passed?

Jack Sheehan stated that he would like to withdraw his name from the signature sheet. He stated that he finds C. Buchert to be quite qualified. He asked if her business were to expand to what extent would Council be willing to go? He asked that Council not be swayed and he suggested that Council consider a status report that may warrant a change in the conditional use.

Mayor Sutherland stated that he feels the applicant would be willing to submit a report upon request.

Mayor Sutherland hearing from no one further closed the request for conditional use public hearing at 8:20 p.m.

Councilman Kennedy moved to approve the application for a conditional use having found that the applicant has met the requirements and the applicable provisions of the Southern Shores zoning ordinance and all other applicable ordinances (Section 10.05 5. a-d) that the use as proposed will conform with the Town's Land Use Plan and will be compatible with the area in which it is located. Further that the use will not materially endanger the public health, safety when located as proposed and will not overburden the Town's fire dept. or County water supply and to include the new language for swimming lessons as a conditional use at 151 Holly Trail. Councilman Campbell seconded. Approved unanimously.

Councilman Campbell stated that the Town has no liability it falls totally on the applicant.

C. Buchert thanked everyone for their support.

c. Consideration of FY 2002-2003 proposed budget

No one signed up to speak.

Mayor Sutherland stated that the proposed FY 2002-2003 budget submission and presentation was held on June 4, 2002.

Mayor Sutherland stated that before Council holds the discussion on the budget for consideration he read an editorial from the Sentinel headlined as Hisses and Kisses which kissed the Town Manager for his presentation of the Town's proposed FY 2002-2003 Budget.

Councilman Campbell made a motion to adopt the budget as presented by the Town Manager. Mayor Sutherland seconded.

Councilman Smith stated that T. Gjestson has done a great job. He stated that his concern and has voiced this before that the Town's Undesignated Fund Balance (UFB) is 2.5 million dollars. He stated that this is the tax payer's money and he feels some of the money should be returned to the citizens. He stated that historically the recommendation of the UFB has been 3-6 months for a rainy day fund but it is 9-12 months. He stated that the roads budget was very aggressive and could be rolled back. He stated that he would not support the proposed budget as presented and suggested that the tax rate be lowered to sixteen cents from eighteen cents.

Councilman Kennedy stated that he does not agree with Councilman Smith's comments. He stated that he initially said to Councilman Smith that a tax cut would be in order but now he has changed his mind. He stated the reason for his change is the situation that the State's budget is presently in. The state can't tell the towns how much money they will be getting. Council needs to assume that the Town will get \$160,000 for the upcoming budget year that represents about three cents of the tax rate. He stated that municipalities' income comes from other sources than property tax. He stated that the area hasn't had a hurricane but it will happen and that will effect the cash flow. He stated that the UFB will be reduced by up to \$150,000 and Duck's incorporation will be a loss of revenue. He thinks this is a conservative budget. He stated with complaints regarding the trash service and the chipper he thinks Council should seriously consider hiring (next year) additional employees to be out in the field to supervise. He stated that the contractors are not getting supervised properly. The town manager has to supervise everyone. He stated that the Town doesn't need to lower taxes one year and then raise them the next year. He supports the proposed budget as presented.

Proposed FY 2002-2003 Budget

Councilman Denny stated that he supports the budget as presented. He stated that it is a time of state revenue uncertainty but the tourist revenue is secure. He stated that next year's street budget should be increased.

He stated that the surplus should be given back to the people in the way of a tax cut or in the way of providing for needs in infrastructure. He stated that he is comfortable with the 75% fund balance and that the Town's eighteen cent tax rate is less than 1/2 of other Towns in Dare County.

Councilman Campbell stated that the integrity of Council on the protection of the citizens tax dollar. He stated that Council's record speaks for itself in that the taxes have been dropped twice in the last three years. He stated that the Town Manager has done a great job with the unknown prospect of the State's revenues and the incorporation of Duck in his budget submitted.

Mayor Sutherland thanked God for the manager's conservatism and his ability. Council voted 4 to 1 to have the 9-12 months in the rainy day fund and taxes were reduced two years in a row. He stated that every time the Town reduces the taxes it hurts the town in revenue sharing from the occupancy tax. The budget was approved 4 to 1 as presented. Councilman Smith voting no.

6. Consideration of draft Zoning Ordinance Amendment for Board of Adjustment notification procedures. Article XII. BOA. Section 12.04 B.2. Powers and duties-Variations

Councilman Campbell asked Pat Storey, Board of Adjustment vice chair if the BOA chairman and the Planning Board has seen the proposed changes? She stated that they have and they have approved the new language. Mayor Sutherland read the draft of the BOA procedure.

Bob Siegel, chairman of the Board of Adjustment recommends Council consider raising the application fee from \$25.00 to \$100.00.

Mayor Sutherland suggested that the Town Manager review the Town's current fee schedule.

Councilman Campbell made a motion to adopt the amended BOA procedures as presented. Mayor Sutherland seconded. Approved unanimously.

7. Council's Agenda-none

8. Mayor's Agenda

Mayor Sutherland announced the DOT meeting will be held July 18 at 7:00 p.m. in the Pitts Center and that everyone should attend.

9. Town Manager's Agenda-none

10. Town Attorney's Agenda-none

Councilman Campbell moved to recess the meeting to go into closed session to discuss personnel issues. Mayor Sutherland seconded.

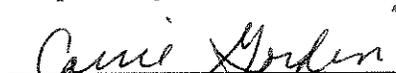
Councilman Campbell moved to adjourn closed session and return to open session. Mayor Sutherland seconded. Mayor Sutherland moved to adjourn meeting at 9:05 p.m. Councilman Campbell seconded. Approved unanimously.

ATTEST:



Mayor

Respectfully submitted:



Town Clerk