

Southern Shores Town Council
Town of Southern Shores, North Carolina
Regular Meeting
May 3, 2005
7:00 p.m.-Pitts Center

MINUTES

The Southern Shores Town Council met on May 3, 2005, at the Pitts Center.

The following members were present: Mayor Hal Denny, Council Members: Jodi Hess, Dan Shields, David Sanders, and Brian McDonald

Also present were: Carl Classen, Town Manager; Carrie Gordin, Town Clerk; and Ike McRee, Town Attorney

OPENING

Mayor Denny called the meeting to order at 7:00 p.m. and led the Pledge of Allegiance.

Mayor Denny called for a moment of silence for the family on the passing of Ginny Albrecht, long time resident and volunteer.

APPROVAL OF AGENDA

Council Member Shields moved to approve agenda as presented. Council Member Sanders seconded. The motion passed with Mayor Denny and Council Members Hess, Shields, Sanders, and McDonald voting aye; no Council Member voting no; and no Council Member absent.

APPROVAL OF MINUTES

Council Member Shields moved to approve the March 1, 2005, minutes as presented. Council Member Sanders seconded. The motion passed with Mayor Denny, Council Members Hess, Shields, Sanders, and McDonald voting aye; no Council Member voting no; and no Council Member absent. The motion passed with Mayor Denny, Council Members Hess, Shields, Sanders, and McDonald voting aye; no Council Member voting no; and no Council Member absent.

Council Member Hess moved to approve the March 15, 2005, minutes as presented. Council Member Shields seconded. The motion passed with Mayor Denny, Council Members Hess, Shields, Sanders, and McDonald voting aye; no Council Member voting no; and no Council Member absent.

Council Member Shields moved to approve the April 5, 2005 minutes as presented. Council Member Hess seconded. The motion passed with Mayor Denny, Council Members Hess, Shields, Sanders, and McDonald voting aye; no Council Member voting no; and no Council Member absent.

PUBLIC COMMENT

Mayor Denny opened the floor for public comment.

Tom Hartman, 140 Beech Tree Trail, stated that he would like to mention that Floyd Lupton is ill and is at Britt Haven in Belhaven. He stated that he supports the street improvements to Beech Tree Trail. He asked that safety standards be addressed with regards to traffic management and that the project not be delayed.

Mary Berntsen, 141 W. Holly Trail, she represents the "Meals on Wheels" program. She reviewed the program and stated that, due to a change in caterers, the service would not be dropped for Southern Shores but that volunteers who deliver the meals may need to go to Kill Devil Hills to pick up the meals. She stated that she isn't asking Council to do anything but she would like information sent out asking anyone who would like to use the service or anyone who knows someone who could use the service contact her or Town Hall.

Jeff Shields, 163 Beech Tree Trail, stated that he generally supports the Beech Tree Trail street improvements but he does have some concerns. He stated that he does not want to see the "S" curves straightened. He delivered a petition that he said was signed by 23 residents, representing 17 properties on Beech Tree. He asked that Council consider re-negotiating the improvements on the bid process on the behalf of the residents of Beech Tree Trail

Ed Cowell, 134 Beech Tree Trail, he stated that he supports the improvements on Beech Tree. He stated that the roller coaster effect causes water accumulation which is dangerous and swales would be helpful. He doesn't think the street needs to be widened but at E. Dogwood it is hard to maneuver at times with construction trucks. He stated that at times he has had to pull over and stop due to the placement of a basketball hoop is on the side of the pavement and mailboxes.

Leo Holland, 23 Spindrift Trail, president of the SSCA stated that the Grand Opening of the boat ramp has been delayed due to construction problems. He stated that the SSCA is holding their 30th anniversary on May 15 at 2 p.m. and that David Stick is the guest speaker for the General Membership meeting on May 9.

Robert Woodard, chairman of the Outer Banks Visitors Bureau and Carolyn McCormick, Executive Director, Dare County Tourism Board, were introduced by Mayor Denny for a special presentation. Mr. Woodard gave an extensive informative tourism stewardship report.

REPORTS**Planning Board-April 18, 2005 meeting**

Jim Groff, Planning Board chairman reported that four ordinances are on the May 3 Council. He stated that June 10 a meeting is scheduled to discuss Planned Unit Developments.

Build the Bridge/Preserve Our Roads

Bob Palombo reported that the federal Transportation Bill is held up in committee. He submitted as part of the minutes a response he wrote to an editorial in the Coastland Times on April 17, 2005 regarding the Mid-Currituck Sound Bridge. Hearing no objection, Mayor Denny directed that a copy be included with the minutes (Exhibit A)

Southern Shores Volunteer Fire Department

Chief Bakken reported that there are 90 volunteer members in the Fire Department. He presented the monthly fire report and stated that calls are down. He reminded everyone to clean their house numbers so they are visible for emergency services.

PUBLIC HEARINGSOrdinance # 2005-04-01-Moratorium –Planned Unit Development (PUD)

Mayor Denny opened a public hearing on Ordinance No. 2005-04-01 Relating to a Moratorium on Applications for Planned Unit Developments.

Ms. Terry Frank, attorney with the firm of Vandeventer Black, spoke as a representative for Southern Shores Realty. She submitted objections regarding the moratorium. She asked that Council not approve the moratorium but if it is, to work quickly and take the advice of trained planners. She stated that in the commercial use public hearing, to also be held May 3, language is written that PUD's be changed from a permitted use to a conditional use. She asked that Council consider the impact any changes would have on Southern Shores Realty, since Mr. Stone's property is the only one that would be impacted by these changes and would prefer that the PUD language remain as current written.

Neal Blinken, Powells Point, spoke in opposition to moratoriums in general. He stated that Council does not need to take such a drastic action.

Hearing no other comments from the public, Mayor Denny closed the public hearing.

Ordinance # 2005-04-04-Temporary Uses

Mayor Denny opened a public hearing on Ordinance No. 2005-04-04 Relating to a Temporary Uses.

Hearing no comments from the public, Mayor Denny closed the public hearing.

Ordinance #2005-04-02-Zoning Map Amendment

Mayor Denny opened a public hearing on Ordinance No. 2005-04-02 Relating to a Zoning Map Amendment. Mayor Denny stated the Ordinance deletes a piece of commercial property formerly located in the Town's Extraterritorial Jurisdiction that has been annexed by the Town of Kitty Hawk. Mayor Denny stated that the Ordinance also corrects a small area of commercial property located in the Southern Shores Landing Planned Unit Development (PUD) that should have been included in the Commercial District when the PUD was approved.

Hearing no comments from the public, Mayor Denny closed the public hearing.

Ordinance #2005-04-03-Commercial Zoning

Mayor Denny opened a public hearing on Ordinance No. 2005-04-03 Relating to Commercial Uses. Mayor Denny stated that the Ordinance clarifies commercial uses appropriate for the Southern Shores community.

Bob Stewart, 8604 Caratoke Hwy. Powells Point, stated that he is a civil engineer doing business as Performance Engineering and is speaking on behalf of Frank Stone. He stated that the

Ordinance appears to delete businesses that are currently permitted. He questioned why nothing new would be permitted and why competition between businesses is discouraged. He stated that the list of permitted uses is also problematic and asked whether if something is listed does that mean those businesses not listed are not allowed. He suggested deleting the exclusionary list of permitted uses. He stated that the prohibition of mercantile facilities greater than 30,000 sq. ft. displays a lack of understanding of the dynamics of retailing. He stated that he feels the prepared Ordinance is poorly prepared and will attract poorly performing businesses and the Town will lose more than gain.

Ms. Terry Frank, attorney with the firm of Vandeventer Black, spoke as a representative for Southern Shores Realty and Frank Stone. She questioned the legality of the draft ordinance. She stated that PUD's have been amended from a permitted use to a conditional use but that no conditions have been listed. She feels it is premature to approve this proposed ordinance and she encourages Council to not vote for it at this time.

Frank Stone, 1 Kingfisher Loop, stated that he has been associated with Southern Shores for over 40 years and lived and worked here for 35 of those years and has seen many changes over that time. He stated that he has invested everything he has in real estate in Southern Shores for his retirement and he has protected those investments. One piece of property in particular, he has set aside for 25 years, knowing that some day he would develop or sell the property. He stated that now proposed changes to zoning may have a huge impact on his property and make it so it can't be developed for commercial use. He asked that Council consider getting professional opinions on these changes and he feels if Council approves the ordinance as it stands it would be a slap in his face.

Neal Blinken, Powells Point, stated it would better serve the Town to list the undesirable businesses in the ordinance. He stated that he is concerned in limiting 30,000 sq. ft. to a business and requiring restaurants as a conditional use will cause acrimonious feelings. He does not support this ordinance as written.

Hearing no comments from the public, Mayor Denny closed the public hearing.

OLD BUSINESS

Ordinance # 2005-04-01-Moratorium –Planned Unit Development (PUD)

Mayor Denny stated that this Ordinance was originally drafted as an one-year moratorium but has been amended to a period of six months. He stated that he supports the Ordinance and that this moratorium would allow time to bring the Zoning and other development ordinances together in a more unified manner.

Council Member McDonald asked that the intent is to not make PUD's illegal. Mayor Denny stated that is correct and Council is on record that PUD Use remains in the commercial zone.

Council Member McDonald stated that he only would agree to a six-month moratorium on amending language as needed but that also the zoning ordinance needs to be compiled in an orderly consistency.

Council Member Hess supports the six-month moratorium.

Council Member Sanders stated he is in favor of hiring professional assistance in compiling a unified development ordinance but he is concerned that the moratorium may need to be extended.

Council Member Shields stated that the Zoning Ordinance needs to be restructured but the moratorium should not be longer than six month regarding PUD's.

Mayor Denny stated that the effective date regarding the moratorium ordinance should read May 3 not April 6 as drafted.

Council Member McDonald asked why the moratorium is needed if the current Town ordinances can control the PUD's and re-draft the ordinance and leave things as they are. He stated that the moratorium is only for one part of the zoning.

Council Member Hess stated that the PUD/Subdivision regulations are in conflict and need to be reviewed and drafted to prevent future problems in any upcoming developments.

Mayor Denny moved to amend and approve Ordinance # 2005-04-01 to be effective immediately and to expire November 2, 2005. Council Member Hess seconded. Mayor Denny, Council Members Hess and Shields voting aye; Council Members Sanders and McDonald voting no; and no Council Member absent. A copy of Ordinance No. 2005-04-01 as approved is attached as Exhibit B and made part of these minutes.

(NOTE: Approval at the same meeting during which an ordinance is introduced requires an affirmative vote by 4/5ths of the entire Town Council. NCGS §160A-75)

Mayor Denny stated that second approval of the Ordinance will be brought forth at the May 17, 2005 Council meeting.

Ordinance No. 2005-04-02-Zoning Map Amendment

Carl Classen explained this Ordinance is to update the Town zoning map from a past approval of a site plan for Southern Shores Landing with staff recommended map as part of ordinance.

Council Member Hess moved to approve Ordinance No. 2005-04-02 with staff's map amendment. Council Member McDonald seconded. The motion passed with Mayor Denny and Council Members Hess, Shields, Sanders, and McDonald voting aye; no Council Member voting no; and no Council Member absent. A copy of Ordinance No. 2005-04-02 as approved is attached as Exhibit C and made part of these minutes.

Ordinance No. 2005-04-04-Temporary Uses

Council Member Hess brought to Council's attention that the ordinance language reads to be approved by Town Council but the temporary use is a permitted use not a conditional use.

Council Member Shields moved to adopt Ordinance #2005-04-04 as amended. Council Member Sanders seconded. The motion passed with Mayor Denny and Council Members Hess, Shields, Sanders, and McDonald voting aye; no Council Member voting no; and no Council Member absent. Ordinance amended to read correctly. A copy is attached as Exhibit D and made part of these minutes.

Ordinance #2005-04-03-Commercial Zoning

Mayor Denny asked Jim Groff, Planning Board chairman to address Council on this ordinance.

Mr. Groff stated that the board has been working on this for over six months. He stated that the purpose of the ordinance is to be more specific what businesses are allowed and prohibited in the

commercial area. He stated that the board has taken into consideration comments made by the citizens from the Long Range Planning survey. He stated that most comments said "Don't change anything". He stated that the board realizes changes do happen and they tried to manage the changes. He stated that previous public hearings were held on this ordinance with little or no comment. He stated that new definitions were established and the board is not trying to limit property rights of land developers but the Town is a residential community and the board is trying to manage what the citizens want.

Discussion was held regarding the lists of businesses allowed, prohibited, or allowed as a conditional use.

Council Member Sanders recommends that Council table action on this ordinance until further review. He stated that he understands that if this ordinance is approved restaurants would become a conditional use from currently a permitted use. He asked what is the existing law regarding restaurants serving liquor by the drink since the Town is holding a referendum on May 10 on this issue.

Mayor Denny stated that the Town has little control regarding restaurants that serve liquor. Mr. McRee stated that the state ABC Board places controls on restaurants regarding the amount of food/liquor sales of said establishments. Mr. McRee stated that the Town already has in place ordinances regarding nuisances and noise that would help in regulation of establishments.

Mr. McRee explained that if the ordinance is approved any existing establishments would become non-conforming and would comply with current ordinances and any new applications for restaurants would follow application as a conditional use.

Council Member Hess moved to adopt Ordinance #2005-04-03 Article II. deleting definition of nightclub and modifying definition of restaurant (business) and to include Article V. to item number 1. Restaurants. Mayor Denny seconded. Council Member Hess moved to amend the motion to include Article V, VI, and VII as presented. Mayor Denny seconded the amended motion. The motion passed with Mayor Denny and Council Members Hess, Shields, Sanders, and McDonald voting aye; no Council Member voting no; and no Council Member absent. Ordinance amended to read correctly. A copy is attached as Exhibit E and made part of these minutes.

Mayor Denny stated that Council needs to give guidance to Planning Board regarding commercial businesses and he recommends to defer further discussion on this item at the May 17 meeting.

Mr. Classen stated that the Planning Board has scheduled a special meeting on June 10 with a professional planner to discuss and develop a Unified Development Ordinance regarding PUD's.

Resolution 2005-05-01-Stormwater Policy Advisory Committee Charter

Mayor Denny stated that due to on-going stormwater issues the committee charter needs to be extended. Council Member McDonald moved to adopt Resolution 2005-05-01 as presented. Mayor Denny seconded. The motion passed with Mayor Denny and Council Members Hess, Shields, Sanders, and McDonald voting aye; no Council Member voting no; and no Council Member absent. A copy is attached as Exhibit F and made part of these minutes.

NEW BUSINESSResolution 2005-05-03-Relating to Public Records of Town Attorneys

Council Member Shields moved to adopt Resolution 2005-05-03 as presented. Council Member Hess seconded. The motion passed with Mayor Denny and Council Members Hess, Shields, Sanders, and McDonald voting aye; no Council Member voting no; and no Council Member absent. A copy is attached as Exhibit G and made part of these minutes.

Ordinance 2005-05-aa-Gravey Pond Nuisance Abatement Exemption

Mr. Classen stated that this issue is following up on an item from the 2005 Town Council Retreat to consider amending the Town Code to delete an exemption for Gravey Pond from the nuisance abatement requirements. He stated that the requirements provides that adjacent property owners are responsible for any vegetation (typically trees) that hang more than 45° over the edge of the waterway thus becoming hazards to boaters and – if they fall into the waterway – inhibiting the flow of water, which negatively impacts drainage through the Town and diminished water movement necessary for cleansing the waterway.

Council Member Hess moved to adopt Ordinance 2005-05-01 with the modifications recommended by staff. Mayor Denny seconded. The motion passed with Mayor Denny and Council Members Hess, Shields, Sanders, and McDonald voting aye; no Council Member voting no; and no Council Member absent. A copy is attached as Exhibit H and made part of these minutes.

OTHER ITEMSCouncil Items

Council Member Hess thanked staff and the Mayor for the revised format of the minutes.

Mayor Items

Mayor Denny stated that Council adopted a resolution (2004-09-03) regarding legislation on email lists as public records. He stated that the issue is before the legislators again and he recommends Council submit an updated resolution to them requesting that the Town's broadcast email address list not be a matter of public record.

Town Manager's Items

Mr. Classen provided information regarding ongoing 2005 Retreat Goals as well as a volunteer effort by Ray Sharpe to repair the Town cemetery sign and the joint project with the Town of Duck for placement of Mile Post Markers on NC12 and on the beach with approval from NCDOT.

Mike Hejduk, Town Code Enforcement Administrator, provided information to Council regarding the preliminary flood insurance rate changes. He stated that there will be initial confusion as the information is disseminated.

Police Chief Pledger announced that Lt. Paul Terry's father passed away, who was a veteran of WWII, Korean and Vietnam.

Chief Pledger presented the monthly crime report. He reported that a one hour license check was held on May 2 at S. Dogwood and Wood Duck with 13 charges and 5 warnings given.

Mr. Classen reported that the second 2005 Spring Road Project bid opening was held May 2 with results as follows:

		(Beech Tree/East Holly elements)
Barnhill	\$263,980	(\$210,430; \$53,550)
RPC	\$273,840	(199,980; \$73,840)

He stated that the total Council-approved budget (February 1, 2005) for this project was \$218,750 (\$33,750, which includes the engineer's construction estimate; 10% contingency plus 15% for engineering and administration but both bids exceed the amount budgeted for this project.

Council discussed the \$50,000 increase in the bid quote from the approved budget amount and asked that the Town Manager provide where additional funds might come from and the Town manager and the engineer will meet and present to Council for further discussion at the May 17 meeting.

Mr. Classen stated that the FY2005-2006 budget would have a line item for channel marker maintenance. He also presented Personnel Plans for the Police and Public Works Departments.

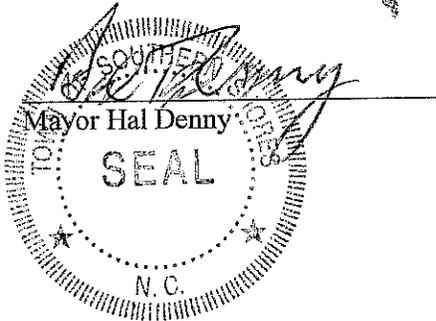
Town Attorney's Items-None

PUBLIC COMMENT-None

Hearing no other business Council Member Shields moved to adjourn the meeting at 10:50 p.m. Council Member Hess seconded. The motion passed with Mayor Denny and Council Members Hess, Shields, Sanders, and McDonald voting aye; no Council Member voting no; and no Council Member absent.

ATTEST:

Respectfully submitted:



Carrie Gordin

 Carrie Gordin, Town Clerk