



Town of Southern Shores

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Town of Southern Shores

Council Meeting

May 1, 2007

7:00 PM.-Pitts Center

The Southern Shores Town Council met on May 1, 2007 at the Pitts Center.

The following Council Members were present: Mayor Don Smith, Dan Shields, Jodi Hess, David Sanders, and Brian McDonald.

Also present were: Webb Fuller, Town Manager; Carrie Gordin, Town clerk; and Ike McRee, Town Attorney.

Mayor Smith called the meeting to order at 7:00 p.m., led the Pledge of Allegiance and held a moment of silence for the family of Bob van Zee who recently passed away, for Senator Marc Basnight and his family in the loss of their family owned business, Lone Cedar Restaurant due to a fire and for the armed forces serving around the world.

APPROVAL OF AGENDA

Mayor pro tem Shields moved to amend the agenda by moving item IV.B Resolution 2007-05-01-NC DOT Comprehensive Transportation Plan for the Northern Outer Banks under the manager's agenda. Council Member Sanders seconded. The motion passed with Mayor Smith and Council Members Shields, Hess, Sanders and McDonald voting aye; no Council Member voting no; and no Council Member absent.

PUBLIC COMMENT

Mayor Smith opened the public comment section of the agenda.

Chris Toolan, 2042 S. Old Nags Head Woods Road, Kill Devil Hills, addressed council regarding the placement of the proposed cell tower on Sandfiddler Court. He stated he is the listing agent for a property owner who lost a potential buyer when they learned there was a possibility of a cell tower being installed. He stated that even though the cell tower request has only went before the planning board the article in the newspaper caused an economic impact before anything actually happened. He asked council to consider placing the tower in a more suitable location.

Lori William, 109 Pudding Pan Lane, informed council that no one parked on the right-of-way at the "wedding house" but it appeared cars parked at neighboring residences. She stated that the Kitty Hawk Rental guide advertises the house to be a four bedroom. She stated that the property owner has a personal website stating that the house has seven bedrooms. She stated that the local wedding guide states the house has an occupancy of one hundred and fifty people. She stated that this is more than a vacation rental home.

Barry Briet, 6 Sandfiddler Court, stated he opposes the construction of the proposed cell phone tower on the Sprint property. He stated the town zoning does not permit this even as a temporary request and at this time council can not act. He stated that he is opposed to any changes to the town zoning that would allow towers in the residential zone.

Hearing no further comments, Mayor Smith closed the public comment section of the agenda.

MINUTES –April 3, 2007

Mayor pro tem Shields moved to approve April 3, 2007 minutes as presented. Mayor Smith seconded. The motion passed with Mayor Smith and Council Members Shields, Hess, Sanders and McDonald voting aye; no Council Member voting no; and no Council Member absent.

CONSENT AGENDA

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

REPORTS

Planning Board

George Kowalski, chairman presented report from the April 16, 2007 meeting.

Items for council's consideration are:

- Set public hearing date-Draft Home Occupation Ordinance
- Consider site plan application LDA-2007-04-01-My Home Options
- Consider site plan application LDA-2007-04-02-Verizon Wireless-temporary tower

Mayor pro tem Shields moved to hold the public hearing for the 2007-05-01-Home Occupations draft ordinance at the June 5 council meeting. Council Member Hess seconded. The motion passed with Mayor Smith and Council Members Shields, Hess, Sanders and McDonald voting aye; no Council Member voting no; and no Council Member absent.

Mike Hejduk presented the LDA-2007-04-01-My Home Options site plan. He stated this is a permitted use and the application meets all requirements.

Mayor pro tem Shields moved to approve LDA-2007-04-01-My Home Options site plan as presented and to include any special conditions that apply. Council Member Hess seconded. The motion passed with Mayor Smith and Council Members Shields, Hess, Sanders and McDonald voting aye; no Council Member voting no; and no Council Member absent.

Mayor pro tem Shields stated that council has no authority to take action on LDA-2007-04-02-Verizon Wireless-temporary tower request. He stated that he does not support this request and he does not support any tower that would require a change in zoning.

Ike McRee, attorney stated that council does not have the authority to consider this application in its current form.

Mayor pro tem Shields moved to reject the application request from Verizon Wireless for LDA-2007-04-02. Mayor Smith seconded.

Council Member McDonald stated this issue does need to be addressed but not just for one vendor and finding an alternate location working with the civic associations may be a better solution.

The motion passed to reject the application with Mayor Smith and Council Members Shields, Hess, Sanders and McDonald voting aye; no Council Member voting no; and no Council Member absent.

[Clerk's Note: Planning Board Report for April 17, 2007 is attached hereto as Exhibit A].

Southern Shores Volunteer Fire Department-No report

Mayor Smith reported that upon attending a luncheon today Charlie Cameron, Nags Head Town Manager, asked that the mayor extend a big thank you to the fire department on a great job our fire department did aiding in the Lone Cedar restaurant fire.

Police Department

Chief Kole presented the monthly police report.

Mayor pro tem Shields noted that the calls for service have significantly increased. Chief Kole stated the officers are checking commercial entry by making sure doors are secured and more residents have requested property checks and more walk throughs are being done at Kitty Hawk Elementary School which shows a higher number of calls on the report.

Mayor Smith stated that a question was raised at the mayor's chat about a house on Wax Myrtle Trail that had a drug bust. Chief Kole stated that happened about a month ago and he understands some of the people are back at the house and the department is aware.

OLD BUSINESS

Storm Water Management Study Report

The town manager stated that Robert McClendon presented the Storm Water Management Study Report with various recommendations at the April 24 council meeting. He stated that Mr. McClendon and Nancy White, CSI, are willing to help as needed. He stated that as recommended in the report staff is asking for direction to enter into an implementation phase. He stated the Storm Water Management Advisory Committee could be appointed as an Implementation Committee. They would work with staff and identify and prioritize problem areas and assessing costs.

Mayor pro tem Shields moved to retain the Storm Water Management Advisory Committee members and appoint them as a Storm Water Management Implementation Committee. Council Member Hess seconded.

Mayor Smith asked following the \$163,000 spent on studies what direction is the town heading.

The town manager stated that some residents may be expecting some immediate remedies following this report but there is no money in the budget at this time. He stated there may be grants available and he would be recommending, in the fall, to develop a capital plan and move money from the fund balance. He stated there may be recommended changes to residential zoning to mitigate storm water. He stated that NCDOT has installed a pumping system at Southern Shores Realty on NC12. He stated that the town would rent a pump, as needed, when an emergency arises.

The motion passed to retain the Storm Water Management Advisory Committee members and appoint them as a Storm Water Management Implementation Committee with Mayor Smith and Council Members Shields, Hess, Sanders and McDonald voting aye; no Council Member voting no; and no Council Member absent.

NEW BUSINESS

Proposed FY2007-08 Budget

The town manager presented the manager's budget message and proposed budget which calls for a tax rate increase from 8.5 cents to 9.75 cents with an overall budget decreasing from a 4.65 million to 4.47 million with no spending from the fund balance. He stated that over the past year the town is seeing a decline in revenues. He stated that council adopted a reserve fund policy that calls for 75% of the undesignated fund balance be placed in reserve but it currently is at 58%. He stated that it is recommended that the Powell Bill money not be spent and placed in the capital reserve plan. He thanked staff for all their input. He requested that council set dates for budget workshops and a date for the budget hearing.

Council agreed to hold the budget hearing at the June 5, 2007 council meeting and to hold two budget workshops prior to June 5 and one following the budget hearing. The dates for the workshops are May 10 and May 21, 2007 each beginning at 9:00 a.m.

Council Member Hess moved to hold the budget hearing on June 5, 2007 at 7:00 p.m. in the Pitts Center. Mayor pro tem Shields seconded. The motion passed with Mayor Smith and Council Members Shields, Hess, Sanders and McDonald voting aye; no Council Member voting no; and no Council Member absent.

OTHER ITEMS

Council

Council Member McDonald stated that from Verizon's request for a cell phone tower it has been brought to the town's attention there is a cell phone problem. He stated that something needs to be done to improve service and should council look for some solutions. He asked if there is some way the civic associations could look at some sites for consideration.

Mayor Smith stated that the Town of Kill Devil Hills has adopted a resolution opposing a legislative bill on cell towers. He requested that staff review the resolution and submit one for council consideration opposing the bill.

Council Member Sanders stated that the some specifics of the bill are to prevent a community from totaling excluding cell towers in certain areas. He stated our current ordinance does prevent cell towers except on a water tower. He stated that cell phones have now become a necessity and service is important.

Council Member Hess asked if the town manager could get a copy of the Kill Devil Hill study for review.

Council Member Hess moved to accept the Kill Devil Hills resolution by making changes as applicable to Southern Shores. Mayor Smith seconded.

Council Member McDonald stated that he did not read the resolution and would not vote for that reason.

The motion passed with Mayor Smith and Council Members Shields, Hess, Sanders and voting aye; Council Member McDonald voting no; and no Council Member absent.

Council Member Sanders stated that at the Mayor's chat stop signs were discussed. He stated the one way stop at S. Dogwood Trail and Yaupon Trail needs to be looked at. Mayor Smith stated that Chief Kole will look into this and make a recommendation.

Mayor-none

Manager

The town manager stated council has been provided with different versions for consideration of Resolution 2007-05-01. He supports a transportation comprehensive plan and recommends the resolution adopted by the Town of Duck.

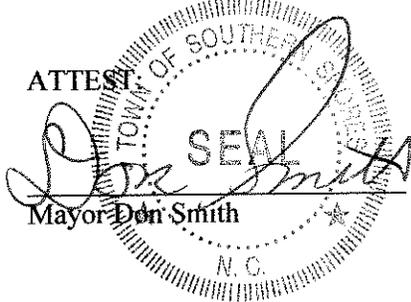
Mayor pro tem Shields moved to use the Duck resolution but to change text as needed applicable to Southern Shores. Council Member Hess seconded. The motion passed with Mayor Smith and Council Members Shields, Hess, Sanders and McDonald voting aye; no Council Member voting no; and no Council Member absent.

Town Attorney-none

PUBLIC COMMENT

Mayor pro tem Shields reported that Lori Williams pointed out an error in a NCDOT map provided to the public and upon NCDOT being notified they will make the needed correction.

Hearing no other business Mayor Smith moved to adjourn the meeting at 8:05 p.m. Mayor pro tem Shields seconded. The motion passed with Mayor Smith and Council Members Shields, Hess, Sanders and McDonald voting aye; no Council Member voting no; and no Council Member absent.

ATTEST

Mayor Don Smith

Respectfully submitted:


Carrie Gordin, Town Clerk

Memorandum

To: Southern Shores Town Council
CC: Town Manager
From: George Kowalski, Chairman, Planning Board
Date: 4/23/2007
Re: Recap, Planning Board Meeting of April 16, 2007

Planning Board recommended actions for the Town Council:

- 1. Approve the site application, subject to special conditions, LDA 2007-04-01, My Home Options.**
- 2. Partially approve the site application LDA 2007-04-02, Verizon Wireless Temporary Tower.**
- 3. Subsequent to holding a public hearing, approve Ordinance No. 2005-06-PB9, Home Occupation.**

Organization: Chairman Kowalski called the meeting to order at 7:00 PM. Planning Board members George Kowalski, Georgine Poisal, Jay Russell, Dave Peckens, Joe Walter, ETJ Representative Ed Overton, Alternate Nancy Wendt, and Alternate Jim Connors were all present. Also in attendance were the Code Enforcement Administrator Mike Hejduk and Administrative Support Assistant Cyndy Gabrys.

Approval of Agenda: Agenda approved

Approval of Minutes: The minutes of the regular meeting held March 19, 2007, were approved with minor changes.

Public Comment: There was no public comment.

Committee Reports:

The **Stormwater Management Advisory Committee** report was presented by Jay Russell, who stated that the committee will be presenting their findings at the next Town Council workshop, April 24, 2007.

Robert McClendon of the UNC Coastal Studies Institute will be presenting the committee's report along with a PowerPoint presentation.

The **Hazard Mitigation Plan Committee** report was given by Mike Hejduk. He stated that the Council will be presented with choices that need to be made at the next Town Council Workshop meeting, April 24, 2007.

The **Vegetative Advisory Committee** proposed ordinance was presented by its chairman, Jim Connors and members Gigi Hagenah, Sally Lowe, Helen Van Lear, Tony DiBernardo, Lori DiBernardo, Kathy McCullough-Testa. The members answered a variety of questions submitted by the Planning Board and gave their perspectives on the Town's role in protecting vegetation. After extensive discussion it was decided that certain issues would need to be discussed and resolved at a combined Planning Board and Vegetation Committee meeting. Jim will announce that date in the near future.

The **Land Use Plan/ Steering Committee**: The report was presented by Nancy Wendt, who said that results from the March 29, 2007 meeting held at the Duck Woods Country Club have as of yet not been sent back to the committee. Further action will be taken once those results are discussed.

Applications:

1. LDA 2007-04-01: My Home Options

This application is for the construction of a new building on the last available piece of commercial real estate in Martin's Point, 6345 N. Croatan Hwy. Representing the applicant was John De Lucia. This application came complete, fulfilling all filing requirements. The building is an exemplary example of style and architecture and will house a home electronics business.

Subsequent to discussion, the Board, by motion, unanimously approved the recommendation that Council approve the application LDA 2007-04-01 subject to the Standard Conditions specified on page 1 of 9 of the Planning Board Application Summary.

2. LDA 2007-04-02: Verizon Wireless Temporary Tower

Sit back and relax because this section is going to take some concentration to understand the logic of the decisions. Here goes:

Verizon Wireless, represented by Gary Pennington, Ashley Tobias, Laurie Roker and others, came to discuss a problem that Verizon was having on the Outer Banks, especially in the Duck-Southern Shores corridor. Verizon's antenna system, on the water tower in Southern Shores, can only handle 1,000 telephone calls at a time. The Duck tower antenna can only handle 1,000 telephone calls as well. Not only is the handling of 2,000 cell phone calls at any given time insufficient during the summer months, because of the number of tourists present, it also creates usage dissatisfaction for residents of Southern Shores and Duck who are Verizon customers, who would experience lack of service and dropped calls.

Since calls will be difficult to send and receive, Verizon is asking for a temporary solution to this problem by installing a COW (cell on wheels) at 7 Sandfiddler Court in Southern Shores, at the site where Sprint had their COW, after the tower collapsed in Kitty Hawk. However, these two COW scenarios are not the same since there is not an emergency in Verizon's case and therefore the tower falls under a different set of regulations. This temporary tower must be able to withstand 150 mph winds and since it has to be synched with the other two antenna sites, it needs to be 120 feet in height. This is a more substantially constructed tower and the building that houses the equipment shelter (12 ft x 30 ft.) cannot be mounted on wheels and must be anchored. The "temporary time" defined by Verizon is May through October, 2007. The placement of this temporary tower would increase the number of calls that can be handled at any given time to approximately 3000 and would give Verizon time to negotiate a permanent solution. This request would only be made once, since a permanent solution would be created, within the following year, and hopefully it would solve any further problems. Mr. Pennington admitted that Verizon was caught unaware by the extensive popularity of their service within this area (Virginia/North Carolina coastal region), which outpaced the New York City Metropolitan area during this past year.

There is however a major stumbling block. 7 Sandfiddler Court is zoned R1, Low density residential, and within this zone, there is no permitted use for a cell tower without a water tank attached. If the Planning Board approved a zoning change and presented it for Town Council approval, the earliest adoption date, of that change, would take place some time in June or July and only after a public hearing. When the time for installation is included, this solution would not help Verizon's problem.

The Planning Board does not have the power to grant Verizon temporary COW status. Only the Town Council has that power. So we have a quandary.

The Planning Board realizes that Verizon is not the only cell carrier that will have cell phone issues in the future and these issues can only be solved by establishing new towers.

In the Town code, in Chapter 7, section 7-20 Powers and Duties of the Planning Board, the following is stated:

(a) It shall be the duty of the planning board to prepare plans and to coordinate the plans of the town and those of others so as to bring about a coordinated and harmonious development of the area. The planning board is hereby designated as the planning agency for the preparation or revision of the zoning ordinances of the town under authority of Article 19 of Chapter 160A of North Carolina General Statutes. In addition, the planning board is directed and authorized:

(1) To acquire and maintain in current form such basic information and materials as are necessary to an understanding of past trends, present conditions, and forces at work to cause changes in these conditions.

(2) To prepare and from time to time amend and revise a comprehensive and coordinated plan for the physical development of the area. The comprehensive plan shall be the planning board's recommendations to the council for the orderly development of the town, including, among other things, the general location, character, and extent of streets, bridges, waterways, parks, playgrounds, open spaces, and public utilities.

The Planning Board therefore recognizes that it is responsible to keep abreast of current and future technological and electronic communication requirements of its citizenry and the public utilities that supply them, within the fragile ecological system we live in.

The Planning Board also recognizes that 120 foot towers are an unsightly view on the horizon even if they can be disguised as pine trees. This temporary solution on 7 Sandfiddler Court is an unsightly solution and the 120 foot height of the tower is based upon the height required to sequence the antennas on the two other towers, since the land that the tower sits upon is 10 feet above sea level. This Duck Road corridor is not a place to house these types of towers. There may be better sites in town to erect permanent towers. For example, there may be association properties on the higher elevations of Sea Oats Trail or Hickory Trail, which would elevate the base of the tower to 50-60 feet above sea level and if that land had 30-50 foot trees, it would only necessitate a tower poking its fake, forested head, 20 or so feet above the tree canopy. The cell tower would be more inconspicuous and could possibly be even lower. In order for this new tower placement to happen, the zoning has to be changed and cell phone towers need to be a conditional use in an RS-1 district.

Subsequent to discussion, the Planning Board, by motion, unanimously approved the recommendation that Council partially approve the application LDA 2007-04-02 with the following stipulations:

That the Town Council grant Verizon's request to place a temporary, 120 foot tall, cell phone tower at 7 Sandfiddler Court for the time period of May 1, 2007 until the last day of October, 2007.

That the surrounding home owners be notified of the particulars beforehand as a courtesy, so they do not learn about this after the tower is installed.

That the temporary tower and accessory equipment shelter might be considered an accessory to the existing utility (Sprint Telephone Building) on the site even without a water tower subject to the Special Conditions, (1. A 120 foot tower must be located at a distance equal to its height from any residence,) and Standard Conditions as shown on page 1 of 9 on the Planning Board Application Summary. This request will not be a perennial occurrence and is only granted once to Verizon Wireless.

That in order to perform Planning Board duties as stated in Chapter 7, the Town Council recommends that staff begin the process of writing a change to the RS -1 zoning definition to allow the construction of cell phone towers, as conditional uses, with specific conditions listed, and that a rewrite of the zoning code be presented to the Planning Board, as soon as possible, so that the Planning Board may follow the prescribed procedure for possible approval.

Other Business

Old Business

- 1. Ordinance No. 2006-06-PB9 (An Ordinance of the Southern Shores Town Council Relating to Amending the Zoning Ordinance Relating to Home Occupations.)**

This is the final result of a long and arduous process started more than two years ago to modify the Home Occupation definition and rules within the Town. The Planning Board agreed to a version that originated in Savannah, Georgia. It is a document that is more descriptive and more exacting than the current code.

Subsequent to discussion, the Board, by motion, unanimously approved, that the Town Council, subsequent to a public hearing, adopts proposed Ordinance No. 2006-06-PB9.

New Business:

There was no new business.

Other Items:

There were no other items presented by Planning Board members. Mike Hejduk explained that there had been no construction activity this month at the Marketplace, the dentist office on S. Dogwood, or the generator installation at the water tower. The Kitty Hawk Elementary school ball field construction is moving along as planned.

Announcements:

Next regular meeting: Monday, May 21, 2007; 7:00PM Pitts Center

Adjournment: Upon motion, the Planning Board meeting adjourned.