



Town of Southern Shores

5375 N. Virginia Dare Trail, Southern Shores, NC 27949

Phone 252-261-2394 / Fax 252-255-0876

www.southernshores-nc.gov

Council Meeting
April 5, 2011
7:00 p.m.-Pitts Center

The Southern Shores Town Council met on April 5, 2011 in the Pitts Center.

The following Council Members were present: Mayor Hal Denny, Mayor pro tem Jodi Hess, Council Members Jim Pfizenmayer, Kevin Stroud, and George Kowalski.

Also present were: Town Manager Peter Rascoe, Town Attorney Ben Gallop and Town Clerk Carrie Gordin.

Mayor Denny called the meeting to order at 7:00 p.m. led the Pledge of Allegiance. He held a moment of silence for long time resident's Jerry Smallwood and Maureen Cagiano and for our men and women in uniform serving around the world.

APPROVAL OF AGENDA

Mayor pro tem Hess moved to approve the agenda as presented. Council Member Kowalski seconded. The motion passed with Mayor Denny and Council Members Hess, Pfizenmayer, Stroud, and Kowalski voting aye.

APPROVAL OF MINUTES-March 1, 2011

Mayor pro tem Hess moved to approve the minutes as presented. Council Member Kowalski seconded. The motion passed with Mayor Denny and Council Members Hess, Pfizenmayer, Stroud, and Kowalski voting aye.

PRESENTATION

Dare County Arts Council-Laura Martier, Executive Director

Mrs. Martier introduced Nina Foster, Membership Chairperson. Mrs. Martier provided information on the many different community projects and workshops the DC Arts Council have to offer.

Nina Foster announced Art Space Gallery is holding a Southern Shores membership drive on April 19, 6-8 p.m. at the Southern Shores Crossing and she invited everyone to attend.

Outer Banks Hotline, Inc.-Temple Heggie, Programs Coordinator

Temple Heggie provided information on an educational program proclaiming April as Sexual Assault Awareness and Child Abuse Prevention month. This campaign is to educate people to be aware of crisis in our lives and how to respond. She asked Council to encourage employees and others to become aware and they can contact Hotline for additional information.

CONSENT AGENDA

FY 2010-2011 Budget Amendment #10

Proposed Amended Legal Services Contract

Resolution 2011-04-01 Sexual Assault Awareness and Child Abuse Prevention-Outer Banks Hotline

Resolution 2011-04-02 Child Abuse Prevention Month-Children & Youth Partnership of Dare County

Resolution 2011-04-03 Mid-Currituck Bridge-Build the Bridge-Preserve Our Roads

Mayor pro tem Hess moved to approve the Consent Agenda as presented. Council Member Pfizenmayer seconded. The motion passed with Mayor Denny and Council Members Hess, Pfizenmayer, Stroud, and Kowalski voting aye.

[Clerk's Note: A copy of the Consent Agenda items are hereby attached as Exhibit A].

STAFF REPORTS

Town Planner

Wes Haskett, Planner, presented the March Building Inspections/Code Enforcement Report.

[Clerk's Note: A copy of the March Building Inspections/Code Enforcement Report is hereby attached as Exhibit B].

Police Department

Police Chief Kole presented the monthly report and provided each Council Member with a copy of the annual Police Department report for 2010. He announced the 800 MHz radios will be operational tomorrow for the entire Police Department; with the Fire Department coming on next.

Southern Shores Volunteer Fire Department

Fire Chief Harvey provided the quarterly report. He reported on a fire call in Duck where local fire departments from Kitty Hawk, Kill Devil Hills, Corolla and Southern Shores responded with mutual aid. There were no damages to adjacent properties but the house was a total loss.

REPORTS FROM BOARDS, COMMITTEES, AND ASSOCIATIONS

Town Planning Board-None

Southern Shores Civic Association

Karen Kranda, President, reported for the SSCA as follows: the new bulkhead is completed at the North Marina; working on a new walkway and a foot shower at the Hillcrest parking lot; investigating the installation of a Bocce Ball area at Sea Oats Park and are asking gardeners for help in the beautification of the park. SSCA is waiting to hear from AT&T on the installation of the telecommunication tower. The annual membership drive is on-going.

Chicahauk Property Owner's Association- no report

GENERAL PUBLIC COMMENT-None

PUBLIC HEARING

Proposed Wind Generation Facilities Ordinance ZTA-11-02

Wes Haskett, Town Planner, thanked everyone involved for their time and effort on this project. He presented a Power Point overview. He stated Council previously provided recommended changes to the proposed ordinance which have been included as the amended proposed ordinance.

Mayor Denny opened the Public Hearing.

Manny Medeiros, Jr., Martin's Point, commented on windmills by providing information on the cost of purchasing a windmill structure with the consumer's theory that it will be a cost saving in electricity. He stated however that there are no savings. He does not support the use of commercial type windmills and stated the associated subsidies and tax credits are just silly government programs.

Hearing no other comments Mayor Denny closed the Public Hearing.

Mayor Denny stated he attended several of the Town meetings on this issue and he commends those for the amount of research that was given by Bob Palombo, Larry Lawhon, Mike Florez, who are here tonight as well as all those who worked on this ordinance.

Mayor Denny asked Council to address the proposed ordinance.

Council Member Kowalski stated he has personally reviewed this ordinance and has become quite knowledgeable on the subject. He does not agree, as written in the ordinance, with the noted 60dBA level as a way to address noise compliance. He recommends addressing the noise issues as is already addressed in the Town's Code which is through the public nuisance process.

Council Member Kowalski moved to amend the proposed ordinance on page 5 lines 40-41, (3)(a) to read: Noise shall be in accordance with the standards established in Section 22-3 of the Town Code. Council Member Hess seconded.

Council Member Stroud stated he has two concerns. He feels it is necessary to define a decibel level in the ordinance and he is concerned about the aesthetics of the windmill and would like to suggest considering only allowing the vertical type of windmill structure.

The motion passed with Mayor Denny and Council Members Hess, Pfizenmayer and Kowalski voting aye and Council Member Stroud voting no.

The Town Planner stated Council has the authority to address Council Member Stroud's concerns on both noise and aesthetics as provided in the ordinance during the conditional use hearing by setting certain conditions.

Council Member Pfizenmayer stated his concern regarding battery banks has been addressed and he supports the ordinance as amended.

Mayor pro tem Hess stated as the ordinance is written wind generation facilities are allowed in all zoning districts, including commercial. The ordinance also provides only one facility as an accessory use to a structure. She asked if multiple business owners would each want to install a wind generation facility how would this be handled, and should there be a consideration to exclude the commercial district? She stated

she is also concerned about facilities being operational when a property owner is away for an extended period of time.

The Town Planner stated once again Council has the authority to address the concern of absentee operation during the conditional use hearing and set certain conditions.

Following discussion, the consensus of Council members was to leave the commercial district as is.

Mayor Denny moved to approve the Wind Generation Facilities Ordinance ZTA-11-02 as amended. Mayor pro tem Hess seconded. The motion passed with Mayor Denny and Council Members Hess, Pfizenmayer and Kowalski voting aye and Council Member Stroud voting no.

[Clerk's Note: A copy of the Wind Generation Facilities Ordinance is hereby attached as Exhibit C].

OLD BUSINESS-None

NEW BUSINESS

Review/Approval-Modified Site Plan (SPA-11-01) for Increase Parking and Lot Coverage at 6345 N. Croatan Hwy.

The Town Attorney stated this item requires a quasi-judicial procedure and asked anyone wishing to speak on this item needs to be sworn in. The Town Clerk swore in Wes Haskett, Town Planner and John Delucia, Engineer with Albemarle & Associates, agent for the applicant.

The Town Attorney opened the hearing.

The Town Planner provided an overview of application SPA-11-01. He stated the Planning Board and Town staff, upon review of the modified site plan, recommends unanimously approval with conditions as provided in the Staff Report.

Following procedure the Town Attorney asked for any questions from the agent or from Council to the Town Planner.

Mayor pro tem Hess asked what happens if the site plan is not completed within 180 days. The Town Attorney stated the Code Enforcement Officer would revoke the permit unless state statutes changes.

The Town Attorney called upon Mr. Delucia.

Mr. Delucia addressed Council by saying some building modifications were needed to change the site from the previous use to now office use with some internal modifications and additional parking needed.

Following procedure the Town Attorney asked for any questions from the Town Planner or from Council to the agent. Hearing none and hearing no comments from the public the Town Attorney closed the hearing.

Mayor Denny moved to approve the modified site plan (SPA-11-01) as presented for increase parking and lot coverage at 6345 N. Croatan Hwy., and to accept the findings and conditions provided by the Planning Board and the Town staff. Mayor pro tem Hess seconded. The motion passed with Mayor Denny and Council Members Hess, Pfizenmayer Stroud, and Kowalski voting aye.

[Clerk's Note: A copy of the SPA-11-01 application and Staff Report dated March 31, 2011 is hereby attached as Exhibit D].

Set a Public Hearing for a Conditional Use Permit To Operate a Restaurant at 1 Ocean Blvd.

The Town Planner requests Council set a Conditional Use Hearing to consider a Conditional Use Permit to operate a restaurant at 1 Ocean Blvd.

Mayor Denny moved to set a Conditional Use hearing at the May 3 Council meeting. Mayor pro tem Hess seconded. The motion passed with Mayor Denny and Council Members Hess, Pfizenmayer, Stroud, and Kowalski voting aye.

Consideration of Proposed Government Access Channel (GAC) Budget FY 2011-2012 and an Amendment to the Interlocal Shared Use Agreement to Add Two New Groups

Mayor pro tem Hess, as Council's representative on the Committee, provided Council with the GAC proposed budget and amended agreement for their consideration and approval. She stated the Town's share of the budget is one thousand dollars the same as previous years.

Mayor pro tem Hess moved to approve the program's proposed FY 2011-2012 GAC Budget. Mayor Denny seconded. The motion passed with Mayor Denny and Council Members Hess, Pfizenmayer, Stroud, and Kowalski voting aye.

Mayor pro tem Hess moved to approve the program's amended Interlocal Shared Use Agreement by adding the College of the Albemarle and the UNC Coastal Studies Institute as the two new groups. Mayor Denny seconded. The motion passed with Mayor Denny and Council Members Hess, Pfizenmayer, Stroud, and Kowalski voting aye.

[Clerk's Note: A copy of the GAC Budget is hereby attached as Exhibit E].

Discuss Process for Town Manager's Annual Evaluation

Mayor pro tem Hess stated in accordance with the Town Manager's contract an annual evaluation is to be conducted by July 31. She has provided Council with evaluation forms and she requested a date be set sometime following budget approval that Council enter into a closed session to complete the evaluation process.

OTHER ITEMS

Town Manager

The Town Manager reported:

- He will submit the FY2011-2012 Proposed Budget and Budget message at the April 19 Council Workshop Meeting with a request to set the Budget public hearing at the May 3 Council Meeting.
- The Finance Officer will present the third quarter financial report at the April 19 Council Workshop Meeting.
- A third manned lifeguard stand will be placed at the East Dogwood Trail beach access.
- Staff is waiting for the Trinitie Trail Bridge design from NCDOT and he will be meeting with Dare County Water Dept. for a cost analysis to bore under the canal for the waterline replacement.
- De-mobilization of Phase One of the canal dredging project is on-going.
- Permit Application process for Phase Two of the canal dredging project is on-going and will be a lengthy process.
- Regular mowing schedule will begin within the next two weeks.

- The US Lifesaving Association is holding their 2011 Spring Conference at the Hilton in Kitty Hawk which is being sponsored by the South Atlantic Lifesaving Association on April 28-30.
- He has contacted Tidewater Fibre Recycling regarding optional costs and schedules and will update.

Mayor Denny asked who will be responsible for the costs for the water line replacement. The Town Manager stated it is the Town's responsibility and will be included in the Trinitie Trail Bridge costs.

Town Attorney

The Town Attorney requests Council go into a closed session following regular business pursuant to attorney/client privilege.

Mayor

Mayor Denny stated following the recycling program discussion held at the March 29 meeting he feels the Town should be doing more to encourage recycling.

Council

Council Member Kowalski stated there is an email circulating stating the Town is proposing to raise taxes and he wants to let everyone know that is an untrue statement, the Town is not considering raising taxes.

Council Member Pfizenmayer stated more people are needed to keep the "Meals on Wheels" program going and if anyone is interested to contact him.

Following regular business Mayor Denny moved to go into closed session to consider approval of closed session minutes in accordance with NCGS 143-318.11(a)(1) and N.C.G.S. 143-318.10(e) and NCGS 143-318.11(a)(3) to consult with Town attorney Mayor pro tem Hess seconded. The motion passed with Mayor Denny and Council Members Hess, Pfizenmayer, Stroud, and Kowalski voting aye.

Upon returning to open session Mayor Denny moved to adjourn the meeting at 9:35 p.m. Mayor pro tem Hess seconded. The motion passed with Mayor Denny and Council Members Hess, Pfizenmayer, Stroud, and Kowalski voting aye.



Respectfully submitted:

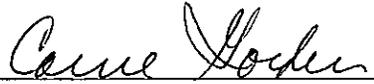

Carrie Gordin, Town Clerk

EXHIBIT A

**Town of Southern Shores
Budget Amendment Number # 10**

Revenues Increases			Revenues Decreases		
<u>Account Number</u>	<u>Description</u>	<u>Amount</u>	<u>Account Number</u>	<u>Description</u>	<u>Amount</u>
40-39907	Powell Bill FB Appropriated	\$12,159	40-39909	Undesignated FB	\$12,159

Explanation: This will use all of the Powell Bill Reserve instead of Undesignated Fund Balance

Recommended By:

J. Peter Rascoe, III, Town Manager

Approved By:

Hal Denny, Mayor

Date

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NORTH CAROLINA
DARE COUNTY

This instrument has been procured in the manner required by the Local Government Budgets and Fiscal Control Act.

Bonnie Swain
Finance Director

CONTRACT FOR LEGAL SERVICES

This Agreement for the employment of Town Attorney is entered into the 5th day of April, 2011, by and between Town of Southern Shores, North Carolina, a body corporate and politic existing pursuant to the laws of the State of North Carolina (hereinafter "Town"), and Hornthal, Riley, Ellis & Meland, L.L.P. (hereinafter collectively referred to as "Attorney") and is effective as of the 1st day of February, 2011.

RECIPIALS

1. Town is in need of the legal assistance of a law firm to fill the position of Town Attorney.
2. The law firm is desirous of filling that position.
3. The parties desire to memorialize their agreement as hereinafter set forth.

NOW, THEREFORE, for and in consideration of the mutual covenants expressed herein it is agreed as follows:

1. **Term of Employment:** It is the agreement and understanding of the parties, that this is an appointed position and may be terminated at will by the Town provided, however, Attorney shall not cease employment in such manner as to prejudice any legal positions, whether by litigation or otherwise, the Town may be maintaining through the Attorney. In this regard, the Attorney shall not withdraw from any litigation, negotiations, drafting or the like without the specified permission of Town, if to do so would prejudice Town's position.

2. **Services:** Attorney shall provide to Town such legal services as Town requires and requests.

3. **Independent Contractor Status:** Attorney offers its services as an independent contractor and Town has no liability for payment of any benefits that would normally accrue to its employees by virtue of their employment with the Town.

4. **Reimbursement and Billing:** Attorney, including its partners, associates and paralegals, shall be reimbursed as follows:

a. A non-refundable retainer of \$2,500.00 per month shall be paid to Attorney by the Town for the provision of any legal services including representation at meetings upon request and communications with Town staff and officials. Attorney shall submit monthly invoices to the Town indicating all work performed and actual expenses incurred. The invoices shall indicate legal services performed at the rate of \$150.00 per hour, paralegal services at a cost of \$65.00 per hour and the amount of actual expenses incurred. All fees for legal services and paralegal services shall be debited from the retainer first, with any remaining fees invoiced in excess of the expended retainer. Actual expenses shall be billed and paid without regard to the retainer.

b. Beginning June 1, 2012 the hourly rate for legal services shall increase to \$155.00 per hour and on June 1, 2013 the hourly rate of legal services shall increase to \$160.00 per hour.

5. **Expectations:** Attorney recognizes the need of Town for accessibility and prompt service. To this end, it shall be the obligation of Attorney to diligently return phone calls, be available upon request, and otherwise meet reasonable deadlines imposed by the Town. Benjamin M. Gallop, partner of the firm, shall be primarily responsible for providing the requisite services to the Town. However, Town understands it is hiring the firm as opposed to an individual attorney. In the event of Mr. Gallop's unavailability, the Town shall seek advice from other Partners or Associates within the firm who shall comply with the Town's needs.

6. **Organization and Access to Services:** Attorney represents the Town Council

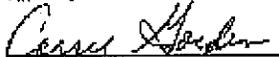
Attorney recognizes a legal matter it deems in need of attention, the same shall be reported to the Town Manager for permission to proceed. Except in emergency situations, Attorney shall not initiate any legal action, or maintain any position on behalf of the Town, without the permission of the Town Council pursuant to the instruction of the Town Manager.

7. **Non-exclusive Obligation:** It is agreed and understood that Attorney is a private law firm with a substantial and varied practice. Nothing herein shall be construed as to prohibit the Attorney firm continuing to serve its other clients and promote its practice outside representation of Town.

8. **Conflict of Interest:** During its representation, Attorney shall not undertake any new representation in conflict with the Town or any of its agencies. In the event a conflict of interest is discovered as a result of prior representation, the same shall immediately be reported by Attorney to the Town Manager. If the conflict is ethically irreconcilable, the Attorney shall not represent either the Town or its other client in the controversy.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

ATTEST:

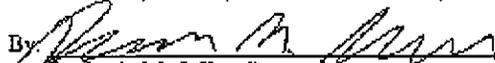

Town Clerk

TOWN OF SOUTHERN SHORES

By: 
Peter Ruscio, III, Town Manager



HORNTHAL, RILEY, ELLIS & MALAND, L.L.P.

By: 
Benjamin M. Gallop, Partner

Sexual Assault Awareness and Child Abuse Prevention Resolution
April, 2011

WHEREAS, the public cares deeply about the welfare and lives of our children and a majority report that child abuse is a very important moral issue for them;

WHEREAS, domestic violence in the presence of a child is deemed to create an injurious environment for children by placing them at risk for actual physical injury or at risk for serious emotional disturbance;

WHEREAS, sexual abuse, molestation, and assault include a range of behaviors all of which pose a threat to the health and welfare of our children and our adults;

WHEREAS, we recognize our children are impacted by other violent, abusive, frightening behaviors such as bullying, abuse of authority or position and random violent crime;

WHEREAS, research has identified that witnessing or experiencing traumatic violence and abuse impacts children's brain development and function and our children's capacity for emotional growth, good health, and resilience is directly linked to their life experiences;

WHEREAS, preventing child abuse and neglect and domestic and sexual violence is a community problem, that depends on involvement among all people throughout the community;

WHEREAS, April is nationally proclaimed Sexual Assault Awareness Month and Child Abuse Prevention Month;

WE HEREBY RESOLVE to support the Outer Banks Hotline's campaign to build resilience and change the impact of violence on children beginning April 2011 through year end and declare that we unite with the nation in proclaiming April Sexual Assault Awareness Month and Child Abuse Prevention Month.

Adopted this 5th day of April 2011.

SEAL

Hal Denny, Mayor

ATTEST: _____
Carrie Gordin, Town Clerk

**Dare County, North Carolina
Child Abuse Prevention Month, April 2011 Proclamation**

Whereas, preventing child abuse and neglect is a community problem affecting both the current and future quality of life of a community;

Whereas, child maltreatment occurs when people find themselves in stressful situations, without community resources, and do not know how to cope;

Whereas, the majority of child abuse cases stem from situations and conditions that are preventable in an engaged and supportive community.

Whereas, child abuse and neglect can be prevented by making sure each family has the support they need to raise their children in a healthy environment;

Whereas, child abuse and neglect not only cause immediate harm to children, but are also proven to increase the likelihood of criminal behavior, substance abuse, health problems such as heart disease and obesity, and risky behavior such as smoking;

Whereas, all citizens should become involved in supporting families to provide safe, nurturing environments for their children giving them the opportunity to grow up to be caring, contributing members of our community;

Whereas, effective child abuse prevention programs succeed because of partnerships created among social services agencies, schools, faith communities, civic organizations, law enforcement agencies, and the business community;

Therefore, we, the Town of Southern Shores do hereby proclaim

April as Child Abuse Prevention Month and call upon all citizens, community agencies, faith groups, medical facilities, elected leaders and businesses to increase their participation in their efforts to support families, thereby preventing child abuse and strengthening the community in which we live.

Adopted this 5th day of April 2011.

S E A L

Hal Denny, Mayor

ATTEST:

Carrie Gordin, Town Clerk

**TOWN OF SOUTHERN SHORES RESOLUTION
SUPPORTING GAP FUNDING FOR THE
MID-CURRITUCK BRIDGE**

WHEREAS, the Town of Southern Shores recognizes that a bridge across the Currituck Sound from the mainland of Currituck County to Corolla is vitally important to the economic growth and general well being of the State of North Carolina by providing an undeniably better, safer access for residents, vacationers and business travelers to the Northern Outer Banks; and,

WHEREAS, the Town of Southern Shores has and does support efforts to protect the State's natural and cultural resources while moving forward with the construction of the Mid-Currituck Bridge in an expeditious manner; and,

WHEREAS, the last two State of North Carolina budgets authorized and implemented "Gap Funding" in support of the Mid-Currituck Bridge through the NC Department of Transportation funding without which the project's feasibility would be in serious peril and cause immediate delays; and,

WHEREAS, any reallocation of the necessary "Gap Funding" for the Mid-Currituck Bridge, would delay progress on this most critical public safety and economic development infrastructure project for one of North Carolina's most prized tourist destinations.

NOW, THEREFORE, BE IT RESOLVED THAT the Town Council of the Town of Southern Shores, NC respectfully requests the North Carolina General Assembly to continue with the appropriation of necessary "Gap Funding" for the Mid-Currituck Bridge which has been authorized and included in the last two North Carolina Budgets.

ADOPTED this the 5th day of April, 2011

MAYOR

ATTEST:

Town Clerk

Exhibit B

4-5-11 TC Report

1. Mailed 3 Code Enforcement Violation Letters in March

- One violation letter was for obstruction of the Town's right-of-way and the other two were for violating the Town's sign ordinance.

2. Permitting and Inspections for March

- 4 zoning permits were issued.

-21 building permits were issued: 2 additions, 2 remodels, and 17 others.

-70 Dare County building inspections were conducted (69 residential and 1 commercial, 40 job sites).

-5 Dare County fire inspections were conducted.

-Total amount of fees collected in March: \$6,110.80.

Exhibit C

ZTA 11-02

**WIND GENERATION FACILITIES 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 Council for the Town of Southern Shores (the "Town Council") finds that Wind Energy is an abundant, renewable, and nonpolluting energy resource that can be converted into electricity for residential and commercial use; and

WHEREAS, the Town Council further finds that Wind Energy Facilities constructed for the purpose of generating electricity 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, 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 36-57 be amended as follows:

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

~~Windmills and wind driven electric generators are excluded from the definition of accessory use.~~

PART II. That Chapter 36, Section 36-170 be amended as follows:

Sec. 36-170. Electrical and communication service.

All electrical, telephone and TV distribution lines and all conduits used for the distribution of such signals, located within the town, shall be placed underground from the point of separation from the transmission or trunk line to the structure of the ultimate user. Existing distribution lines that are in place overhead on the effective date of this regulation may be extended only if placed underground. Transformers and enclosures containing switches, meters, capacitors, etc., may be pad mounted as an exception to the aforementioned. ~~Windmills and wind driven generators used for the generation of electric power are prohibited in all zoning districts.~~

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

(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:

- (7) Wind Generation Facility, in compliance with the requirements of Section 36-176.

PART IV. That Chapter 36, Section 36-203 be amended as follows:

(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:

- (1) Wind Generation Facility, in compliance with the requirements of Section 36-176.

PART V. That Chapter 36, Section 36-204 be amended as follows:

(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:

- (4) Wind Generation Facility, in compliance with the requirements of Section 36-176.

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

(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:

(8) Wind Generation Facility in compliance with the requirements of Section 36-176.

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

(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:

(3) Wind Generation Facility in compliance with the requirements of Section 36-176.

PART VIII. That Chapter 36, Section 36-207 be amended as follows:

(c) *Conditional uses permitted.* The following uses shall be permitted as a conditional use, subject to the requirements of this district; shall be subject to conditions and modifications relating to impacts on adjacent properties, transportation and transportation systems, transportation interconnectivity, stormwater, utilities and telecommunication facilities (including capacity), vegetation and other elements of the natural environment, noise, hours of operation, and other factors that the Town Council finds applicable; and additional regulations and requirements imposed by the Town Council, as provided in Article X of this Chapter:

(9) Wind Generation Facility in compliance with the requirements of Section 36-176.

PART IX. That Chapter 36, Section 36-176 be added as follows:

Sec. 36-176. Wind Energy Facilities .

(a) Definitions. The following definitions shall apply to all portions of the Town Code relating to the use or construction of Wind Generation Facilities within the Town:

(1) Applicant is the person or entity filing an application under this Ordinance.

(2) Dwelling, Single-Family is a detached building designed for or occupied exclusively by one family.

(3) Facility Owner is the entity or entities having controlling or majority equity interest in the Wind Energy Facility, including their respective successors and assigns.

(4) Occupied Building is a residence, school, hospital, church, public library or other buildings used for public gathering that is occupied or in use when the permit application is submitted.

(5) Public Road is a full passage right-of-way.

(6) Structure is anything constructed or erected, the use of which requires location on the ground, or attachment to something having location on the ground.

(7) Vegetation Line means the first line of stable natural vegetation, which shall be used as the reference point for measuring oceanfront setbacks. This line represents the boundary between the normal dry-sand beach, which is subject to constant flux due to waves, tides, storms and wind, and the more stable upland areas. It is generally located at, or immediately oceanward of, the seaward toe of the frontal dune and/or erosion escarpment. In areas where there is no stable natural vegetation present, this line shall be established by connecting or extending the lines from the nearest adjacent vegetation on either side of the site and by extrapolating (by either on-ground observation or by aerial photographic interpretation) to establish the line.

(8) Wind Generation Facility is a single system designed to supplement other electricity sources as an accessory use to a structure, wherein the power generated is used primarily for on-site consumption. The facility may consist of a wind turbine, support structure, foundation, battery bank, and transformer. The support structure must be a self supporting monopole and may be free standing or attached to a structure.

(9) Wind Power is the conversion of wind energy into another form of energy.

(10) Wind Turbine or windmill is a wind energy conversion system that converts wind energy into electricity.

(11) Wind Turbine Height is the distance measured from the lowest adjacent grade to the highest point of the structure, including any attachments, such as a turbine rotor, or tip of the turbine blade when it reaches its highest elevation.

(b) Permit Requirements.

(1) Wind Generation Facilities shall only be permitted as follows:

(a) Wind Generation Facility as an accessory use to a structure in the RS-1, RS-8, RS-10, R-1, G&I, and C Zoning Districts.

(i) No more than one free standing Wind Generation Facility as an accessory use to a structure; or

(ii) No more than one attached Wind Generation Facility as an accessory use to a structure.

(b) For properties that are divided by a street or canal and are under the same ownership, the Wind Generation Facility shall be located on the same side of the street or canal which the structure receiving power from the Wind Generation Facility is located.

(2) No Wind Generation Facility shall be constructed unless a permit has been issued to the Facility Owner that approves construction of the facility under this Ordinance.

(3) Any physical modification to an existing and permitted Wind Generation Facility that materially alters the size and/or type of Wind Turbine or other equipment shall require a permit modification under this Ordinance. Like-kind replacements shall not require a permit modification.

(c) Dimensional and Design Requirements.

(1) Height Requirements.

(a) Wind Generation Facilities shall observe a maximum height of forty five (45) feet measured from the lowest adjacent grade to the highest point of the facility, including any attachments, such as a turbine rotor, or tip of the turbine blade when it reaches its highest elevation.

(2) Setback Requirements.

(a) The base of all Wind Generation Facilities shall be located at least one (1) foot from the nearest property line for every one (1) foot of proposed height.

(i) For rear setback requirements for oceanfront properties, the base of the Wind Generation Facility shall be located at least one (1) foot from the Vegetation Line for every one (1) foot of proposed height.

(3) Noise and Vibration Requirements.

(a) Noise shall be in compliance with the standards established in Section 22-3 of the Town Code.

(b) No vibration shall be detectable at adjacent property lines.

(d) Installation.

(1) Free standing Wind Generation Facilities shall be a self supporting monopole; and installation and design of the Wind Generation Facility shall be site specific and conform to applicable industry standards, including those of the American National Standards Institute.

(2) All structural, electrical, and mechanical components of the Wind Generation Facility shall conform to relevant and applicable Local, State, and National Codes including the N.C. Building Code and National Electric Code.

(3) All Wind Generation Facilities shall be constructed to withstand sustained winds of at least one hundred thirty (130) miles per hour.

(4) All Wind Generation Facilities shall be equipped with a braking device and power disconnect to keep the rotor stationary while the turbine is being inspected and/or maintained. The braking device shall also be used for winds exceeding optimal speeds as defined by the manufacturer.

(5) All Wind Generation Facilities shall be constructed according to the local electric service provider's standards for power disconnect and grid connections.

(6) The visual appearance of Wind Generation Facilities shall at a minimum:

(a) Be finished with a neutral color (not white);

(b) Not be artificially lighted; and

(c) Not display advertising (including flags, streamers or decorative items), except for identification of the turbine manufacturer or facility owner. One identification sign which identifies the turbine manufacturer or facility owner may be attached to the Wind Generation Facility and shall not exceed one (1) square foot in total area at a height not to exceed six (6) feet.

(e) Application Requirements.

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

(a) A narrative describing the proposed Wind Generation Facility, including an overview of the project;

(b) The proposed total rated capacity of the Wind Generation Facility;

(c) Documentation signed and sealed by the manufacturer and a North Carolina registered engineer that the Wind Generation Facility can withstand sustained winds of at least one hundred thirty (130) miles per hour;

(d) The proposed representative type and height of the wind turbine to be constructed; including its generating capacity, dimensions, and respective manufacturers, and a description of ancillary facilities;

(e) A site plan showing the location of all structures and properties, demonstrating compliance with the applicable setback requirements;

(f) Certification of compliance with applicable Local, State, and Federal regulations;

(g) Other relevant information as may be reasonably requested by the Town of Southern Shores to ensure compliance with the requirements of this Section;

(h) Signature of the applicant.

(2) Throughout the permit process, the applicant shall promptly notify the Town of any proposed changes to the information contained in the permit application that would alter the project.

(3) Changes to the approved application that do not materially alter the initial site plan may be approved administratively.

(4) 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.

(f) *Validity of Permits.* A Conditional Use 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 a building permit.

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 effective from and after the ____ day of _____, 2011.

Mayor

ATTEST:

Date: __/__/__

Town Clerk

Vote: __Ayes __Nayes

Approved as to form:

Town Attorney

STAFF REPORT

To: Southern Shores Town Council
Date: March 31, 2011
Case: SPA-11-01
Prepared By: Wes Haskett, Town Planner/Code Enforcement Officer

GENERAL INFORMATION

Applicant: Bill Vogedes
6385 N. Croatan Hwy.
Kitty Hawk, NC 27948
(252) 261-9300

Requested Action: Approval of site plan modification to increase existing parking area and existing lot coverage.

PIN #: 986606288919
Location: Martin's Point Extraterritorial Jurisdiction (ETJ)
Zoning: C, Commercial

Existing Land Use: "Developed"

Surrounding Land Use & Zoning:
North- Martin's Point (Dare County jurisdiction)
South- Highway 158
East- Developed; C, Commercial District
West- Developed; C, Commercial District

Applicable Regulations: Zoning Ordinance: Article III Interpretation and Definition of Terms; Article VI, General Provisions; Article X, Administration and Enforcement.

SPECIAL INFORMATION

Public Utilities: Existing water service and septic system.
Public Services: The property is within the Town's ETJ; County protection services are available.
Transportation: The subject property has frontage on Martin's Point Road.
Physical Characteristics: Developed (vacant building).

ANALYSIS

The applicant seeks approval of modifications to a previously approved site plan which consists of increased parking area and lot coverage. The proposed use(s) of the currently vacant building requires additional parking spaces and is subject to administrative approval. As a result of the additional proposed parking spaces, the existing lot coverage is also increased. The Town Zoning Ordinance states that proposed changes to previously approved site plans must be

reviewed by the Planning Board and approved by the Town Council.

RECOMMENDATION

The Land Use Plan identifies this area as Developed in the C, Commercial zoning district. The Town Planning Board unanimously (6-0) recommended approval of the application and all applicable regulations of the Town Zoning Ordinance and all of Town Staff's concerns that are applicable to this application have been identified. Town Staff recommends approval of the application and offers the following conditions for consideration:

1. Per the provisions of Section 36-297,(a), (2), (3), and (4) of the Town Zoning Ordinance, approval of this application shall be null and void if:
 - a. No building permit for the principal structure is issued within one hundred and eighty (180) days from the date of final approval of the site plan by Town Council; and,
 - b. The start of construction has not commenced within 180 days from the date of issuance of the building permit or if after commencement work is discontinued for a period of 12 months; or,
 - c. The work authorized by the building permit issued is not prosecuted to completion within 18 months of the date of issuance of the building permit.
2. That the applicant must strictly abide by all requirements of the Town Zoning Ordinance and must also strictly comply with all other applicable local, State, and Federal requirements.