



Town of Southern Shores

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Council Meeting
January 3, 2012
7:00 p.m. - Pitts Center

Mayor Denny called the meeting to order at 7:00 p.m. in the Pitts Center with the following Council Members present: Mayor Hal Denny, Mayor pro tem Jodi Hess, Council Members George Kowalski, David Sanders and Larry Lawhon. Also present: Town Manager Peter Rascoe, Town Attorney Ben Gallop and Town Clerk Carrie Gordin.

Mayor Denny led the Pledge of Allegiance and held a Moment of Silence for Bob Burns, long time resident and a great volunteer in prior years and Gwen Cruickshanks who was the Chair of the Build Our Bridge/Preserve Our Roads Committee as well as very active in civic affairs in Dare County .

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, Kowalski, Sanders and Lawhon voting aye.

APPROVAL OF MINUTES – December 6, 2011

Mayor Denny addressed some minor corrections to the minutes which were noted. Mayor pro tem Hess moved to approve the minutes as corrected. Council Member Kowalski seconded. The motion passed with Mayor Denny and Council Members Hess, Kowalski, Sanders and Lawhon voting aye.

CONSENT AGENDA

Dare County Tax Pickups and Releases

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

[Clerk's Note: A copy of the Dare County Tax Pickups and Releases are hereby attached as Exhibit A].

PRESENTATION-North Carolina Dominion Power-Michael Thompson, Intergovernmental Liaison

Mayor Denny stated following Hurricane Irene certain areas of the town were left without electricity for some time. It was discussed previously by Council that a Dominion Power representative attend a Council meeting to give a presentation on the Town's distribution system. He stated Michael Thompson will discuss the current placement of the electrical distribution lines.

Mr. Thompson introduced Tony Beach and Lee Rozier also with NC/Dominion Power. He presented maps showing the Town's distribution system and explained which lines were overhead and underground. He stated there is no guarantee that underground lines would not be disrupted following an event. He stated the cost of

initially placing original lines underground is paid by the property owner or the developer. Cost considerations include what type of material is used, the footage involved and area placement, not near wetlands. There are four areas of concern in Town where power is disrupted by storm events: Holly, Beech Tree, East Dogwood and Bayberry Trails. He stated in 2009 the cost to Dominion Resources for placing exiting lines underground on the canal-front was two million dollars and for the sound-front was \$500,000.

He reported currently the maintenance for tree clearing of the utility easements along NC12/Hwy 158 is on-going. This maintenance is on a three-year schedule and will be completed by February 10. He also reported the fuel factor increase for residents' power bill began on January 1, 2012.

Mr. Thompson presented Mayor Denny with a \$1,000 check for a donation form Dominion Resources for the Town's Welcome Sign.

STAFF REPORTS

Town Planner

Wes Haskett, Planner, presented his monthly report. He stated the Planning Board has completed their review and has approved proposed responses to the state's comments on the draft Land Use Plan. Staff will present the recommendations to Council for consideration at the February 7 Council meeting. He stated he has received two applications for the alternate Planning Board member vacancy. The applications will be presented to Council at the February 7 Council meeting for consideration.

[Clerk's Note: A copy of the Planner's Report is hereby attached as Exhibit B].

Police Department

Chief Kole presented monthly report.

Southern Shores Volunteer Fire Department

Chief Harvey presented monthly report.

REPORTS FROM BOARDS, COMMITTEES, AND ASSOCIATIONS

Town Planning Board

Sam Williams, Chairman, reported the Planning Board, upon review of the first wind generation facilities application (CUP 11-02), is recommending approval with a condition that the engineer certify prior to building permit being issued that the structure meets the 130 mph wind requirement per the ordinance. He stated the building permit would not be issued until the certificate is presented to Code Enforcement.

The Town Attorney advised Council to not discuss the matter at this time but to wait until a public hearing is held on the matter as it requires a quasi-judicial proceeding. He stated Council can add additional conditions if the application is approved subsequent to the public hearing.

Southern Shores Civic Association (SSCA)

Ross Mitchell stated the SSCA is holding its annual membership drive. He explained what SSCA dues are spent on and announced the next General Membership meeting will be held on Monday January 9 at

7 p.m. with Police Chief Kole as the guest speaker. Also voting for new board members for 2012 will be held at that time and the results of the by-law amendments will be announced. The monthly board meeting has been changed from 9 am to 7 pm the first Friday of each month.

Chicahauk Property Owner's Association (CPOA)-None

GENERAL PUBLIC COMMENT-None

PUBLIC HEARING-ZTA-11-04-Site Plan Amendments

Mayor Denny stated that staff prepared the presented amendments and they have been reviewed by the Planning Board and it is recommended for Council approval.

Mayor Denny opened the Public Hearing and with no one wishing to speak he closed the hearing.

Mayor Denny stated upon review of the amendments by the Town Attorney he is proposing some non-substantial changes to the original draft amendment with the request that if Council approves the ordinance to do so with those changes.

Mayor Denny asked the Town Attorney to read his proposed changes to Section 5 (a) and (b) which he did. Two editorial corrections were also noted.

Mayor Denny moved to approve ZTA-11-04-Site Plan Amendments as amended by the Town Attorney regarding Section 5 (a) and (b), the editorial corrections and the striking of Section 8 as proposed. Council Member Lawhon seconded. The motion passed with Mayor Denny and Council Members Hess, Kowalski, Sanders and Lawhon voting aye.

Mayor Denny moved that Council finds ZTA-11-04-Site Plan Amendments as amended and approved to be consistent with the Town's Land Use Plan. Mayor pro tem Hess seconded. The motion passed with Mayor Denny and Council Members Hess, Kowalski, Sanders and Lawhon voting aye.

[Clerk's Note: A copy of the ZTA-11-04-Site Plan Amendments showing the proposed changes as approved are hereby attached as Exhibit C].

OLD BUSINESS-None

NEW BUSINESS

Introduce Amended Ordinance-Beach/Waterway Usage Section 34-55. Beach and Dune Management

The Town Planner stated Council approved an ordinance last year that allowed for the removal of unattended personal articles left on the beach such as tents, chairs, umbrellas etc. He stated this proposed amendment is to clarify the hours for unattended articles. The proposed amended ordinance prohibits unattended articles between the hours of 5 p.m. to 7 a.m. The existing ordinance prohibits unattended articles from sundown to sunrise and presents an enforcement challenge for lifeguards since those times are typically outside their duty hours. He stated a public hearing is not required for Council approval of this ordinance.

The Town Manager stated the process for removal of the articles included tagging them by the life guards and waiting a day before removal by the life guards. If removed by the lifeguards, the articles were taken to the Public Works Department. The property owner could then recover their property by identifying it.

Following discussion by Council, Mayor pro tem Hess moved to approve the amendments to Section 34-55 (b)(2) as presented by town staff. Council Member Kowalski seconded. The motion passed with Mayor Denny and Council Members Hess, Kowalski, Sanders and Lawhon voting aye.

[Clerk's Note: A copy of the Amended Ordinance-Beach/Waterway Usage Section 34-55. Beach and Dune Management proposed changes as approved are hereby attached as Exhibit D].

Request to Set Public Hearing for CUP 11-02-Millis-Wind Generation Facility Application

The Town Planner made a recommendation that a Public Hearing be set for CUP 11-02-Millis-Wind Generation Facility Application which has been recommended to Council for approval with conditions. Council Member Kowalski commented if the applicant is not able to comply with the ordinance why would we have a public hearing. The Town Attorney reminded Council that the process allows the applicant due process and it is appropriate to set the public hearing. Council may then decide whether to find the application incomplete.

Mayor pro tem Hess moved to set a Public Hearing on the CUP 11-02-Millis-Wind Generation Facility Application at the February 7 Council Meeting. Council Member Sanders seconded. The motion passed with Mayor Denny and Council Members Hess, Kowalski, Sanders and Lawhon voting aye.

OTHER ITEMS

Town Manager

The Town Manager reported on several issues:

- The easement and permit documents required for the Chicahawk Trail Street Improvement Project are coming in and the bid package and designs will be brought to Council at the February 7 meeting.
- The Juniper/Trinitie Trails Bridge closed today and work has begun by NCDOT on the replacement.
- A report from the CIP Committee will be given to Council at its February workshop meeting.
- New cemetery access lanes will be surfaced with crush and run and other improvements are on-going there as well.
- Discussions with DOT for the Tall Pine Bridge replacement project start-up are in progress.
- Staff will make its report on the Planning Board's proposed stormwater ordinance at the February 21 meeting.

He also reported to Council an inter-departmental budget transfer of \$500 transferred from "Contingency" line in Public Works Department expense section into an inserted "Juniper/Trinitie Bridge" line of the same section to cover expenses necessary to repair damage caused by a sink hole.

Town Attorney-None

Mayor

Mayor Denny announced that he, as well as Council Members Sanders and Lawhon, will be attending the Essentials of Municipal Government Workshop in Greenville and Council Member Kowalski will be attending a Community Planning and Zoning course.

Mayor Denny requested a date be set for the annual Retreat and if possible to include a joint meeting with the Planning Board as was requested at a previous meeting.

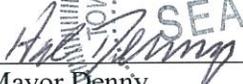
Following Council discussion the Retreat date, with a possible joint meeting with the Planning Board, is set for February 14-15 beginning at 9:00 a.m. each day to be held in the Pitts Center. The Mayor and Town Manager will work on the agenda preparation.

Council-None

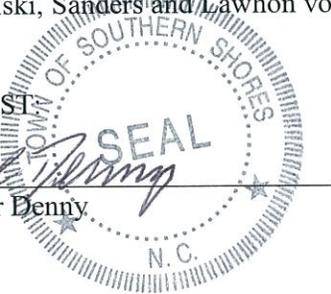
Hearing no other regular business Mayor Denny moved to go into closed session pursuant to 143-318.11(a) (3) to consult with the Town Attorney in a manner preserving the attorney/client privilege and 143-318.11(a) (1) to review and consider closed session minutes. Mayor pro tem Hess seconded. The motion passed with Mayor Denny and Council Members Hess, Kowalski, Sanders and Lawhon voting aye.

Upon returning to open session and hearing no other regular business Mayor Denny moved to adjourn at 9:10 p.m. Mayor pro tem Hess seconded. The motion passed with Mayor Denny and Council Members Hess, Kowalski, Sanders and Lawhon voting aye.

ATTEST:



Mayor Denny



Respectfully submitted:



Carrie Gordin, Town Clerk

Exhibit A

**TOWN OF SOUTHERN SHORES
TAX DEPARTMENT**

1/3/2012

<u>PICKUPS</u>		<u>RELEASES</u>	
August Real	\$401.96	Sept. Vehicles	\$41.41
Oct. Real	\$11,005.73	Oct. Vehicles	\$95.30
		Oct. Real	\$105.30
		Nov. Real	\$109.76
		Nov. Vehicles	\$48.29
<u>TOTAL</u>	\$11,407.69		\$400.06

Exhibit B

**1-3-12 TC Report
Town Planner
Month of December**

1. Land Use Plan

-The Planning Board reviewed and approved the proposed responses to the State's comments on the draft Land Use Plan at their December 19th meeting. The proposed responses will be submitted to you to review and consider at the February 7th Council meeting.

2. Planning Board Alternate Member Vacancy

-Town Staff has received two applications for the vacant Alternate Planning Board position. We will submit their applications to you to review and consider at the February 7th Council meeting.

3. Mailed 1 Code Enforcement Violation Letter in December

-for the accumulation of rubbish/trash/junk.

4. Permitting and Inspections for December, 2011

-2 Zoning Permits were issued.

-11 building permits were issued: 1 new single-family dwelling, 1 addition, and 9 others

-117 Dare County building inspections were conducted (53 job sites).

-Total amount of fees collected in \$5,412.00

Exhibit C

Sec. 36-299. Application for building permits, zoning permits and site plan requirements.

- (a) *Single-family detached and duplex residences.*
- (1) Applications for building permits and zoning permits shall be accompanied by duplicate site and/or building plans as required by the planning and code

enforcement department to accurately describe the work proposed drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of buildings already existing, if any; and the location and dimensions of the proposed building or alteration. The site plan shall also include the present owner's name; present and proposed lot coverage in square feet and as a percentage; the lot, block and section number of the parcel, flood zone per FEMA; required open yard zoning setback lines, and; applicable coastal development area of environmental concern (AEC) regulatory features and lines. Site plans and surveys shall bear the seal of a state licensed professional surveyor, engineer, architect or other person duly authorized by the state to prepare such plans. The application shall include such other information as lawfully may be required by the building inspector, zoning administrator, and other code enforcement staff, including existing or proposed building or alteration; existing or proposed uses of the building and land; and the number of families, housekeeping units, or rental units the building is designed to accommodate; conditions existing on the lot and on nearby lots; elevations of finished floors; and such other matters as may be necessary to determine conformance with and provide for the enforcement of this section. Applications for principal dwellings or accessory garages with associated driveways shall show the driveway as it extends from the front property line through the public or private right-of-way to the edge of the improved roadway.

- (2) One copy of the plans shall be returned to the applicant by the building inspector and zoning administrator, after they shall have marked such copy "Reviewed for Code Compliance." A copy of the plans, similarly marked, shall be retained by the planning and code enforcement department.
 - (3) Permits issued pursuant to state requirements for work limited in scope to electrical, plumbing, gas, mechanical or fire protection shall not require the submission of site plans for activity within or attached to an existing structure. The construction of a pool, concrete driveway or bulkhead requires issuance of a building permit.
- (b) *All uses other than one- and two-family dwelling units.*
- (1) Site plans must be reviewed by the planning board and approved by the town council before a building permit and zoning permit for construction may be issued.
 - (2) Site plan requirements. Twelve copies of the site plan shall be submitted no later than 30 days prior to the planning board meeting at which the plan is to be reviewed. All plans shall be prepared, stamped and endorsed by a state registered engineer, surveyor or architect, or other person duly authorized by the state to prepare such plans. All plans shall contain at least the following information:
 - a. *Property and ownership information.*

1. Present recorded owner and the map book reference of the site property.
 2. Owners, lot numbers or map book and page reference of all adjacent properties.
 3. Boundary of the entire lot by course and distance.
 4. Width of the existing rights-of-way.
 5. Nature or purpose, location and size of existing easements.
 6. Iron pins three-eighths of one inch in diameter and 36 inches in length, or concrete monuments shall be shown and installed at all lot corners, points of tangents, and any angle point along a given course of the lot.
 7. Plan drawn to at least one inch: 100-foot scale showing north arrow.
 8. Zoning district of the site and all adjacent properties.
 9. Lot area by upland; by swamp, marsh and wetland; and the total area.
- b. *Existing features information.*
1. Streets showing the type and width of pavement, curbs and sidewalks.
 2. Topographic features of the lot and existing grades for the lot, streets, storm drainage, etc.
 3. All underground utilities and facilities.
 4. All existing buildings and structures.
 5. Wetlands as certified by the U.S. Army Corps of Engineers or their authorized agent.
 6. Flood zone, base flood elevation, and map reference, as determined by the latest FEMA flood insurance rate map, with the notation "flood zones subject to change by FEMA."
- c. Site improvements, show all proposed site improvements including, but not limited to:

1. Anticipated final appearance of the sides and rooflines of proposed structures shown on the site plan, plus a rendering showing the anticipated front appearance of the structure relative to landscaping. Final appearance of all structures shall be determined at time of building permit application.
2. Proposed building type and material (i.e., steel, brick, concrete or wood frame), number of floors and dimensions.
3. Proposed lowest floor elevation.
4. Location and type of all sidewalks and curbs with the site.
5. Proposed method for treating wastewater, location of all wastewater collection and treatment facilities (including any applicable property to be reserved for possible future wastewater use), name of any regulatory agency that must approve wastewater system, name of and written approval for connection from any organization that will collect or dispose of wastewater.
6. Layout and number of parking stalls, driveway connections, and internal traffic plans.
7. Finished grades.
8. A tabulation of the total number of dwelling units of various types in the project and the overall project density in dwelling units per acre.
9. Rights-of-way improvements in accordance with the policy of the town council.
10. Storm drainage in accordance with the policy of the town council.
11. A tabulation of lot coverage by type of cover and overall project coverage and percent coverage.
12. Limits of land disturbing activity and the calculated area of land disturbance.
13. Proposed use under this chapter, pertaining to zoning.
14. Parking requirements and spaces provided.
15. Proposed signage and calculations.
16. Proposed water supply.

17. Proposed outdoor lighting.
 18. Required and provided buffers, and proposed landscaping.
 19. Location of solid waste container, plus location of separate recycling container.
- d. All items on the site plan and all pertinent provisions of this chapter, pertaining to zoning, shall be addressed by the applicant before the site plan is presented for review by the planning board.
 - e. Dimensional requirements and development standards shall be in accordance with the district in which the development is to be located.
- (3) *Water and wastewater treatment and disposal.*
- a. No proposed site plan shall be accepted by the town, as part of an application for approval or conditional approval by the planning board, without written tentative approval of the proposed sewage treatment and disposal facilities by the department of environmental health or the state department having jurisdiction.
 - b. No proposed site plan shall be accepted by the town, as part of an application for approval or conditional approval by the planning board, without written tentative approval of the proposed water distribution facilities by the water department or the state department having jurisdiction.
- (4) The planning board may recommend approval, conditional approval or rejection of any proposed site plan. Upon completion of review, the planning board will transmit their recommendations to the town council. The town council may approve, approve with specific requirements or disapprove any site plan. A rejected site plan may be resubmitted, in accordance with this section, when redrafted to meet the specifications of this article and upon payment of a plan review fee.
- (5) Site plan amendments.
- a. If, Following town council's conditional or final site plan approval, minor changes or amendments to the approved site plan may be approved by the zoning administrator upon written application if the site plan as amended will otherwise meet the requirements for approval. All other changes or amendments to an approved site plan must be approved by the town council after review by the planning board in the same manner required for the initial review of a site plan. the owner or developer desires to make a change in any of the factors listed in subsection (b)(2)a, b, c, d or e of

this section, the change must be reviewed by the planning board and approved by the town council.

b. Changes or amendments to an approved site plan may be considered minor if, in the discretion of the zoning administrator, they have no substantial impact on neighboring properties or the general public and do not prevent the spirit and intent of a condition of the prior approval or the requirements of the zoning ordinance from being met. If, in the zoning administrator's sole discretion, the zoning administrator cannot clearly determine whether a change or amendment qualifies as minor or upon the written request of the applicant, the changes or amendments to a site plan shall be considered by the town council after review by the planning board in the same manner required for the initial review of a site plan.

- (6) Prior to issuance of a building permit and zoning permit, evidence shall be presented to the town showing satisfaction of all appropriate state and federal permits, including but not limited to:
- a. U.S. Army Corps of Engineers wetlands permit.
 - b. NCDOT driveway permit and/or encroachment application for work in a state right-of-way.
 - c. State soil erosion and sedimentation control plan approval.
 - d. State stormwater plan approval.
 - e. State or town CAMA permit.
 - f. Receipts for payment of water connection fee, county regional water system.
 - g. Septic tank or other wastewater treatment approval by the department of environmental health or other appropriate permitting agencies.
- (7) Inspections of sites involving public rights-of-way and inspections of any on-site construction shall be made by the town.

(8) After approval of a site plan by the town council, minor changes, which do not affect subsection (b)(2)a, b, c, d or e of this section, in the plan may be approved, in writing, by the zoning administrator, provided that the changes do not prevent the spirit and intent of a condition of approval from being met, or a provision or requirement of an article from being executed, except as provided in section 36-304.

(Code 1988, § 11-10.04; Ord. No. 04-03-01, art. II, § 1, 6-1-2004; Ord. No. 2006-07-04, art. III, 9-5-2006; Ord. No. 2006-09-02, art. VI, 11-28-2006; Ord. No. 2011-01-01, art. VIII, pt. X, 1-4-

Exhibit D

Sec. 34-55. Beach and dune management.

(a) *Definitions.* The following definitions shall apply to all portions of the Town Code relating to the public beaches, primary dunes and frontal dunes within the town:

- (1) *Adverse impact* means anything that would destroy, harm, impair, diminish, or degrade the value or integrity of a sand dune for storm protection or wildlife habitat.
- (2) *Beach* means the lands consisting of unconsolidated soil materials that extend for a distance of 100 yards east of the mean low water mark into the Atlantic Ocean landward to a point where either the growth of stable natural vegetation occurs or a distinct change in slope or elevation alters the configuration, whichever is farther landward.
- (3) *Dune system, frontal dune* is the first mound of sand located landward of the beach having sufficient vegetation, height, continuity, and configuration to offer protective value.
- (4) *Dune system, primary dune* is the first mounds of sand located landward of the beach having an elevation equal to the mean flood level for the area plus six feet. The primary dune extends landward to the lowest elevation in the depression behind the same mound of sand.
- (5) *Dune walkover access, improved* is a raised walkway constructed for the purpose of providing access to the beach from points landward of the dune system.
- (6) *Dune walkover access, unimproved* is a sand walkway or path used for the purposes of providing pedestrian access to the beach which is located in an area where there is no escarpment present between the dune structure and the beach.
- (7) *Escarpment* is the vertical drop or steep slope in the beach profile separating two comparatively level or more gentle sloping surfaces caused from high tide or storm tide erosion. Escarpments for the purposes of this chapter shall only be determined to exist in areas where the height and slope of the escarpment would preclude reasonable pedestrian access to the beach without causing an adverse impact to the dune structure.
- (8) *Tent* is portable shelter supported by a framework of multiple poles.

(b) *Beach and dune protection.* The following activities shall be considered unlawful on the beach, as defined in section 34-55(a):

- (1) Erection of a tent, cabana, or umbrella which, in the opinion of public safety personnel:
 - a. Prevents or disrupts the passage of emergency or ocean rescue vehicles; or
 - b. Hampers the ability to provide adequate ocean rescue service by obstructing the line of sight to the water from lifeguard stands or other surveillance areas.
- (2) Leaving unattended personal articles on the beach between the hours of sunset and sunrise 5:00 p.m. and 7:00 a.m. These items may include, but shall not be limited to, volleyball nets, badminton nets, poles, tents, chairs, cabanas, sunshades, horseshoe stakes, croquet courses, umbrellas or any other personal property items; Unattended personal articles left on the beach between 5:00 p.m. and 7:00 a.m. are subject to removal and disposal;
- (3) Substantially altering the contour or shape of the flat beach area by excessive digging or mounding of sand that:
 - a. In the opinion of public safety personnel, such alteration presents a present, dangerous condition; or
 - b. Is left unattended for any period of time without restoring the beach to its original condition.
- (c) The following activities shall be considered unlawful within the dune system:
 - (1) Walking or traversing on the dunes outside of an improved or unimproved dune walkover access as defined in section 34-55(a);
 - (2) Degrading, disturbing, or compromising the integrity of the dune structure. These prohibited activities include, but shall not be limited to:
 - a. Digging, shelling, mining, or mechanical alteration of the dune topography;
 - b. Playing, sliding, climbing, or rappelling on the frontal or primary dune or the dune escarpment; and
 - c. Discharging water into the dune where it will cause significant scouring or erosion or otherwise affect the integrity of the dune.
 - (3) Development activities without a valid building permit, health department approval, or CAMA authorization;
 - (4) Littering.

(d) *Exemptions.* This section shall not apply to the following activities:

- (1) Development activities authorized or permitted by the town, the county department of environmental health, or CAMA;
- (2) Dune or property maintenance activities including planting or fertilization of vegetation, sand fence installation, minor dune repairs, and removal of litter or debris;
- (3) Federal, state, and local officials engaged in official regulatory activities; and;
- (4) Persons engaged in research, conservation, or extension activities as authorized by the town manager.

(Ord. No. 2010-04-01, Pt. I, 4-20-2010)

Town of Southern Shores, NC
Closed Session Minutes
January 3, 2012

Those in attendance: Mayor Denny, Council Members Hess, Kowalski, Sanders and Lawhon.

Also present: Town Manager Peter Rascoe, Town Attorney's Ben Gallop and Phillip Hornthal and Town Clerk Carrie Gordin.

Mr. Hornthal discussed the Town's continued litigation process with Sampson Contracting on the Town's Canal Dredging Maintenance Project Phase 1. He stated Council authorized the Town Manager to pay up to \$75,000 to Sampson Contracting but no agreement was reached.

Following discussion Mayor Denny moved to authorize the Town Attorney settle with RPC, Contracting any claims of Phase 1 of the Town's canal dredging project not to exceed \$15,000 upon terms satisfactory to litigation Counsel, Phillip Hornthal.

Mayor Denny moved to go out of closed session. Mayor pro tem Hess seconded. The motion passed unanimously.

ATTEST


Hal Denny, Mayor

Respectfully submitted:


Carrie Gordin, Town Clerk