



Town of Southern Shores

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

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www.southernshores-nc.gov

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

The following Council Members were 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 called the meeting to order at 7:00 p.m. led the Pledge of Allegiance and held a Moment of Silence to honor our military service personnel who have received purple hearts.

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 - Approval of Minutes-July 3, 2012 and July 18, 2012.

Council Member Sanders moved to approve the July 3, 2012 minutes as presented. Council Member Lawhon seconded. The motion passed with Mayor Denny and Council Members Hess, Sanders, Kowalski and Lawhon voting aye.

Mayor pro tem Hess moved to approve the July 18, 2012 minutes as presented. Council Member Kowalski seconded. The motion passed with Mayor pro tem Hess and Council Members Sanders, Kowalski and Lawhon voting aye. Mayor Denny was not present at the July 18 meeting and did not vote on the approval of those minutes.

CONSENT AGENDA

Dare County Tax Pickups and Releases

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

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

STAFF REPORTS

Town Planner

Wes Haskett, Town Planner, presented the monthly report.

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

Police Department

Chief Kole presented the monthly report. He also reported on Friday, August 3, many emergency agencies participated in the investigation of a missing person incident with the outcome of the person being found safely. He expressed his appreciation to all who were involved in the search. Those were represented by the Colington Volunteer Fire Department, Kill Devil Hills Fire Department/Ocean Rescue, Roanoke Island Fire Department, Kitty Hawk Fire Department/Ocean Rescue, Stumpy Point Fire Department, Mann's Harbor Fire Department, Corolla Fire/Rescue Department, Dare County Med Flight, Duck Fire Dept./Police Department, Surf Rescue, Southern Shores Civic Assoc./Southern Shores Boat Club, Nags Head Police Department, Kitty Hawk Police Department, Kill Devil Hills Police Department, Dare County ABC, Dare County Emergency Medical Service/Emergency Management Operations and the Southern Shores Volunteer Fire Department.

Southern Shores Volunteer Fire Department

Chief Harvey presented the monthly report. He also expressed his appreciation for all those who were involved in the search. He thanked everyone for the professionalism shown during the investigation with all the multi-agencies and the volunteers that were involved. He also thanked Pizza Stop for providing pizzas to the searchers.

Mayor Denny stated he observed and was very impressed with the professionalism shown by all.

REPORTS FROM BOARDS, COMMITTEES, AND ASSOCIATIONS

Town Planning Board-None

Southern Shores Civic Association (SSCA)-None

Chicahawk Property Owner's Association

Leo Holland, president, announced the CPOA's annual picnic will be held on September 29 and the Board is in the process of updating the CPOA By-laws.

GENERAL PUBLIC COMMENT

Mary Jane Slesinski, 22 Wild Pony Lane, commented with concerns about allowing dogs on the beach, about dog owners not disposing of the dog feces properly, and about owners not keeping dogs on leashes.

Shelly Tarleton, 73 Land Fall Loop, commented with the same concerns regarding dogs. She stated there is a process available for DNA testing of dogs to identify feces.

Caecilia Koeleveld, 72 Gravey Pond Lane, addressed Council with her concerns for the removal of trees for the needed street improvement to Gravey Pond Lane. She previously provided Council with a letter addressing her concerns. She requested Council reconsider the engineering plans for the street improvements due to the removal of so many trees.

OLD BUSINESS

Appointment to Government Education Channel Committee-Council Member Sanders

Mayor Denny stated Council Member Sanders has agreed to replace Mayor pro tem Hess as the Town's representative on the Government Education Access Channels Committee.

Mayor Denny moved to appoint Council Member Sanders to the Government Education Access Channels Committee as the Town's representative. Council Member Kowalski seconded. The motion passed with Mayor Denny and Council Members Hess, Sanders, Kowalski and Lawhon voting aye.

Proposed Amendment of Chapter 28, Streets, Sidewalks and Other Public Property

The Town Manager called upon the Town Planner to review the changes as proposed in draft Ordinance 2012-08-01.

The Town Manager stated the Town Attorney had recommended an additional statement of authority to be included in the preamble of the proposed amendment ordinance.

Mayor Denny moved to adopt the submitted additional text. Council Member Sanders seconded. The motion passed with Mayor Denny and Council Members Hess, Sanders, Kowalski and Lawhon voting aye.

Council Member Kowalski stated he finds the entire Code Section to be poorly written and he suggested a complete rewrite before any approval.

Following discussion by Council, Council Member Lawhon suggested on page 2, line 31 under the encroachment agreement the words "which may be" should be removed.

The Town Attorney stated if those words are deleted the word "and" should be included.

Mayor Denny moved to adopt Ordinance 2012-08-01 as presented. Mayor pro tem Hess seconded.

The Town Attorney asked if Council wanted to delete the wording suggested by Council Lawhon.

Mayor Denny moved to amend his motion to include the deletion of the words on page 2, line 31 "which may be" and to insert the word "and". Mayor pro tem Hess seconded. The motion passed with Mayor Denny and Council Members Hess, Sanders, Kowalski and Lawhon voting aye.

[Clerk's Note: A copy of Ordinance 2012-08-01 is hereby attached as Exhibit C as amended].

NEW BUSINESS

Fee Schedule-Town Parking (sticker)

The Town Manager updated Council on the distribution process for the Town stickers. He stated currently there is no expiration date for the stickers. He stated he plans on inserting a December 31, 2014 expiration date on the sticker for the purpose of attempting to keep the stickers current with vehicles actually kept in the Town.

OTHER ITEMS

Town Manager

The Town Manager reported on several matters:

- The implementation of the NIMS-ICS system for the recent emergency search event was executed very professionally.
- A videographer will attend the September 4 Council meeting to provide a test filming of the meeting.
- The Town's new website will be on-line hopefully within the next five days.
- The cemetery committee has met and reviewed the ordinance and rules and will submit changes for Council review in September.
- The Chicahawk Trail Street Improvement Project contract completion date is at the end of the August.
- The required amount of bidders were not received for the Gravey Pond Lane, Deer Path Lane, and Spindrifft Trail project (FY2012-2013 Project #1), therefore a second bid announcement has been placed.
- Widgeon Court street project is on-going.
- The first ticket was issued by the Police Department for a willful violation of allowing a dog on beach during restricted hours.

The Town Manager and the Mayor recognized Dare County Commissioner Chairman Warren Judge in attendance of tonight's meeting.

Town Attorney-None

Mayor

Mayor Denny requested Council members review the Town's new website and submit additional personal information for the Council page.

Mayor Denny called upon Joe Anlauf, Anlauf Engineering, to provide an update on the Chicahawk Trail Street Improvement Project.

Mr. Anlauf stated the project completion date is August 24. They are diligently working and the residents have been patient.

He stated Widgeon Court should be completed this week.

He stated the bid opening for the Gravey Pond-Deer Path-Spindrifft street improvement project is scheduled for August 17. He has met personally with residents to explain the project's design.

Council

Mayor pro tem Hess requested staff review DOT recommendations provided from a previous stormwater study on ways the Town could improve stormwater run-off on NC 12 and report back to Council at the next meeting.

Council Member Kowalski provided materials to Council on construction of bike paths and how grant funding may be acquired to establish a "green city".

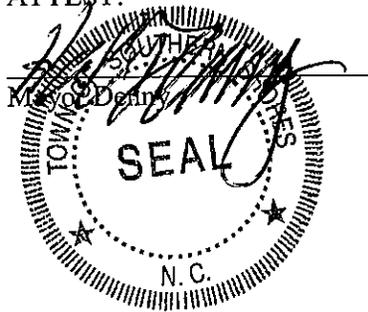
The Town Planner stated he has past experience with this type of project and the best way is to apply for a NC bicycle/pedestrian planning grant before applying for grant funding to actually construct paths.

All Council members agreed that the Planner should proceed with the process.

Hearing no other regular business Mayor Denny moved to go into closed session pursuant to NCGS 143-318.11(a) (6) Consideration of Personnel Issue. Council Member Sanders 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 10:15 p.m. Council Kowalski seconded. The motion passed with Mayor Denny and Council Members Hess, Kowalski, Sanders and Lawhon voting aye.

ATTEST:



Respectfully submitted:

Carrie Gordin
Carrie Gordin, Town Clerk

Exhibit A

**TOWN OF
SOUTHERN
SHORES
TAX
DEPARTMENT**

7/17/2012

PICKUPS

RELEASES

April Real	\$10.20
March Vehicle	\$11.76
April Vehicle	\$42.79
May Vehicle	\$156.44

TOTAL

\$0.00

\$221.19

Exhibit B

**8-7-12 TC Report
Town Planner
Month of July**

1. Land Use Plan Update

-Tomorrow is the last day for written comments on the Town's recently adopted Land Use Plan to be submitted to the Regional Planner and to my knowledge, no comments have been submitted. The Coastal Resources Commission will hopefully be certifying the plan at their August 29th meeting which I plan to attend. I will be sure to update everyone on the outcome of the meeting as soon as possible.

2. Permitting and Inspections for July, 2012

-4 Zoning Permits were issued.

-32 building permits were issued: 1 new single-family dwelling, 1 remodel, and 30 others.

-62 building inspections were conducted (38 job sites).

-Total amount of fees collected in July was \$5,712.60.

3. FY 2011-2012

-Total amount of fees collected in FY 2011-2012 was \$78,416.29.

Exhibit C

2012-08-01

**OBSTRUCTIONS IN STREET AND HIGHWAY
RIGHT-OF-WAY DECLARED PUBLIC NUISANCES ORDINANCE
AMENDING THE TOWN CODE
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 Council finds that it is in the interest of the public's health, safety and general welfare that the Town Code be amended as stated below; and

WHEREAS, the Town of Southern Shores has the additional authority to regulate obstructions within its street right-of-ways pursuant to North Carolina General Statute § 160A-296.

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. Town Code.

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 28, Section 28-2 be amended as follows:

Sec. 28-2. Obstructions in ~~street and highway~~ right-of-way declared public nuisances.

(a) All obstructions within the right-of-way of all streets and highways in the town are hereby declared public nuisances. ~~All obstructions located within four feet of any asphalt or otherwise improved roadway owned or maintained by the town is hereby prohibited and shall be removed immediately upon written notification from the town manager. For purposes of this chapter, the term "right-of-way" is defined as any street, or that area adjacent to any street between two or more property lines, that is owned or maintained by dedicated to, and accepted by, the town. and is regularly used, wholly or in part, for pedestrian or nonvehicular traffic (including, but not limited to, a multiuse path).~~ The town is not responsible for any damage incurred to any obstruction in any street, ~~or that area between two or more property lines, that is owned or maintained by the town and is regularly used, wholly or in part, for pedestrian or nonvehicular traffic (including, but not limited to, a multiuse path)~~ right-of-way.

(b) The following obstructions are exempt from this section:

- (1) Commercially available newspaper and mailboxes.
- (2) Garbage/recycling containers, branches/brush, and other items temporarily placed on the right-of-way for scheduled pickup at times designated by the town.
- (3) Reserved.

- (4) Property numbers on posts, as allowed by section 24-60.
- (5) Driveway aprons and any minimum necessary accessory structures.
- (6) Landscaped beds at grade which may include sand, mulch, or dirt, but excludes trees and shrubs.

(c) For the purposes of this section, the term "obstruction" means and is defined as any object, building or sign, whether manmade or natural including, without limitation, vehicles and trailers, dirt and sand berms, wood chip and/or mulch piles, fences, yard decorations, stakes, poles, posts, bulkheads, large stones/rocks and concrete or other masonry walls.

(d) This section shall not apply to self-propelled motor vehicles displaying town parking permits, ~~which may be~~ and legally parked in right-of-way parking areas, established in accordance with section 20-146.

(e) Placement of signs on the town right-of-way and private property is regulated by section 36-165.

(f) Except for those obstructions listed in subsection (b) of this section, no obstruction may be placed within ~~four feet of the improved surface of a public roadway~~ any right-of-way.

(Code 1988, § 6-201; Ord. No. 02-09-021, pt. 2, 9-3-2002; Ord. No. 04-07-02, art. III, 8-3-2004; Ord. No. 2011-07-01, pt. II, 7-5-2011)

PART II. That Chapter 28, Section 28-3 be amended as follows:

Sec. 28-3. Encroachment agreements.

Notwithstanding the provisions of section 28-2, property owners, or their agents, may apply for an encroachment agreement providing for the placement of obstructions within the right-of-way. Encroachment agreements shall be divided into three categories and a property owner, or his agent, may apply for more than one type of encroachment agreement.

- (1) *Construction encroachment agreement.* A property owner, or his agent, may apply to the town for a construction encroachment agreement. If approved by the town manager, the applicant may park construction related vehicles within the right-of-way, but no closer than four feet from the paved road surface or from any travel lane. Application may only be approved after finding that the applicant cannot practicably park on the property during the construction period. The street shall not be used for the storage of any construction materials, equipment, tools or supplies including, but not limited to, temporary water and toilet facilities. A construction encroachment agreement may be issued for a term no longer than six months and may be extended for two additional consecutive three-month terms so long as the applicant shall have

generally been in conformity with the ordinances of the town. No certificate of occupancy may be issued until the town manager has made a written finding that any road surface is in the same or better condition than upon commencement of the construction process.

- (2) *Special events encroachment agreement.* A property owner, or his agent, may apply to the town for a special events encroachment agreement. If approved by the town manager, the applicant may park vehicles related to a special event on the side of the street, but no closer than one foot from the paved road surface or from any roadway. A special event is hereby defined as a previously scheduled event having a duration of not longer than 20 hours in any 48-hour period. Except for vehicles, the applicant of an approved special events encroachment agreement may not place any other obstruction within the street, except for traffic cones or small flexible flags (which shall be required to be in place during the duration of the permit term), indicating the boundaries of the area covered by the special events encroachment agreement. A special events encroachment agreement may be issued for the same section of a street for a term no longer than 20 hours in any 48-hour period and may not be extended beyond the approved duration without prior approval by the town manager.
- (3) *Right-of-way encroachment agreement.* A property owner, or his agent, may apply to the town for a right-of-way encroachment agreement. If approved by the town council manager, the applicant may place an obstruction within the street right-of-way. Except where the town council manager, or his designee, makes written findings showing no practicable alternative, the obstruction shall not be closer than four feet from the paved road surface or four feet from any roadway. No other obstructions may be placed within the street, except as otherwise provided by law. A right-of-way encroachment agreement shall be executed in such a format that it shall be recorded in the county registry and shall be made available by the applicant and any subsequent property owner to any future property owner. Any obstruction authorized by a right-of-way encroachment agreement shall be installed no sooner than the date the agreement has been recorded in the county registry and the agreement shall automatically expire 30 days after the obstruction has been removed.

(Code 1988, § 6-201.1; Ord. No. 04-07-02, art. IV, 8-3-2004)

PART III. That Chapter 28, Section 28-4 be amended as follows:

Sec. 28-4. Trees.

(a) ~~The town, at its discretion, may remove any obstruction within any street, or that area between two or more property lines, that is owned or maintained by the town and is regularly used, wholly or in part, for pedestrian or nonvehicular traffic (including, but not limited to, a multiuse path).~~

(ba) No person, except upon written permission from the town manager, may remove from

within the public-right-of-way a living dogwood tree (genus *Cornus*). ~~This prohibition shall not apply to any dogwood tree (genus *Cornus*) located within four feet of an improved roadway.~~

(eb) Except as provided in subsection (b) of this section, property owners or their agents may also remove vegetation within a street right-of-way with the written permission of the town manager. Brush, vines, trees and other vegetation having a diameter of less than four inches, at a point two feet above normal average grade, may be removed without restriction at the discretion and expense of the property owner.

(Code 1988, § 6-202; Ord. No. 02-09-021, pt. 2, 9-3-2002; Ord. No. 04-07-02, art. V, 8-3-2004)

PART IV. That Chapter 28, Section 28-5 be amended as follows:

Sec. 28-5. Abatement by town

(a) If, in the course of providing a public safety service, any employee or volunteer of a public safety service provider finds that an obstruction within the street right-of-way hinders the ability, in any way, of the provision of a public safety service, then the town manager, police chief, fire chief, or authorized person on the scene and in charge of providing the public safety service may order the removal of the obstruction. Any cost for the removal and cleanup of the obstruction shall be due and payable by the person, if known, placing the obstruction in the street. In all other cases, the town may order the removal of any obstructions at any time, as provided in subsection (b) of this section.

(b) If any person, having been ordered to abate an obstruction in a street right-of-way, fails, neglects or refuses to abate or remove the condition constituting the obstruction within 15 days from receipt of an order to remove an obstruction, the town manager may cause such condition to be removed or otherwise remedied by having employees of the town or independent contractors remove or otherwise abate such nuisance at the owner's expense.

(c) Any person causing, permitting, or allowing an obstruction to exist, who has been ordered to abate or remove the obstruction, may, within the time allowed by this chapter, request the town, in writing, to suggest possible contractors to remove such condition, the cost of which shall be paid directly to the contractor.

(Code 1988, § 6-203; Ord. No. 02-09-021, pt. 2, 9-3-2002; Ord. No. 04-07-02, art. VI, 8-3-2004)

PART V. That Chapter 28, Section 28-6 be amended as follows:

Sec. 28-6. Costs

The actual cost incurred by the town in removing an obstruction from a street right-of-way shall be charged to the owner of such lot or parcel of land that caused, permitted, or allowed the obstruction to exist; and it shall be the duty of the tax collector to mail a statement of such charges to the owner or other person in possession of such premises with instructions that such charges are due and payable within 30 days from the mailing thereof. If such costs charged in

accordance with this section are not paid as herein stated, the costs shall be a lien upon the land or premises and shall be collected as unpaid taxes.

(Code 1988, § 6-204; Ord. No. 02-09-021, pt. 2, 9-3-2002; Ord. No. 04-07-02, art. VII, 8-3-2004)

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 7th day of August, 2012.

ATTEST:

Town Clerk

Approved as to form:

Town Attorney

Mayor

Date: _____

Vote: _____