



Town of Southern Shores
Regular Council Meeting
July 9, 2019

The Town of Southern Shores Town Council met in the Pitts Center located at 5377 N. Virginia Dare Trail at 5:30 p.m. on Tuesday, July 9, 2019.

COUNCIL MEMBERS PRESENT: Mayor Bennett, Mayor pro tem Chris Nason and Council Members Fred Newberry, Jim Conners and Gary McDonald.

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Town Attorney Ben Gallop, Town Manager Peter Rascoe and Town Clerk Sheila Kane

CALL TO ORDER / PLEDGE OF ALLEGIANCE / MOMENT OF SILENCE

Mayor Bennett called the meeting to order at 5:30 p.m., led the Pledge of Allegiance, and held a moment of silence.

AMENDMENTS / APPROVAL OF AGENDA

MOTION: Mayor pro tem Nason moved to table item 4.A Public Hearing on *ZTA-18-09 PB01 Regulation of structures and Uses Nonconforming* to December. The motion was seconded by Councilman McDonald. The motion passed unanimously (5-0).

MOTION: Councilman McDonald moved to move Agenda Item 2.A-E Staff Reports to just before New Business. The motion was seconded by Councilman Newberry. The motion passed unanimously.

MOTION: Councilman McDonald moved to approve the July 9, 2019 agenda as amended. The motion was seconded by Mayor pro tem Nason. The motion passed unanimously (5-0).

CONSENT AGENDA

The consent agenda consisted of the following items:

- Council Meeting Minutes - May 7, 2019 & June 4, 2019
- Budget Amendment #1 – Rollover Balance of FY 18-19 Encumbered Funds for Town Code Project

MOTION: Mayor Bennett moved to approve the consent agenda as presented. The motion was seconded by Councilman McDonald. The motion passed unanimously (5-0).

OLD BUSINESS

Consideration of a Special Events and Occupancy Limitation Ordinance – Requested May 7, 2019 by Councilman Gary McDonald.

Planning Board Chair Elizabeth Morey gave a brief report stating that herself and Planning Board Member Andy Ward had met with Town Planner Wes Haskett and came up with a list of suggestions for the Special Events and Occupancy Limitation Ordinance as requested by Council. These suggestions were not incorporated into the draft presented to Council.

Mayor Bennett being concerned about enforcement asked the Town Manager what the impact of not passing the ordinance would be. The Town Manager replied that the impact would be minimal at best. The Town already has parking and noise ordinances in place that are enforced. He stated Town staff is not going to go door to door counting heads.

Councilman McDonald stated Staff and Planning Board members Elizabeth Morey and Andy Ward have done significant work on this ordinance and he **moved** to send the draft ordinance back to these members to have inclusion of the Planning Board's list of suggestions. His motion was seconded by Councilman Newberry.

Mayor Bennett stated we have a solution looking for a big problem. He further stated that it felt like a piece of paper was being manufactured to put more control on people's lives and he did not agree.

Councilman Newberry agreed with Councilman McDonald and stated the ordinance is not intended to penalize the residents. It is to control the parking and the noise of parties into the late evening.

Councilman Conners stated this whole thing needs to die.

Councilman Nason stated staff and the Planning Board put a lot of work into this ordinance but he felt that it will never be quite right and that there really does not seem to be a problem. For those reasons he will not support it and would prefer to rely on the ordinances we already have in place.

Councilman Newberry stated considering recent events he felt Council was trying to be proactive. This was not to penalize the residents. It is more to protect the privacy and the wellbeing of the residents. He stated we live here year around and are a fairly quiet community and would like to keep it that way.

Councilman Nason stated he didn't disagree but some of the loudest parties are from residents. He stated he doesn't see a whole lot of parties along the beach and for those there are mechanisms already in place if an issue arises.

Councilman Newberry stated, based on recent events he would be more specific if he needed to be.

Mayor Bennett stated he would be specific in what Mr. Newberry was addressing and that is Mr. Newberry is referring to the two 12-bedroom homes that SAGA has recently built.

Councilman Newberry stated it is to prevent large events and have some control over them. To protect the quiet neighborhood and its residents - but if you want to kill it, kill it.

Councilman Connors called for a vote on the question. Hearing no further discussion, the motion failed 2-3 with Councilman Newberry and Councilman McDonald voting affirmative; Mayor Bennett, Mayor pro tem Nason and Councilman Connors opposing.

GENERAL PUBLIC COMMENT

Mayor Bennett called for public comment and the following citizens offered comment:

1. Porter Graham-229 Sir Chandler Dr KDH-concerned with Special Events Ordinance.
2. Andy Ward-147 Bayberry Trail-requested letter to Council in reply to Porter Graham's article be placed in the record of the minutes.
3. Mike Stone-8 Sandfiddler Ct.-Please address the wording "commercial facility" as it is worded in the ordinance.
4. Laura Lappin-70 Gravey Pond Ln.-Special Events ordinance may have had good intentions but is overreaching.
5. Ann Sjoerdsma-69 Hickory Trail-Opposed to Porter Graham's comments and Town Council is not going to do anything tonight, they are just looking for viewpoints. Still in a discussion stage.
6. Sandra Slates-38 Ginguite Trl.-Opposed to Special Events Ordinance
7. Starkey Sharp-His Client followed all the Town asked and yet Council has once again postponed the non-confirming lots issue. The Town passed a bad ordinance.
8. David Herts-Waters Edge Dr-Opposed to Special Events Ordinance and the way some citizens are treating others with different opinions.

Hearing no other citizen wishing to speak, Mayor Bennett closed public Comment.

NEW BUSINESS

Public Hearing and Consider approval of a Proposed Design for a Walking Trail Along South Dogwood Trail, and approval to seek bids and a construction contract. (Council appropriated \$ 1,000,000 on June 4, 2019.)

Town Attorney Gallop opened the public comment and the following residents offered comment:

1. Rich Carroll-130 S Dogwood Trail-supports walking trail but does not want a pergola in front of his house.
2. Al Ewerling-187 South Dogwood Trail-the walking trail plans will drastically change South Dogwood. One-million-dollar pet project but no money towards traffic. The walking trail will knock down property values and quality of life.
3. Ann Sjoerdsma-69 Hickory Trail-disappointed in design plans, incomplete. Use of concrete rather than permeable material. The path should be narrower than the proposed 5 ft.
4. David Feyrer-70 South Dogwood-Do the path as rapidly as possible for the safety of the community. Will look a lot better and be safer.
5. Mary Lou Hoffert-would like to know if the trees being removed will be replaced
6. Paul Personino-16 7th Ave, -hopes the opposition Council is getting doesn't sway the decision. Walking path will improve safety and it agrees with the 5 ft width. Keep the trail on one side, do not split it onto two sides.
7. Tommy Karole-77 East Dogwood Trail-Council should take a step back and see what traffic study says. He cannot read the plans online.

Town Attorney Gallop closed the public hearing.

Mayor pro tem Nason stated Council cannot afford to wait, someone is going to get hurt on South Dogwood Trail. This is critical and we need to protect the residents.

Councilman Newberry stated he is not opposed to the path but opposed to the funding, taking a million dollars out of the emergency fund. He also stated the path does not need to be five feet wide, and it will hurt the ambiance of South Dogwood Trail.

Councilman McDonald inquired about how many trees would be removed. He also stated he agreed with Councilman Newberry in that the funding of the project is pulling from the Town's emergency fund.

Mayor Bennett stated he wanted to clarify something. Councilman Newberry and Councilman McDonald stated money was taken from the "emergency fund". Money was taken from the undesignated fund balance. The emergency capital was not reduced under the three million the Town tries to keep for emergency issues. He stated this project did not impact the three million, this was separate over and above.

Councilman McDonald stated the money was in the undesignated fund balance, which is for emergencies. Mayor pro tem Nason and Councilman Connors disagreed that this fund is meant for just emergencies. Councilman Nason stated it wasn't just meant to sit there.

MOTION: Councilman Connors moved that Council authorize advertising to receive formal bids, based on the current design plans before us, for the construction of a 5-foot wide concrete walking trail along the east side of South Dogwood Trail-from western end of the current East Dogwood Trail Walking Trail to the northern end of the current Town sidewalk at

the Southern Shores Cemetery. Prior to bid advertising the Town Manager, in his sole discretion, may authorize the Town Engineer to make final adjustments in the walking trail's design alignment to balance the primary goal of providing for public safety with the additional goals of tree preservation and incorporating feedback from the South Dogwood Trail property owners. The motion was seconded by Mayor pro tem Nason. The motion passed 3-2 Mayor Bennett, Mayor pro tem Nason, Councilman Conners voting affirmative; Councilman Newberry and Councilman McDonald opposing.

NEXT AGENDA ITEM

Public Hearing and Consider adoption of Ordinance 2019-07-01, Capital Infrastructure Improvement Planning Committee Recommendation for FY 2019-2020. (Council appropriated \$ 662,340 on June 4, 2019.)

Town Attorney Gallop opened the public hearing. Hearing no citizens wishing to speak on the matter, Town Attorney Gallop closed the Public Hearing.

MOTION: Mayor Bennett moved to adopt Ordinance 2019-07-01, Capital Infrastructure Improvement Planning Committee Recommendation for FY 2019-2020. The motion was seconded by Councilman Conners.

MOTION: Councilman Newberry disagreed with the order of the first two priority streets and moved to amend the primary motion to have East Dogwood Trail paved and implemented as the first priority, followed by Hillcrest as priority two. The amended motion was seconded by Councilman McDonald.

Councilman Conners stated it should be left the way the Capital Infrastructure Improvement Planning Committee recommended.

Mayor Bennett called for a vote on Councilman Newberry's amended motion. The motion passed 4-1 with Councilman Conners being the sole opposing vote.

Mayor Bennett called for a vote on the primary motion to approved Ordinance 2019-07-01, Capital Infrastructure Improvement Planning Committee Recommendation for FY 2019-2020 as amended. The motion was seconded and passed unanimously.

NEXT AGENDA ITEM

Planning Board Appointments for Confirmed Vacancies.

MOTION: Mayor Bennett moved to re-appoint Elizabeth Morey to the Planning Board and appoint Donald Sowder as a regular member and appoint Tony DiBernardo to replace Leo Holland as an alternate member to the Planning Board. The motion was seconded by Councilman Conners. The motion passed unanimously (5-0).

STAFF REPORTS

The following Department Heads presented Department reports for the month:

- Town Planner Wes Haskett presented the Planning Department's monthly report for June.
- Police Chief David Kole presented his Department's monthly report for June.
- Fire Chief Limbacher presented the Fire Department's monthly report for June and presented audio of the 911 calls from the two back to back fires in Town.
- The Town Manager presented the Manager's report on operation highlights:
 - The Governor has not taken action yet on Senate Bill 355
 - The Town has received reimbursement from the responsible contractor's insurance company pertaining to Juniper Trail road improvement and all repairs have been completed.
 - Town staff have implemented emergency management preparations for the season.
 - Town has produced short segment history videos with former Council Member Jodi Hess doing the research.
- Town Attorney Gallop had no report.

GENERAL PUBLIC COMMENT

Mayor Bennett again called for public comment and the following citizens offered comment.

1. Chris Smith-not a resident in Town but has built several homes in Town. Concerned with the non-conforming lot ordinance.
2. Tommy Karole-77 East Dogwood-Town concerned with safety yet did not put any money into funding for the cut thru traffic.
3. Christy Morris-137 S Dogwood Trail-owns a lot on Skyline that she contends the non-conforming lot ordinance would impact. She has an Dare County Superior Court Order of Judgement from a 2005 civil case allowing the lot to be built upon.

MAYOR COMMENTS & COUNCIL COMMENTS

Mayor Bennett recognized that Southern Shores had its 40th year anniversary as a Town.

Councilman Newberry thanked the Fire Chief for his briefing. He further stated that he feels the walking path along South Dogwood Trail was rushed and that emergency funds versus undesignated funds are one in the same and are being used as a slush fund.

Councilman Connors recognized the Southern Shores Civic Association and the Association's recent improvements.

CLOSED SESSION

Councilman McDonald moved to hold Closed Session pursuant to NCGS §143-318.11 (a)(1) to prevent the disclosure of information that is privileged or confidential pursuant to the common law attorney-client privilege and N.C.G.S. 143-318.10(e). the motion was seconded by Mayor pro tem Nason and passed unanimously.

ADJOURN

MOTION: Upon returning to open session and hearing no other business, Councilman McDonald moved to adjourn the meeting. The motion was seconded by Mayor pro tem Nason. The motion passed unanimously (5-0). The times was 8:15 p.m.

ATTEST:


Thomas G. Bennett, Mayor



Respectfully submitted,


Sheila Kane, Town Clerk



**GENERAL PUBLIC COMMENT
SIGN-UP SHEET**

July 9, 2019

We encourage your public comments. All speakers must recognize the utmost importance of maintaining the decorum of Town meetings and of the need for all to have an opportunity to speak in a timely and uninterrupted manner. Please limit your comments to 3 minutes and speak courteously and respectfully to the Council as a whole. The 3 minute time allotted is your time to speak. You may choose to use all of it or less, but it is not transferrable to anyone else. Public comment is your opportunity to provide input on Town matters. It is not meant to be a dialogue exchange between you, members of the Council, or others in the audience.

NAME	MAILING ADDRESS OF RESIDENT	TOPIC
Porter Graham	229 Sir Chandlers Dr. Kill Devil Hills	SPECIAL EVENTS + OCCUPANCY LIMITATION
Andy Ward	147 Bayberry	same
Mike Stone	8 Sandhill Ct	Events
Laura Lappin	70 Gravey Pond Ln	
Ann Sjoerdsma	69 Hickory Trl.	Events
Sandra Slates	38 Dignity	Events
Urban Striegel		
Tommy Karole	77 E. Dogwood	
Ernie R. Dash	21 Paradise Pl	_____
Stacey Shapp		

Hello all,

I'm quite certain you all have gotten your fair share of phone calls and emails stemming from the opinion piece that ran recently in the Outer Banks Voice concerning the prospects of our Town placing some type of restrictions on special events. I am certainly disappointed that the author of that piece, Porter Graham, failed to include the history of the Town Code Amendment (TCA) that he so freely quoted from in his article. As the shared government affairs director for the local Homebuilders and Board of Realtors, he is in essence, their paid lobbyist, earning his salary from membership dues. Having only been in that position since March, and a new resident of Dare Co., I suppose we should give him a pass for being somewhat misinformed as to the origin of the TCA that dates back to December 2015.

However, I'm inclined to believe Porter Graham was not so much being a bit sloppy with his reporting, but rather, slanting things hard in one direction to maximize reaction within the beach community and beyond. After all, that's what lobbyists do, and he did a damn good job, as far as I can tell. His piece was even picked up by the News and Observer a few days ago.

As directed by TC, the Planning Board, at our June 17 meeting, began discussion on ways to denuclearize Ben's original TCA. We ended our meeting with all board members agreeing that Elizabeth and I would meet with Wes and work on a list of suggestions the PB could present to you for your July meeting.

Elizabeth, Wes and I met this past Monday and dug into Ben's original TCA piece by piece. Out of that meeting, and several emails and phone calls later we have come up with a list of suggestions that we believe would strike a fair balance in the quest to have some type of control over unfettered use of primarily rental property for multiple events. I am including that list which Wes has sent to all PB members for their input. Anticipating agreement from the rest of the PB, Elizabeth will offer this list of suggestions to you at the July council meeting.

Both Willo Kelly and Porter Graham have given their accolades to Duck's 10 year old wedding-related event policy (not codified). Their threshold of guests in order to trigger an application process starts at 50 attendees. Their policy and registration form has merit and certainly should be used as a guideline, but it is ten years old and not an ordinance in their town code. Along with their policy link I am also including a link for an obvious event house that you will likely recognize in Duck. That operation could set up in Southern Shores tomorrow and we have absolutely nothing in place to curtail event after event from occurring. I believe we all know the intent of the two 12 BR "single family residential" houses under construction here in SS at the moment.

<https://www.townofduck.com/getting-married-in-duck>

<https://www.exclusiveobxhomes.com/rentals/weddings-events/>

I am absolutely in favor of our town allowing all kinds of special events. How many, how often and how big needs to be a part of our town code of ordinances and not just a loose policy. After all, we as residents of and property owners in Southern Shores are the primary stakeholders in this situation, not the Board of Realtors, the Homebuilders or the event industry. I strongly believe that we, as a town, can be accommodating but at the same time control a constant push for more commercialization in our residential community. Less can often be more. After all, this is our Town.

Sincerely,

Andy



Southern Shores Town Council

July 9, 2019

The proposed event ordinance before the council reflects significant very welcome modification of text considered by the planning board on June 4.

The Outer Banks Association of REALTORS® appreciates the town's revision from 25 to 75 of the size of events for which no permit is required, and from 3 to 10 of the number of allowable permit-required events at one property. We thank the town for these steps in the right direction.

While these changes substantially lessen the detrimental impact the event ordinance would have on property managers and homeowners, the revised text remains highly problematic due its ambiguity in several areas.

First, Section 22-87 threatens "persons managing" unpermitted events or events that diverge from the content of permit applications with substantial penalties but does not specify who these persons are. Inasmuch as property managers' routine business exposes them to potential liability under that section, the town is delegating the ordinance's enforcement to members of our association. It is unreasonable to require property managers to police the number of annual events at a certain locale, the details of events' compliance at the permitting stage, and the events themselves to ensure their resemblance to the permit.

Second, the definition of "traditional family events" remains highly ambiguous in two respects. Exempted events are those quote unquote "for" people related by blood or marriage to the property owner. What does the word "for" mean here? Can you get fined for holding a 75-person event that includes non-relatives, but which you believe to be "for" relatives? Also, are permits required for traditional family events other than those specifically enumerated in the definition, or can you get fined for mistakenly believing your super bowl party or college graduation party is traditional enough to be exempt? How would town personnel who respond to a complaint and discover a nonconforming graduation party address the situation? By interviewing partygoers as to their familial ties and determining who can stay? The definition is ambiguous, the category is arbitrary, and its enforcement is impracticable.

Third, what happens if more people show up at an event than anticipated? Would a property owner who refuses to stand in the doorway turning away nonconforming partygoers be subject to investigation as to whether he should have expected them to show up? It is unreasonable for the town to burden property owners with policing arbitrary numerical distinctions between various categories of event, and impracticable for the town to enforce them.

Fourth, has the town adequately explored the Fourth Amendment constitutionality of denying a special event permit under Section 22-84(B) of the ordinance due to a property owners' refusal to consent to police and fire personnel's warrantless inspection of their home?

I hope the foregoing exemplifies some of the factors significantly complicating enforcement of the revised ordinance. My coverage this evening has certainly not been exhaustive. The association knows and respects what the town is trying to do, but we believe there are better means to achieve it, and those means are simply to require registration, but not permitting, of large social gatherings.

Respectfully submitted,

Porter Graham

Government Affairs Director



PUBLIC HEARING
July 9, 2019

Public Hearing-Agenda Item 4.A

Public Hearing-Consideration of ZTA-18-09 PB01 Zoning Text Amendment application submitted by the Town of Southern Shores to amend the Southern Shores Town Code by amending Section 36-132, Regulation of Structures and Uses Nonconforming.

NAME (PRINT)	ADDRESS
Craig Hord	378 SeaOaks Trail
Chris Smith	405 Fort St KIDH
Starkey Sharp	Kitty Hawk, NE
Ann Sjoerdsma	69 Hickory Trail
Emily Ausband	177 Chickhawk Trail
Christy Morris	137 S. Dogwood Tr



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

Ordinance #2019-07-01

An Ordinance Establishing a Capital Infrastructure Improvement Plan and Authority to Implement

Be It Ordained, the Town Council of the Town of Southern Shores, after a Public Hearing held this date, does hereby adopt and establish a Capital Infrastructure Improvement Plan (CIIP) for Fiscal Year 2019-2020 (as described on Attachment A incorporated herein by reference), and authorizes the Budget Officer to enter into agreements and contracts necessary to implement the CIIP in accordance with Town policies and standards, along with budgeted items in "Public Works Department - Streets, Bridges & Canals" in Section 1.A. of the Budget Ordinance adopted June 4, 2019.

Be It Further Ordained by the Town Council, the adopted CIIP as attached incorporates the following added directive:

The following prioritized capital infrastructure improvements are authorized for implementation, and Town staff is authorized to expend appropriated capital funds on surveying and design of lesser prioritized streets if it becomes apparent during the fiscal year that all appropriated funds will not be expended on the targeted higher-priority streets. The East Dogwood Trail capital improvement project shall be implemented as the first priority. In considering economic and environmental conditions, Town staff may implement any other individual "target" project with any other "target" project in the best interest of the Town. [Capital street improvement funds budgeted for FY 19-20 = \$662,340.]

This Ordinance is effective upon adoption.

Approved this 9th of July 2019.

Thomas Bennett, Mayor



Attest:

Sheila S. Kane, Town Clerk

"Attachment A"

Capital Infrastructure Improvement Plan

Recommended By the Capital Infrastructure Improvement Committee May 30, 2019

Adopted by Town Council July 9, 2019 for Fiscal Year 2019-2020

The following prioritized capital infrastructure improvements are authorized for implementation, and Town staff is authorized to expend appropriated capital funds on surveying and design of lesser prioritized streets if it becomes apparent during the fiscal year that all appropriated funds will not be expended on the targeted higher-priority streets. The East Dogwood Trail capital improvement project shall be implemented as the first priority. In considering economic and environmental conditions, Town staff may implement any other individual "target" project with any other "target" project in the best interest of the Town. [Capital street improvement funds budgeted for FY 19-20 = \$662,340.]

Group A, Target shall be Implemented as First Priority

1. East Dogwood Trail - NC 12 east to Ocean Blvd. w/ stormwater improvements - 670 LF (+/-)

Group A, Other Targets in Order of priority for FY 19-20:

2. Hillcrest Drive - Hickory Trail intersection to SSCA tennis courts - 3,700 LF (+/-) (lessen over-width at hill top.)
3. Sea Oats Trail - 11th Avenue north to NC Highway 12
4. Dewberry Lane - 230 LF (+/-)

Group B, In order of priority subsequent to completion of Group A:

5. Chicahauk Trail - NC Hwy 12 to Trinitie Trail intersection - 2,693 LF (+/-)
6. Hillcrest Drive - from New Sea Oats intersection to NC 12 with improvement to Wax Myrtle intersection - 757 lf (+/-)
7. Trinitie Trail - address road subsidence area near Old Passage
8. Wax Myrtle Trail - East Dogwood Trail south to end 2,720 LF (+/-)
 - Incl. Dolphin Run - 410 LF (+/-)
 - Incl. Porpoise Run - 425 LF (+/-)
9. Ginguite Trail - southern segment - 2,000 LF (+/-)
10. Bayberry Trail - entire length - 1,775 LF (+/-) Incl. Dewberry Ln. - 230 LF (+/-)
11. West Holly Trail - entire length - 830 LF (+/-)
12. Clamshell Trail - Otter Slide east to Chicahauk Trail - 3,440 LF (+/-)
13. S. Dogwood Tr. (street only) - entire length - Dogwood Trls. inters. to US Hwy 158 - 12,672 LF (+/-)
14. Ginguite Trail - Northern segment - 1,800 LF (+/-)

Group C, "Other":

15. Spindrift Trail/High Dune Loop/Wild Pony Lane intersection - 160 LF (+/-)
16. East Dogwood Trail - entire length (excl. previous rebuild segment) - 5,000 LF (+/-)
17. Wax Myrtle and Hickory Trail intersection - 170 LF (+/-)
18. Pintail Trail - entire length - 750 LF (+/-)
19. Land Fall Loop - entire length - 330 LF (+/-)
20. Happy Indian Lane cul-de-sac - 320 LF (+/-)
21. Teal Court - S. Dogwood to cul-de-sac - 275 LF (+/-)
22. North Dogwood Trail - entire length - 5,966 LF (+/-)
23. Turtle Pond Court - entire length - 470 LF (+/-)
24. Trinitie Trail (s/w impr. emphasis) - Clam Shell int. to CPOA Park - **Design Only**