



**TOWN OF SOUTHERN SHORES**  
**TOWN COUNCIL REGULAR MEETING**  
5375 N. Virginia Dare Trail, Southern Shores, NC 27949  
Phone 252-261-2394 / Fax 252-255-0876  
www.southernshores-nc.gov  
**PITTS CENTER**  
**Tuesday, August 02, 2022 at 5:30 PM**

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## MINUTES

### Call Meeting to Order

Pledge of Allegiance  
Moment of Silence

### Present

Mayor Elizabeth Morey  
Mayor pro tem Matt Neal  
Council Member Leo Holland  
Council Member Paula Sherlock  
Council Member Mark Batenic

### Amendments to / Approval of Agenda

**Motion** made by Council Member Holland to approve the agenda as presented, Seconded by Council Member Sherlock. The motion passed unanimously (5-0).

Voting Yea: Mayor Morey, Mayor pro tem Neal, Council Member Holland, Council Member Sherlock, Council Member Batenic

### Consent Agenda

The consent agenda consisted of the following:

1. FY 2022-2023 Budget Amendments #2-#11 Encumbered Funds
2. Approval of Minutes-July 5, 2022

**Motion** made by Council Member Sherlock to approve the consent agenda as presented, Seconded by Council Member Holland. The motion passed unanimously (5-0).

Voting Yea: Mayor Morey, Mayor pro tem Neal, Council Member Holland, Council Member Sherlock, Council Member Batenic

### Staff Reports

In absence of the Deputy Town Manager Wes Haskett, Town Manager Cliff Ogburn reported on the Planning Board. The Planning Board will meet on August 15<sup>th</sup> at 5:00 p.m. and hear a request to have a dance studio added to the list of permitted uses. There is the potential to hear a shared housing request, but that item has yet to be confirmed.

Police Chief Kole presented the Police Department report for the month of July.

Fire Chief Limbacher presented the Fire Department report for the month of July.

Town Manager Cliff Ogburn provide the following operational highlights:

- Beach Nourishment Update- The beach nourishment schedule has changed again. The Town of Southern Shores is now scheduled mid to late September. The delay is due to one of the dredges experiencing mechanical issues but will be back in service shortly. Project completion substantial completion is dated for December 31<sup>st</sup>. Southern Shores will receive thorough daily progress and incidental reports from the contractor once they start.
- 2022 Street Improvement Project Update-Town staff placed a paving schedule in the newsletter on Friday and the contractor changed the schedule by Monday morning. With the change, street improvements have now begun on South Dogwood and are expected to last through the week. Once staff receives an updated schedule it will be made available.
- Water Main Break 7/21/22 Follow-up- Town Manager Ogburn thanked a list of people and departments that helped with the water main brake. This interruption detoured 7000 cars through South Dogwood because of this closure. Lightning was the expected cause of damage to the water line.
- Weekend Traffic Mitigation-Town staff will be placing the barricades back up this weekend, hopefully traffic has reached a manageable level.

Mayor Morey and all Council Members thanked the crews and staff involved in the July 21<sup>st</sup> incident. The vulnerability of our infrastructure was brought to light, and they are proud to know that our emergency services had a plan in place for a situation as such. The situation was handled professionally and speedily and gave a good perspective of who is working for the community.

Mayor Morey welcomed and reintroduced new Town Attorney Phillip Hornthal.

Council Member Sherlock asked the Town Attorney if they have heard anything from the amicus brief that was filed? Town Attorney Hornthal stated they have not heard anything but that was not unusual.

### **General Public Comment**

None

### **Old Business**

none

### **New Business**

#### **3. Southern Shores Fire Department Relief Fund Appointment (Town Rep)**

Fire Chief Limbacher presented the agenda item, stating the Fire Department Relief Fund is a board of five members, two of which are appointed by the Town Council. The Fire Chief serves as a tiebreaker vote only.

Fire Chief Limbacher introduced Mr. Rhodes who was in attendance. Mr. Rhodes is a former Dare County EMS helicopter paramedic and is a Southern Shores resident for over twenty years.

Tim Rhodes from 180 Clam Shell Trail is the recommendation from the Southern Shores Volunteer Fire Department for appointment of a Southern Shores citizen as a Trustee to the Southern Shores Fire District Firefighters' Relief Fund Board of Trustees. The Fire District Firefighters' Relief Fund is governed by state statutes of Article 84 of Chapter 58.

**Motion** made by Council Member Sherlock to appoint Tim Rhodes to the Southern Shores Fire District Fire Fighters Relief Fund Board of Trustees, Seconded by Council Member Holland. The motion passed unanimously (5-0).

Voting Yea: Mayor Morey, Mayor pro tem Neal, Council Member Holland, Council Member Sherlock, Council Member Batenic

#### 4. Certification of Municipal Declaration to Repeal Speed Limits and Request for Concurrence

The agenda summary read as, In May of 2021, the Town Council discussed and considered a request for a lower speed limit on NC 12 through Southern Shores. As part of that discussion, a traffic study was requested of NCDOT to receive a recommendation based on data so as to have a basis for establishing the appropriate speed limit. In some cases, a municipality will request a specific speed limit for NCDOT to consider. The results of the study in that case will either confirm or contradict the request as the appropriate speed. The Town requested a study to determine what the recommended speed limit for NC 12 should be. The study considers several variables other than speed.

Roadways are initially designed to accommodate certain speeds. If requested for a State Highway System Road, a traffic engineer will perform an engineering and traffic investigation to determine the appropriate speed limit. These investigations examine:

- Road surface characteristics, shoulder conditions, roadway alignment and sight distance.
- Commercial and residential development, and roadside friction (number of driveways, parking, pedestrians, etc.).
- Safe speed for curves and other locations along the section of road being studied.
- Frequency and severity of crashes.
- 85th percentile speed —the speed at or below which 85 percent of the traffic is moving.

At present, the speed limit on NC 12 in Southern Shores is 45 mph except during May 15 to September 15 when the speed limit drops to 35 mph from the southern town line to Trout Run. The results of the study indicate that the present speed limits are consistent with the 85th percentile speed. Motorists traveling above the 85th percentile speed are considered to be exceeding the safe and reasonable speed for road and traffic conditions. The 85th

percentile speed should be taken from speed data collected during a 24-hour weekday period. Data for this study was collected during all four seasons in the year.

USLIMITS2 is a web-based tool designed to help practitioners set reasonable, safe, and consistent speed limits for specific segments of roads. For experienced engineers like those in our Division, USLIMITS2 can provide an objective second opinion and increase confidence in speed limit setting decisions. The USLIMITS2 recommendation is 40 mph.

Based upon all the criteria and data evaluated, the report's recommendation is to lower the speed limit the entire stretch of NC 12 through Southern Shores from 45 mph to 35 mph during the full year.

The NC General Statutes are written to give "local authorities" the authority upon the bases of an engineering and traffic investigation to set speed limits on state roads through their locality. Setting the speed limit at a consistent rate through town would be less confusing to all motorists. The lower speeds during the summer months were determined to be appropriate. The recommendation from the study performed by professional traffic engineers recommends the speed limit be 35 mph through town the entire year. Staff recommends that the Town Council concur with this recommendation. Shoulder seasons are reaching well beyond September and traffic remains heavy during a larger portion of the year. This increase in traffic will likely continue to make the case for the lower speed limit. The Council should be aware that the lower speed limit will permit LSV (low speed vehicles) to travel all of NC 12 year-round.

Mayor Morey stated the reduction of speed along NC12 has been discussed by members of the current council, and councils before us. Council Members and staff have received requests from citizens to reduce the speed limit on NC12 through town and last year there were several accidents which prompted the study from NCDOT. She further stated the crash data (page 16) from 2017-22 is higher than the state rate for this type of road, noting that was significant.

Council Member Sherlock stated this is a detailed report of over 50 pages. There are 202 residential driveways affected, 21 intersections without lights and several crosswalks within this 45mph speed limit. The report also mentions the amount of vegetation which create sight issues. She was in favor of lowering the speed limit to 35 mph year around. The heavy traffic volumes are no longer seasonal.

Mayor pro tem Neal stated he agreed with the consistency of having the speed limit the same for the whole stretch but did not necessarily agree with the need for it year-around. The crash data sighted many accidents at low speeds, mostly rear end occurrences.

Council Member Holland stated it was NCDOT recommendation to have it year around.

Police Chief David Kole stated mostly all the accidents in the report occurred in the 35-mph speed zone. Lowering the speed will only add 2-3 minutes of travel time to the Town of Duck

but it would allow the use of low-speed vehicle along the entire NC12 stretch in Southern Shores.

Council Member Batenic stated there are twelve crosswalks before Trout Run alone and they are very dangerous to cross with vehicles traveling at higher rates of speed. He further stated that the crosswalk light at Chicahauk is not working correctly. He was in favor of reducing the speed for the entire stretch of NC12 through Southern Shores.

Mayor Morey stated speed matters, whether it is 45mph or 35 mph, the accident interactions are going to occur but would expect one would have a potentially better outcome from a crash at a lower speed.

**Motion** made by Council Member Sherlock that in accordance with the recommendation by NCDOT and recommendation by staff, move to repeal the present speed limits on NC12 throughout Southern Shores and set the speed limit to 35 mph during the full year, Seconded by Council Member Batenic. The motion passed unanimously (5-0).

Voting Yea: Mayor Morey, Mayor pro tem Neal, Council Member Holland, Council Member Sherlock, Council Member Batenic

#### 5. Consideration of CAMA Land Use Plan Update Proposals

A Request for Proposals (RFP) for updating the Town's CAMA Land Use Plan was posted on the Town website and shared with the NCPlan listserv on July 1, 2022, with a deadline for submittals by 5:00 p.m. on July 22, 2022. The updated plan will also serve as the Town's Comprehensive Plan as required by N.C.G.S. Chapter 160D. Two proposals were submitted in response to the RFP and Town Staff confirmed that at least one other consulting group saw the RFP but did not feel that they could submit a competitive proposal. The first was submitted by N-Focus, based out of Kannapolis, N.C., and their estimated fee for the service is \$67,750 (not mentioned in their RFP). The second was submitted by Stewart, based out of Raleigh, N.C., and their estimated fee for the service is \$80,000. The Town Council approved \$80,000 for the project in the FY 2022-2023 budget.

The proposal submitted by Stewart touches on issues and considerations that are important to the Town, including maintaining community character. Stewart has also recently assisted the Towns of Duck and Manteo in updating their CAMA Land Use Plans (and worked with the Town of Kill Devil Hills). Although their fee is the highest of the two, Town Staff believes that they are the most qualified and responsible consultant for this project.

Council Member Batenic asked how long the projects would take and if they were usually completed on time. Town Manager Ogburn stated the project would take about 12-15 months and more often than most, they are not completed on time.

Town Manager Ogburn stated both contractors have done many Land Use Plans and we can be very specific from the beginning what our expectations are.

Council Member Holland stated the last Land Use Plan took about two years to complete.

Council Member Batenic felt the Stewart presentation was the better of the two proposals, stating the N-Focus proposal was hard to follow.

Council Member Sherlock was impressed with the Stewart presentation. She stated they picked up on a lot of current issues Southern Shores is currently dealing with and they place an emphasis on the public participation process, and she would hope that would be very broad based. Council Member Sherlock was in favor of the Stewart proposal.

Town Manager Ogburn stated Stewart just completed projects for the Town of Duck and Manteo, in which both towns stated they were pleased.

Mayor Morey stated she has spoken with the Town of Manteo, and they spoke highly of Stewart.

**Motion** made by Council Member Holland to accept Stewart's proposal to update the Town's CAMA Land Use Plan and authorization to issue a notice to proceed based on the budget estimate of \$80,000, Seconded by Mayor pro tem Neal. The motion passed unanimously (5-0). Voting Yea: Mayor Morey, Mayor pro tem Neal, Council Member Holland, Council Member Sherlock, Council Member Batenic

Mayor Morey stated she is really looking forward to getting this project off the ground, getting public participation, and hopes it is robust and everyone take the time to participate.

6. Public Hearing-ZTA-22-07, a Zoning Text Amendment application submitted by the Town of Southern Shores to amend multiple Articles in Chapter 36, Zoning to be consistent with N.C.G.S. 160D.

Town Attorney Hornthal opened the public hearing.

Town Manager Ogburn summarized the 160D requirements. The agenda summary presented read as, in 2019 the N.C. General Assembly enacted North Carolina General Statutes Chapter 160D, Local Planning and Development Regulation, which consolidated and clarified former Chapters 160A and 153A that addressed development regulations for Municipalities and Counties. The Chapter became effective January 1, 2021 with the requirement that all Municipalities and Counties update their ordinances to be compliant with it by July 1, 2021. Due to the Town Code Update project, Town Staff chose to postpone amending the Town Code to be compliant with Chapter 160D until the amendments from the Town Code Update project were complete.

As a result of that postponement, and in an effort to bring the Town Code into compliance with Chapter 160D without making numerous amendments, the Town Council adopted Town Code Amendment TCA-21-05 on July 6, 2021 that clarified that the North Carolina General Statutes (in particular Chapter 160D) must be satisfied whenever the Town Code conflicts with, contradicts or is otherwise inconsistent with the North Carolina General Statutes. At this point, we are moving forward with updating Chapter 36, Zoning to be consistent with N.C.G.S. 160D. The first of several ZTAs is ZTA-22-07 which includes amendments to multiple Articles in

Chapter 36 that remove all references to Conditional Use Permits and replaces them with Special Use Permits.

The proposed language also defines Special Use Permit as a permit issued to authorize development or land uses in a particular zoning district upon presentation of competent, material, and substantial evidence establishing compliance with one or more general standards requiring that judgment and discretion be exercised as well as compliance with specific standards. The term includes permits previously referred to as conditional use permits or special exceptions. Like Conditional Use Permits, Special Use Permits require a recommendation from the Town Planning Board and Town Council approval following a quasi-judicial public hearing.

Town Staff has determined that the proposed amendments are consistent with the Town's currently adopted Land Use Plan and Town Staff recommends approval of the application. The Town Planning Board unanimously (6-0) recommended approval of the application at the July 18, 2022 Planning Board meeting.

Town Attorney Hornthal called for public comment. Hearing no one wishing to speak he closed the public hearing.

Council Member Sherlock stated this appears to be a housekeeping item.

**Motion** made by Council Member Sherlock to approve ZTA-22-07, Seconded by Council Member Holland. The motion passed unanimously (5-0).

Voting Yea: Mayor Morey, Mayor pro tem Neal, Council Member Holland, Council Member Sherlock, Council Member Batenic

#### 7. Approval of Planning Board Officers

At the July 18, 2022 Planning Board meeting, the Board reelected Andy Ward as Chairperson and Tony DiBernardo as Vice Chairperson. Section 24-24 of the Town Code states that the Planning Board shall elect its Chairperson and Vice Chairperson subject to the approval of the Town Council. If approved, they will serve as Chairperson and Vice Chairperson until July, 2023 when the next election of officers is held.

Council Member Sherlock stated they have both done an outstanding job and thanked them for their public service.

**Motion** made by Council Member Batenic to approve Andy Ward as Chairperson and Tony DiBernardo as Vice Chairperson, Seconded by Council Member Sherlock. The motion passed unanimously (5-0).

Voting Yea: Mayor Morey, Mayor pro tem Neal, Council Member Holland, Council Member Sherlock, Council Member Batenic

Council Member Batenic thanked Andy Ward and Tony DiBernardo for their service.

8. Tourism Board Grant-Sidewalk on East Side of NC12 Between NC12/Ocean Blvd. Split to East Dogwood

The Dare County Tourism Board's Tourism Impact Grant (TIG) program was established to financially assist Dare County Governmental Units and other Non-profit Organizations with programs or services needed due to the impact of tourism on the County. Town Staff is seeking Council approval to submit a Dare County Tourism Board Tourism Impact Grant application for a sidewalk on the east side of NC 12 as follows:

- 5' wide conventional concrete walking path;
- 3,696 l.ft. extending from Ocean Blvd. north to E. Dogwood Trail running along the east side of NC Hwy 12;
- 6" path thickness;
- The volume of concrete is estimated at 342 cubic yards;
- The preliminary engineering cost estimate with a 20% contingency is \$164,256.00.

This grant has been used to offset the cost of previously constructed sidewalks and paths in the Town. If awarded, a 50% match from the Town will be required. The sidewalk was one of three sidewalks previously approved by Council as part of the Town's Capital Improvement Plan.

Council Member Holland stated Council and staff have had several requests for a path at this location.

Mayor pro tem Neal stated it is a dangerous location to walk without a sidewalk.

Town Manager Ogburn stated as part of the Land Use Plan, Council can get more input as far as the priority of these segments of walking paths.

Mayor Morey stated this was discussed at the budget workshop and this segment made it to the top of priority list for sidewalk locations. The opportunity to have the community weigh in on what they would like to see in terms of locations of sidewalks will be a great thing through our update on our Land Use Plan.

Council Member Batenic asked Town Manager Ogburn for an update to the sidewalk at Chicahauk. Town Manager Ogburn stated it would be placed out for bid in the fall.

**Motion** made by Mayor pro tem Neal to approve submittal of the Dare County Tourism Board Grant for the sidewalk from the split at Ocean Blvd to the East Dogwood intersection, Seconded by Council Member Holland. The motion passed unanimously (5-0).

Voting Yea: Mayor Morey, Mayor pro tem Neal, Council Member Holland, Council Member Sherlock, Council Member Batenic

### General Public Comment

**Jerrica Rea-293 Sea Oats Trl-** would like Council to consider changing code 4-24 ban of fowl in town. Would like Council to consider allowing chickens in town, all issues can be managed by



regulations. There have been no nuisance complaints in neighboring towns where they are allowed.

**Carol Willett-291 Sea Oats**-neighbor to Ms. Rea and supports her request to allow chickens. The community has changed, and she does not believe homeowners will have an issue with allowing chickens, just not roosters.

**Ron Rosso-106 High Dune Loop**-not opposed to Jerrica Rea's request. Chicahauk may have covenants that would not allow chickens, but he supports the request.

## Council Business

Council Member Batenic thanked everyone for their quick response and job well done with the water main break. He expressed his concern with the safety of ebikes.

Council Member Holland provide the Tourism Board report for the month of May. Meals were off 1%, up 7% year to date. Meals are up 28% when compared to 2019 numbers. Occupancy was off 5%, up 4% year to date. Occupancy is up 87% when compared to 2019 numbers. The tax benefit from tourism saves Dare County residents approximately \$3500-3600 per person a year in tax dollars.

Council Member Sherlock stated she heard some concerns with the large trucks crossing Southern Shores bridges during the water main break emergency. She wanted the residents inquiring to know that the Town Manager has followed up with NCDOT and has it under control. She also thanked the manager for getting the potholes on South Dogwood handled so quickly.

## Mayor Morey called for a brief recess prior to a motion to go into closed session (6:45 p.m-6:52 p.m.)

Upon returning from a brief recess, **Motion** made by Mayor pro tem Neal to go into closed session pursuant to NCGS § 143-318.11(3) Attorney-Client Privilege and NCGS § 143-318.11(6) Town Manager's Annual Evaluation, Seconded by Council Member Sherlock. Motion passed unanimously (5-0).

9. Closed Session-Pursuant to NCGS § 143-318.11(3) Attorney-Client Privilege and NCGS § 143-318.11(6) Town Manager's Annual Evaluation

Upon returning to open session, **Motion** made by Council Member Holland to approve a merit raise of 2.5% for Town Manager Cliff Ogburn, Seconded by Council Member Batenic. The motion passed unanimously (5-0).

Voting Yea: Mayor Morey, Mayor pro tem Neal, Council Member Holland, Council Member Sherlock, Council Member Batenic

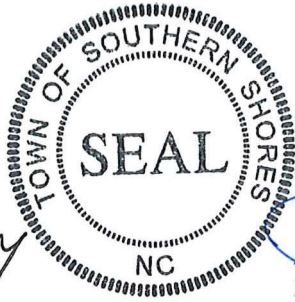
## Adjourn

**Motion** made by Council Member Holland to adjourn at 8:15 p.m., Seconded by Mayor pro tem Neal. The motion passed unanimously (5-0).

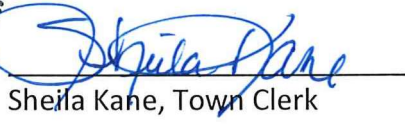
Voting Yea: Mayor Morey, Mayor pro tem Neal, Council Member Holland, Council Member Sherlock, Council Member Batenic

ATTEST:

  
A. Elizabeth Morey, Mayor



Respectfully submitted,

  
Sheila Kane, Town Clerk

The attached documents are incorporated herewith and are hereby made a part of these minutes.