



TOWN OF SOUTHERN SHORES
TOWN COUNCIL REGULAR MEETING

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

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www.southernshores-nc.gov

PITTS CENTER

Tuesday, January 04, 2022 at 5:30 PM

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

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 (4-0).

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

Consent Agenda

The consent agenda consisted of the following:

- December 7, 2021 council meeting minutes

Motion made by Council Member Sherlock to approve the consent agenda as presented, Seconded by Council Member Holland. The motion passed unanimously (4-0).

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

Staff Reports

Deputy Town Manager/Planning Director Wes Haskett presented his department's monthly report for December. He further reported that the Planning Board will be meeting on January 18, 2022 and will discuss Town Code Chapter 26 Solid Waste.

Police Chief David Kole and Fire Chief Ed Limbacher both presented their department's report for the month of December.

Town Manager Cliff Ogburn presented a brief summary of items.

1. Mid- Currituck Bridge – As stated on the NC DOT webpage – “On Dec. 13, 2021, the N.C. Department of Transportation received notification that the U.S. District Court for the Eastern District of N.C. decided in favor of NCDOT and the Federal Highway Administration. A lawsuit was filed in April

2019 by the Southern Environmental Law Center (on behalf of the North Carolina Wildlife Federation and No MCB-Concerned Citizens and Visitors Opposed to the Mid-Currituck Bridge) challenging the FHWA and NCDOT's environmental analysis and decision document for the project. The court ruled that NCDOT and FHWA complied with applicable federal laws and regulations. The project team is evaluating the schedule and working on next steps to move forward".

Though it remains to be seen, it has been reported in the local news outlets that the SELC plans to appeal the decision.

The Council may want to discuss with the Town's Attorney what action or steps, if any, the Council may want to pursue.

2. Potential Council Retreat – If the Council has a desire to schedule a retreat this winter with a facilitator, it would be wise to decide dates before facilitator calendars fill up.

A one- or two-day retreats could be used to:

- Provide an opportunity for board members to learn more about each other's motivations, interests, and work preferences,
- Clarify their mutual expectations, goals, and identity as a governing board,
- Establish broad priorities,
- Define what "success" or "progress" will look like, and/or
- Set budget priorities for the coming fiscal year.

3. Pavement Maintenance Implementation Plan – I will provide an update of the progress with SEPI engineering to begin the process of street maintenance for the coming year.

4. Town Bridge Inspections - We received notification from NC DOT that they are currently preparing for the 2022 inspection cycle. The bridges to be inspected are located at S. Dogwood and Snow Goose Canal, E. Dogwood and Great Blue Heron Canal, and Yaupon Trail and Pelican Canal. The Federal Highway Administration covers 80% of the inspection cost. The remaining 20% or \$650 is our cost. We inquired about adding the Trinitie Trail culvert to these inspections, but it does not qualify due to its narrower width. We are working to get a quote from the DOT contractor as well as the engineering firm who last inspected the culvert in 2014.

Council discussion/actions based off Town Manager's report- Mid-Currituck Bridge

Town Attorney Ben Gallop gave a brief update on the Mid-Currituck Bridge. He stated just shortly after the last Council meeting the U.S. District Court for the Eastern District of N.C. decided in favor of NCDOT and the Federal Highway Administration and is in a holding pattern for now as an appeal can be filed within 60 days. Even if they do not appeal there are other permitting processes that have to occur before the bridge would ever get built, in addition to the complexities of the general assembly and funding.

Council Member Holland asked if there was anything the Town could do besides wait?

Town Attorney Gallop stated the most impact would come from an amicus brief in the fourth circuit. The ultimate analysis is whether the Town's benefit is going to be worth the cost. It is a specialized area of the law, and it would need to be an attorney that is familiar with the case and willing to read all the 78,000 plus pages of the record. This is something the Council would have to consider and address.

Mayor Morey asked the Town Manager if he has heard anything further from NCDOT. He stated he has received no further information.

Council Member Sherlock inquired as to the best person or way to communicate. She asked if it would be appropriate to authorize the mayor to send a letter of urgency and support for the bridge? She stated Council needed to make some noise and initiate some serious discussions with the Town of Duck. There is infrastructure money coming to North Carolina and she would like Southern Shores to get a part of it.

Mayor Morey stated perhaps lunch and a follow up letter.

SEPI Pavement Study/CIP

Council would like to see the SEPI bid packet for the pavement maintenance plan when it is completed.

Bridge Inspections

Mayor Morey stated it only makes sense to have the culvert bridge inspected when the other bridges are done.

Mayor pro tem Neal questioned paying for an inspection that will already tell us it is failing. He asked the Town Manager to email Council a copy of the 2014 bridge report after the meeting. He stated that if the 2014 report says 10-year life span then he doesn't think we need a new report. If it states otherwise, he recommends leaving it up to the discretion of the Town Manager if a new report needs to be obtained.

Mayor Morey and Council by **consensus** agreed to leave any further inspections of the culvert bridge up to the manager.

Council Retreat

Council Member Sherlock stated a retreat would be beneficially for all Council, particularly new members. It would provide the ability to get caught up to speed on town matters.

Mayor Morey stated she envisioned it as an opportunity to have longer discussions on strategic planning and did not feel a facilitator would be beneficial.

Mayor pro tem Neal requested the retreat take place at the Fire Department.

It was the **consensus** of Council to hold a Council Retreat on Wednesday, March 9th at 9:00 a.m. at the Southern Shores Volunteer Fire Department.

General Public Comment (Limit: 3 minutes per speaker.)

None

Old Business

Continuation of Council Vacancy Discussion

Mayor Morey reported that Council had decided on the self-nomination process in order to fill the current vacancy on the Council, to date a total of fourteen applications have been received. Mayor

Morey stated she had called all the applicants to acknowledge their application has been received and to thank them for wanting to serve. Council will wait until the January 18th to make a motion and vote on an appointment.

Council Member Holland agreed with the January 18th date, allowing others that may have been busy with the holidays a chance to apply.

Council Member Sherlock said she would like to add, as it is a testament to the Town, how stunned she is by the amazing applications received. Council has received applications from entrepreneurs, international business executives, attorneys, medical doctors, professors, a restaurateur, people in the intelligence community, retired and young parents. She is glad they have stepped up and applied.

It was **consensus** of Council to place on the January 18, 2022 agenda, discussion and vote to fill the current council seat vacancy.

New Business

Public Hearing ZTA-21-09

Public Hearing ZTA-21-09 a Zoning Text Amendment application submitted by the Town of Southern Shores to amend Town Code Section 36-202 (d)(6), Maximum Allowable Lot Coverage; Section 36-203 (d)(6), Maximum Allowable Lot Coverage; Section 36-204 (d)(6), Maximum Allowable Lot Coverage; Section 36-205 (d)(6), Maximum Allowable Lot Coverage.

Town Attorney Gallop opened the public hearing and called on Planning Director Wes Haskett for the staff report.

Planning Director Wes Haskett presented the staff report which read as, at the March 2, 2021 Town Council meeting, the Town Council instructed Town Staff to take valuable elements out of the adoption draft of the Town Code Update written by CodeWright for review by the Planning Board and the Town Council for future consideration. The proposed amendments to Sections 36-202 (d)(6), 36-203 (d)(6), 36-204 (d)(6), and 36-205 (d)(6) are a result of comments provided by the Town Attorney regarding the use of the first line of stable natural vegetation on oceanfront lots for determining lot coverage. His comments referred to N.C.G.S. 77-20 which establishes that the seaward boundary of oceanfront properties is the mean high-water mark. The proposed amendments are an effort to make it clear that the Town's lot coverage requirements for lots where the boundary is the Atlantic Ocean only use the first line of stable natural vegetation to establish lot coverage by using a portion of the lots, not for establishing the seaward boundary or area of the lots. If approved, the proposed amendments would not change how lot coverage is calculated on lots where the boundary is the Atlantic Ocean (see lot coverage information on enclosed as-built survey).

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 proposed ZTA. The Town Planning Board unanimously (5-0) recommended approval of the application at the November 15, 2021 Planning Board meeting. The proposed language was drafted with the assistance of Professor David Owens with the UNC School of Government. The language suggested by Professor Owens clarifies that the first line of stable natural vegetation is used to establish lot coverage by using a portion of the lots, not for establishing the seaward boundary or area of the lots.

Council Member Sherlock asked for clarification that this ZTA was only wording clarification. Planning Director Haskett stated that was correct, clarification of wording.

Town Attorney Gallop called on the public for comment, hearing none he closed the public hearing.

Motion made by Council Member Holland to approve ZTA-21-09 as presented by staff and recommended by the Planning Board, Seconded by Council Member Sherlock. The motion passed unanimously (4-0).

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

Public Hearing-ZTA-21-10

Public Hearing-ZTA-21-10, a Zoning Text Amendment application submitted by the Town of Southern Shores to amend Town Code Section 36-207 (b), Permitted Uses and Section 36-209, Prohibited Uses in all Districts.

Town Attorney Gallop opened the public hearing and called on Planning Director Wes Haskett for the staff report.

Planning Director Wes Haskett presented the staff report and stated the Planning Board has unanimously recommended approval.

The agenda summary read as, at the May 4, 2021 Town Council meeting, Council adopted ZTA-21-04 which established prohibited uses in the Town. One of the prohibited uses was produce stands and Council directed the Planning Board to recommend a ZTA that would allow produce stands in the Commercial zoning district. The proposed ZTA establishes produce stands as a permitted use in the Commercial zoning district and it includes requirements that address setbacks, hours of operation, parking, signage, trash receptacles, and vehicular and pedestrian traffic safety.

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 proposed ZTA. The Town Planning Board unanimously (5-0) recommended approval of the application at the November 15, 2021 Planning Board meeting.

Council Member Sherlock was not in favor of regulating days and/or hours of operation. She provided the example, only allowing business April 15 through November 15 will exclude a potential business from selling Christmas trees if they choose to do. Planning Director Haskett stated it would have to be rewritten as trees are typically sold on lots/land.

Council Member Holland inquired if there have been any requests for a produce stand. Planning Director Haskett stated to date, the planning department has not received such a request.

Council Member Sherlock asked for a clarification to item 11A. Planning Director Haskett stated it is a setback requirement for structures in that zone.

Town Attorney Gallop called on the public for comment and the following citizen spoke:

Tony DiBernardo-Planning Board Vice Chairperson-stated that the Market Place would not allow a produce stand as it would be competition for the Food Lion grocery store and would most likely violate the number of parking spaces required for the complex. Ultimately, the only places that would most likely allow the produce stand was a handle full of commercial properties along Juniper Trail and Southern Shores Crossing.

Hearing no further comments, Town Attorney Gallop closed the public hearing and turned it back to Council for deliberation.

Mayor Morey thanked the Planning Board for all their hard work and offered two changes; #11 should read as the retail sale of agricultural and horticultural products and item D. should include approval of the Department of Agriculture.

Councilman Neal liked the definition provided for Currituck County. He suggested striking item K all together as we should not dictate or limit the months they can operate their business.

Council Member Sherlock stated allowing produce stands will bring vibrancy to the community and agreed with expanding the definition to allow types of products, such as, honey, jams and jellies.

Town Attorney Gallop reminded Council that if substantial changes are made to the ZTA it should be sent back to the Planning Board. Council would be okay to approve with small changes.

Planning Director Wes Haskett brought forth a concern from the Police Chief if the sale of CBD or hemp would take place.

Mayor pro tem Neal stated that produce stands will most likely just be straight forward common goods and if the issue of CBD or hemp come up, then it can be dealt with separately.

Mayor Morey reviewed the Council's suggested changes.

#11. Should read as the retail sale of agricultural and horticultural products.

d. include Department of Agriculture requirements.

k. strike all together.

Motion made by Mayor pro tem Neal to approve ZTA-21-10 as amended, Seconded by Council Member Holland. The motion passed unanimously (4-0).

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

Capital Project Ordinance for Beach Nourishment

Town Manager Ogburn reviewed the agenda summary which read as, the Capital Project Ordinance will recognize revenues and appropriate expenditures for the beach nourishment project going forward and track the cost for each part of the project over multiple years without adopting a beach nourishment budget each year. A project ordinance authorizes all appropriations necessary for the completion of the project and neither it nor any part of it need be readopted in any subsequent fiscal year. However, each year the budget officer will include in the budget, information detailing adopted project ordinances which will have appropriations available for expenditure during the budget year. The Council can, and most likely will, amend the ordinance as costs change or new line items are added. This doesn't impact the Council's ability to adjust tax rates each year.

Mayor Morey called on Council for any comment or question, hearing none she called for a motion.

Motion made by Council Member Sherlock to approve the Capital Project Ordinance for Beach Nourishment as presented, Seconded by Council Member Holland. The motion passed unanimously (4-0). Voting Yea: Mayor Morey, Mayor pro tem Neal, Council Member Holland, Council Member Sherlock

General Public Comment (Limit: 3 minutes per speaker.)

None

Council Business

Mayor Morey announced the next meeting of Council will be held January 18th at 9:00 a.m.

Council Member Holland provided a Tourism Board update for the month of October. Occupancy was up 6%, 35% year to date. Meals were up 30%, 55% year to date. The Tourism Board had also discussed that this type of growth is non-sustainable.

Council Member Sherlock stated sustainability of growth would be a good agenda item to add to the Council Retreat in March.

Adjourn

Hearing no further business, Mayor Morey called for a motion to adjourn. The meeting was adjourned by **consensus** at 6:54 p.m.

ATTEST:


Elizabeth Morey, Mayor



Respectfully submitted,


Sheila Kane, Town Clerk

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