



Town of Southern Shores
Regular Council Meeting
April 13, 2021

APRIL 13, 2021 MINUTES: Regular Council Meeting

LOCATION: Pitts Center -5377 N Virginia Dare Trail, Southern Shores, NC 27949

COUNCIL MEMBERS PRESENT: Mayor Tom Bennett, Mayor pro tem Elizabeth Morey and Councilmen Matt Neal, and Leo Holland.

COUNCIL MEMBERS PARTICIPATING REMOTELY: None

COUNCIL MEMBERS ABSENT: Councilman Conners

OTHERS PRESENT: Town Attorney Ben Gallop, Town Manager Cliff Ogburn, Deputy Town Manager/Planning Director Wes Haskett, Finance Officer Bonnie Swain, Town Clerk Sheila Kane, Police Chief David Kole, and Fire Chief Ed Limbacher.

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, April 13, 2021.

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 Bennett moved to approve the agenda with amendment. The motion was seconded by Councilman Holland. The motion passed unanimously (4-0).

CONSENT AGENDA

The consent agenda consisted of the following items:

- Council Meeting Minutes - March 2, 2021 (emailed to council)
- Budget Amendment #22-SERDC Recycling Grant
- Budget Amendment#23-SSVFD Radios
- Child Abuse Prevention Month, April 2021 Proclamation 2021-04-01
- Dominion Power-Right of Way Easement (Phase II)
- Emergency Sick leave policy- (amendment to policy to include three new qualifying reasons)

Mayor Bennett requested budget amendment #23 (SSVFD Radios) be removed from the consent agenda and tabled for future consideration.

MOTION: Mayor Bennett moved to approve the consent agenda as amended. The motion was seconded by Mayor pro tem Morey. The motion passed unanimously (4-0).

PRESENTATION

Police Chief David Kole recognized Officers Sergeant Eric Brinkley, Corporal Darrell Brickhouse, School Resource Officer Tracy Mann and Officer Jamie Hines for life saving action they took at a vehicle accident on July 14, 2020.

STAFF REPORTS

The following department heads presented reports for the month:

- Deputy Town Manager/Planning Director Wes Haskett presented the department's monthly permit report for the month of March. He requested the Bee Keeping Ordinance Amendment on the agenda be tabled at this time.
- Police Chief David Kole presented the Police Department's report for March.
- Fire Chief Ed Limbacher presented the Fire Department's report for March and the 2021 Annual Report.
- The Town Manager presented the Manager's report on operations highlights:
 - HB 401/SB 349 was introduced and is a sweeping proposal that would eliminate an effective statewide residential zoning code. Legislators proposed eliminating single family only zoning, along with the dozen other land use changes. It is framed as an attempt to increase housing opportunities but what it does is it seeks to allow duplexes, triplexes, quadplexes and townhomes in all zones that also include single-family homes. The bill would mandate that local governments allow at least one accessory dwelling unit per lot in every single-family residential zone giving all single-family landowners the rights to build an ADU (accessory dwelling unit) if they conform with established property line setbacks. This legislation is in severe contrast with Southern Shores land use policy, the zoning ordinances, and the Town's Vision Statement. Staff has prepared a resolution in opposition to both bills for Council consideration.
 - Street Pavement study Update-A virtual meeting will be set up next week to review results to date, PCI ratings, treatment recommendations and to start working on CIP considerations.
 - Sea Oats Trail-Noticed to proceed issued on March 18th, field surveying work was done last week, and driveway saw cuts to be started this week. A final completion date of July 16th.
 - The Public Works Department has completed painting of the Town Hall exterior.
 - Storm Surge Poles- a storm surge pole to educate and raise awareness of storm surge flooding has been installed out front of Town Hall. This project was spearheaded by Drew Pearson, Dare County Emergency Management.

MOTION: Councilman Holland moved to approve Resolution 2021-04-02 Opposition to HB 401/SB 349. The motion was seconded by Mayor pro tem Morey.

Mayor pro tem Morey stated she would like to see the resolution state that we are in favor of affordable housing options, just opposed to the means stated in these bills as currently written.

MOTION: Councilman Holland amended his motion to allow the Town Manager and other Council Members to be able to edit the resolution prior to submittal. The motion was seconded by Mayor pro tem Morey. The motion passed unanimously (4-0).

- o Town Attorney Gallop had nothing to report.

GENERAL PUBLIC COMMENT

Mayor Bennett called for public comment and the following citizen provided comment:

Public Comment-Jeff Johnson-SSCA President-The stakeholders support the resolution to oppose HB 401/SB 349.

Public Comment-Steve Gudas-serious speeding traffic issue at the curve of Porpoise Run and Wax Myrtle and something should be done.

Public Comment-Tom Peabody-13 6th Avenue-read his MSD exclusion request which is to be considered by council this evening.

Hearing no one else wishing to speak, Mayor Bennett closed public comment.

OLD BUSINESS

None

NEW BUSINESS

Beach Nourishment Project 2022- Exclusion Request-MSD

Town Manager Ogburn reviewed the agenda summary which read,

1. GS 160A-537 (c1) provides owners of properties within the boundaries of a Municipal Service District the opportunity to request their exclusion. Three written requests have been received from:

- Mr. Thomas Peabody, 13th Sixth Avenue
- Mr. Charles and Janan Usher, 121 Ocean Blvd.
- The Southern Shores Civic Association

The General Statute does not explain a required process for deciding these requests.

2. At their March 16 meeting, Town Council held the required public hearing in advance of adopting an ordinance defining new service districts. NCGS 160A-537(f) states that no ordinance defining a service district as provided for in this section shall be finally adopted until it has been passed at two meetings of the city council by majority vote of the voting members present, and no service district shall be defined except by ordinance.

The ordinance defining the Municipal Service Districts must pass two readings at two separate meetings by a majority vote before it shall be finally adopted. If the first vote passes the second vote would be held at the Town Council's May 4, 2021 regular meeting.

Staff recommends that the Council not exclude any properties from any of the Municipal Service Districts. In order for the Council to grant these requests they must determine that the property is not in need of the services, facilities, or functions of the proposed district to a demonstrably greater extent than the remainder of the town. Staff finds nothing unique about these properties that distinguishes them from the rest of the district. Granting these requests could imply that those adjacent to these properties were also not in need.

Town Manager Cliff Ogburn stated passing the ordinance as written would not grant the exclusion. If Council determines the project is necessary, then those properties requesting exclusion are not unique to others within that MSD.

Beach Nourishment Project 2022 -Ordinance 2021-04-01-MSD First Vote

The draft ordinance mirrors the report that was prepared for the March 16, 2021 Public Hearing. An alternative to the maps as originally presented could be considered by the Council. However, some changes may be considered substantive and could require reinitiating the public hearing process.

Councilman Neal stated all properties in MSD 1 should have continuous connection to the Atlantic Ocean.

Mayor pro tem Morey stated she thought the original MSD 1 reflected that connection and that there was a flag lot at the southern curve which had a connection as well. She requested a way to word the ordinance to take into account the connection to the Atlantic Ocean.

Councilman Neal stated you could eliminate flag lots from MSD 1 by limiting the linear footage that abuts the Atlantic Ocean.

Mayor Bennett asked how the flag lot at Pelican Watch was treated during the initial beach nourishment project. Town Attorney Gallop stated Pelican Watch received a special assessment for that project, which is a little different than what we are doing here.

Town Manager Ogburn summarized Council's direction as follows:

District 1-

- i. ~~All properties east of Ocean Blvd/NC 12 beginning at the southern town limit extending to Ocean Blvd; and that abut the ocean beach of the Atlantic Ocean having an eastern boundary greater than or equal to 25 feet, beginning at the southern town limit and extending to the northern town limit.~~
- ii. ~~All properties east of Ocean Blvd. from the split at Ocean Blvd/NC 12 extending to Hickory Trail; and~~
- iii. ~~All properties north of Hickory Trail that abut the Atlantic Ocean extending to the northern town limit.~~

District 2-

- i. All properties in District 1; and
- ii. All properties located east of Ocean Blvd/NC 12 and Duck Road/NC12 beginning at the southern town limit extending north to the northern town line; and

- iii. All properties located west of and abutting Ocean Blvd/NC 12. beginning at the southern town line extending north to 137 Ocean Blvd, and abutting Duck Road/NC 12 beginning at 139 Duck Road extending north to 149 Duck Road.

Councilman Neal **moved** to approve Ordinance 2021-04-01 as amended, District one defined as all properties that abut the ocean beach of the Atlantic Ocean having an eastern boundary greater than or equal to 25 feet, beginning at the southern town limit and extending to the northern town limit; modification to i, striking section 2 and 3; include that the graphic map be reflective of the language change. The motion was seconded by Mayor pro tem Morey. The motion passed unanimously (4-0).

CPE-NC -Ken Willson Contract and Budget Amendment #24

Proposal for the 2021 Monitoring and the Pre-Construction Services associated with the upcoming 2022 project. This proposal was discussed during the CPE presentation on January 19, 2021 and transitions us into the next phase of the project.

Schedule:

Milestone	Start Date	Completion Date	Number of Months
<u>Phase 1 Permit and Design</u>			
Project Initiation / Interagency Meeting	April 2020	April 2020	1
Borrow Area Development	May 2020	January 2021	9
Engineering Design	June 2020	April 2021	11
Federal Permitting	April 2020	June 2021	15
State Permitting	February 2021	July 2021	6
<u>Phase 2 Pre-Construction</u>			
Development of Construction Plans & Specifications	March 2021	June 2021	4
Solicitation of Bids	June 2021	July 2021	1.5
Award Construction Contract	July 2021	August 2021	1.5
<u>Phase 3 Construction (January 2022)</u>			
Construction	May 2022	October 2022	5

Presently, the Town is still under contract for services to provide the following tasks: **Town of Southern Shores – 2022 Permitting and Design Contract**

Task 1 – Environmental Documentation and Permitting
Task 2 – Engineering and Design
Task 3 – Borrow Area Investigations and Design
Task 4 – Native Sampling
Task 5 – Survey to Quantify 3-Inch Clasts on Native Beach

(Presently under contract)

Task 1 is near 85% complete, task 2 near 75% complete and tasks 3, 4, and 5 near 100% complete. Permit and design variables as a result of these tasks dictate the next phase of tasks. For example, Tasks 3, 4 and 5 under the new contract are necessary as a result of State agency review of our permitting process thus far.

2021 Annual Monitoring Services / Pre-Construction Services for 2022 Renourishment

TASK	DESCRIPTION
1	2021 Annual Beach Profile Data Acquisition
2	2021 Annual Monitoring Report
3	Borrow Area A Bathymetric Survey and Sediment Sampling
4	Borrow Area Surface Sample Sediment Analysis (Optional)
5	NCDCM Large Sediment (Clast) Survey
6	Construction Plans & Specifications
7	Contractor Bidding, Selection & Negotiations
8	Pre-Construction Coordination

(Proposed contract under consideration)

The third and last contract for construction management and oversight should be presented near the beginning of 2022.

Town Manager Ogburn stated staff recommends approval of the contract to continue progress towards completing the steps necessary to get our project ready for bidding.

Ken Willson, CPE -NC stated the project is to go out to bid in July.

Councilman Holland inquired as to task four being optional.

Councilman Neal stated that is if the sediment quality from the borrow area has changed. He asked Ken Willson if there was a plan b for a borrow area.

Ken Willson stated there is not a plan b. There is enough volume from the borrow area that has not been dredged to do the Southern Shores project and the other three towns but the more areas that can be provided to the dredgers, that they could go to remove sediment, the better price they will be able to bid.

Mayor Bennett **moved** to approve budget amendment #24 as presented-annual monitoring services and pre-construction services for 2022 beach nourishment project, Seconded by Councilman Holland.

Mayor Bennett **amended his motion** to include allowing the Town Manager to act as executor for the contract, Seconded by Councilman Holland. The amended motion passed unanimously (4-0).

Planning Board Appointments

Planning Board member David Neal resigned from the Town Planning Board on March 2, 2021. The term for his position began on July 1, 2018 and will end on June 30, 2021. Alternate member Robert McClendon began serving as an alternate member on January 7, 2020 and is currently the first alternate (in seniority). Mr. McClendon has expressed an interest in filling the vacancy created by Mr. Neal's resignation. There currently are no applications on file from citizens interested in serving on the Town Planning Board.

Mayor Bennett **moved** to appointment Robert McClendon as a regular member on the Town Planning Board and appointment of alternate member Jan Collins as first alternate, Seconded by Mayor pro tem Morey. The motion passed unanimously (4-0).

Town Code Amendments- TCA-21-02, a Town Code Amendment application submitted by the Town of Southern Shores to amend the Southern Shores Town Code by amending Chapter 4, Animals; Chapter 18, Law Enforcement; and Chapter 22, Offenses and Miscellaneous Provisions as part of the Town Code Update project.

At the March 2, 2021 Town Council meeting, Council directed 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. Town Staff is requesting approval of amendments from the Town Code Update that include Chapter 4, Animals; Chapter 18, Law Enforcement; and Chapter 22, Offenses and Miscellaneous Provisions. The proposed amendment to Chapter 4 originates from changes in State law. The proposed amendments to Chapter 18 and Chapter 22 were initially requested by the Police Department. The proposed amendments do not require Planning Board review prior to Council consideration.

Planning Director Wes Haskett stated he would like to clarify a typo on TCA-21-02, that on page 11 of 14, line 32 reference says set forth in section, that section should read 22-3D and on page 10 out of 14, line 33 staff recommends striking the words agricultural, and lawn care. If Council is inclined to take any action, he would recommend those two corrections be included.

Police Chief David Kole addressed the text amendment. Noise ordinance is a complaint-based issue and is requesting to have something in place when it is needed. He further stated the auxiliary police section is a liability and needs to be removed.

Councilman Neal stated he did not have an issue with strengthening the noise ordinance but would like to take some more time with this.

Councilman Holland stated he does not want to take too much time and give the Police something they can work with if they get challenged.

Councilman Neal **moved** to adopt TCA-21-02 with the elimination of part 2 and part 4 (part four to be addressed in a timely manner -May 18th meeting), Seconded by Councilman Holland. The motion passed unanimously (4-0).

Public Comment-none

Mayor/ Council Comments

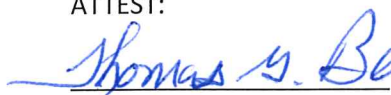
Councilman Holland provided a Tourism Board report for the month of January, saying the numbers are up tremendously. He further stated as we get closer to the summer traffic time and we tend to get a bit aggravated, we need to remember that tourism provides 13,880 jobs in Dare County, employing about a third of the citizens. The annual tourism generates more than 116 million in state and local tax revenue and because of this revenue, each Dare County resident enjoys a tax relief of \$3,147.00 annually and because of that Dare ranks #5 among NC 100 counties in terms of visitor spending.

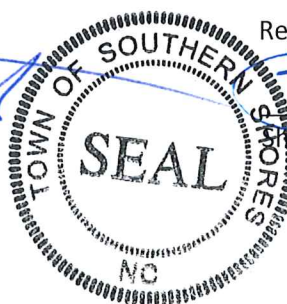
Mayor pro tem Morey would like the Town to consider a resolution, or process, to show representatives in Raleigh that infrastructure needs are important here in our Town and community, that includes the beach which generates the tourism money Councilman Holland was referencing.

ADJOURN

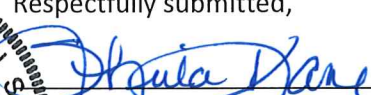
MOTION: Hearing no other business Mayor Bennett called for a motion to adjourn. Councilman Holland moved to adjourn. The motion was seconded by Mayor pro tem Morey. The motion passed unanimously (4-0). The time was 7:25 p.m.

ATTEST:


Thomas G. Bennett, Mayor



Respectfully submitted,


Heila Kane, Town Clerk