



COUNCIL WORKSHOP  
JULY 21, 2020

**JULY 21, 2020 Minutes: Council Workshop**

**COUNCIL MEMBERS PRESENT:** Mayor Bennett, Mayor pro tem Elizabeth Morey, and Council Members Jim Conners, Leo Holland and Matt Neal.

**OTHERS PRESENT:** Town Manager Cliff Ogburn, Deputy Town Manager/Planning Director Wes Haskett, Town Attorney Ben Gallop.

**CALL TO ORDER / PLEDGE OF ALLEGIANCE / MOMENT OF SILENCE**

Mayor Bennett called the meeting to order at 9:00 A.M., led the Pledge of Allegiance, and held a moment of silence.

**ADOPTION OF AGENDA**

Councilman Holland moved to approve the agenda as presented. The motion was seconded by Councilman Conners. The motion passed unanimously (5-0).

**GENERAL PUBLIC COMMENT**

Mayor Bennett called for public comment. Hearing no requests to speak, Mayor Bennett closed public comment.

**BUDGET AMENDMENTS**

Town Manager Cliff Ogburn addressed the two budget amendments before Council. The police equipment consists of public safety equipment and was ordered last fiscal year but received this year. The work done by Florez is construction and design drawings started last fiscal year and is continuing this year as part of the facilities update.

Mayor pro tem Morey stated Florez is doing construction and design drawings for the Town facilities update. She stated if Council decides to do a portion of what is proposed, can the drawings be used into the future? If this is a project that takes five years to complete, are his drawings going to be useful to us?

Town Manager Cliff Ogburn confirmed that the drawings allowed for the project to be completed in phases, if Council decides that route, as long as code changes do not occur. Staff will need to bring the project back to Council anyway, and Council can deem what is a priority at that point and when to budget for the improvements.

Mayor pro tem Morey asked since it was a previous Council that appropriated the \$220,000 do you know where the figure was derived from?

Deputy Town Manager stated he recalls estimated numbers being included with the facilities assessment and the Council at that time used those numbers. Staff has removed some items that they felt were not a priority, such as new carpet and painting.

Town Manager Ogburn recommended that Council approach this in a phased approach, starting at zero dollars and working its way up. The \$220,000 figure is not in the current budget, so that doesn't matter at this point. Code updates and staff safety items will take priority.

**MOTION:** Councilman Conners moved to approve budget amendment #6 and #7 as presented. The motion was seconded by Councilman Holland. The motion passed unanimously.

#### **PUBLIC HEARING-ZTA 20-01 TEMPORARY EMERGENCY ZONING ACCOMMODATIONS**

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

Deputy Town Manager/Planning Director Wes Haskett provided the following report on ZTA-20-01:

*ZTA 20-01 is a Zoning Text Amendment application submitted by the Town of Southern Shores to amend the Southern Shores Town Code by amending Section 36-416, Planning Board Action and by adding Section 36-177, Temporary Emergency Zoning Accommodations.*

*At the May 19, 2020 Town Council meeting, the Council read and considered a letter from the President of the Outer Banks Restaurant Association requesting that Dare County and all of its municipalities consider allowing temporary accommodations for businesses impacted by the COVID-19 pandemic. Specifically, the letter requested allowing restaurant carts, kiosks, and food trucks on their operational premises, and allowing outdoor dining since Phase 2 of the Governor's Safer at Home Order restricts restaurants to 50% capacity. As a result of these requests and the circumstances involved, and after hearing recommendations from the Town Attorney, Council agreed that the Town's Declaration of a State of Emergency should be revised to allow for reasonable temporary accommodations in the Town's Zoning regulations as a short-term solution. Council also directed Town Staff to draft a Zoning Text Amendment (ZTA) to address the requests. During that discussion, the Town Council recognized that the Town Zoning Ordinance currently requires the Planning Board to have a minimum of 30 days to consider amendments to the Town Zoning Ordinance, which prevented the Town from being able to quickly address the requests in the form of a Zoning Text Amendment application, as recommended by the Town Attorney.*

*As directed by Council, Town Staff is proposing to amend the Southern Shores Town Code by amending Section 36-416, Planning Board Action and by adding Section 36-177, Temporary Emergency Zoning Accommodations. The proposed amendment to Section 36-416 removes the current requirement for the Planning Board to have a minimum of 30 days to consider amendments to the Town Zoning Ordinance. The proposed Section 36-177 allows for the Mayor to authorize the Town Manager or his designee to exercise their discretion to allow for reasonable temporary accommodations in Town Zoning regulations consistent with and furthering the purposes of a declared State of Emergency and in the interests of public health, safety, and welfare, including the economic prosperity of the community. Such temporary*

*accommodations cannot extend beyond the termination of the State of Emergency or the end of the circumstances under the declaration causing the need for accommodations, whichever is shorter. All temporary accommodations must be ceased within five days of the expiration of the temporary accommodation.*

*The Town's currently adopted Land Use Plan contains the following Policy that is applicable to the proposed ZTA:*

- *Policy 2: The community values and the Town will continue to comply with the founder's original vision for Southern Shores: a low density residential community comprised of single family dwellings on large lots (served by a small commercial district for convenience shopping and services located at the southern end of the Town. This blueprint for land use naturally protects environmental resources and fragile areas by limiting development and growth.*

#### **RECOMMENDATION**

*Town Staff has determined that the proposed amendments are consistent with the Town's currently adopted Land Use Plan and the Town Planning Board unanimously (5-0) recommended approval of the proposed ZTA on July 2, 2020.*

Town Attorney Gallop called on the public for comment. Hearing no citizen wishing to speak, he closed the public hearing.

Councilman Neal asked for clarification on the thirty-day waiting period, when applications are going through the Planning Board. Since the Planning Board has a schedule set at the beginning of each year and require application to be submitted thirty days before the meeting, applications will still have at least 30 days from time of submittal to Council meeting approval. The Planning Board now has the option of stating they would like to review the application sooner.

**MOTION:** Following a brief discussion, Councilman Neal moved to adopt ZTA -20-01 as recommended by the Planning Board. The motion was seconded by Mayor pro tem Morey. The motion passed unanimously

Town Attorney Gallop stated the Town Code update is still on his list to do. He stated once the Attorney review is complete it will up to Council to decide if they want to adopt all the changes as a whole, or just some sections, or in smaller increments for approval.

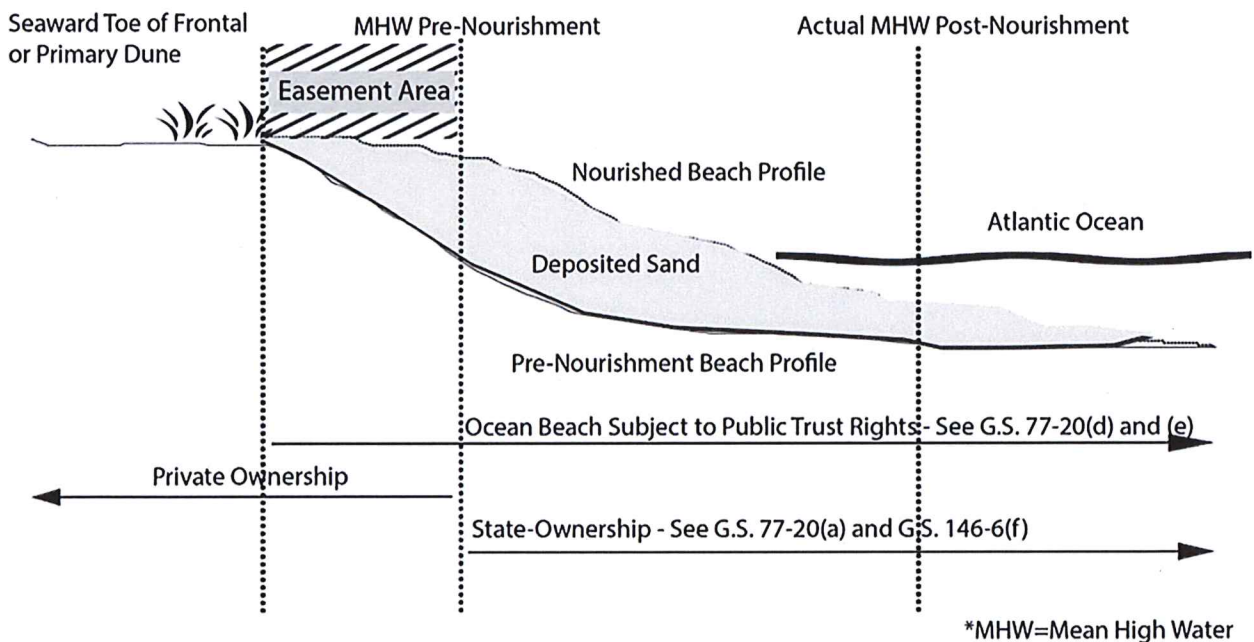
#### **RESOLUTION 2020-07-03 (BEACH NOURISHMENT LEGISLATION RESOLUTION)**

Town Manager Cliff Ogburn provided Council information pertaining to Resolution 2020-07-03. He stated prior to the initiation of the beach nourishment project, the Town is required to obtain easements in order to perform work in the required construction activity area above the mean high-water line (MHW) within project area.

The resolution, if approved, would request that the North Carolina General Assembly add Southern Shores to already established legislation that allows the Town to acquire the right to use a portion of the privately-owned beach for the construction of its beach nourishment project. The Town is seeking only the authority to acquire easements for the project. Like the Town of Duck, this request would exclude

the town from “establishing access for the public to public trust beaches and appurtenant parking areas. The easements are not for the purpose of acquiring public beach access in the project area. Easements allow for the temporary construction activities necessary to build the beach. An easement allows the Town to undertake the nourishment project. This easement will enable the Town to move more quickly to protect property in the future when needed. The easement will only apply to the oceanfront part of property that is adjacent to the state-owned ocean beach and already subject to public trust rights under North Carolina law. It does not change the boundaries of property, convey property to the Town, or change the ability for property owners to access or use their property as they currently do, except in limited instances during the construction phase of the project. Property owners are still allowed to maintain private access to the beach from other portions of their property, it remains privately-owned property.

The diagram below depicts a typical easement area.



Town Manager Ogburn recommended Council adopt the resolution requesting the North Carolina General Assembly to consider adoption of legislation authorizing the Town to acquire the use of property for the purpose of constructing a beach nourishment project.

**MOTION:** Mayor Bennett moved to adopt Resolution 2020-07-03 requesting NC General Assembly to consider adoption legislation authorizing the Town to acquire use of property for construction of a beach nourishment project. The motion was seconded by Councilman Connors.

Councilman Neal asked if we could just add Southern Shores to the subsection, such as subsection 10.

Town Attorney Gallop stated there is a separate section and all municipalities has section B. one through nine, and what the Town is asking is to add section B1, and that section only adds ten and eleven. Section ten is your typical beach nourishment purposes and section 11 is your beach accesses.

Councilman Conners asked Town Attorney Gallop to clarify the easements the Town is pursuing to do the beach nourishment project, is the Town actually taking title to that property.

Town Attorney Gallop stated the town is taking title in the form of an easement, it is not a fee simple title, which is property ownership. It is limited rights to do limited things. The Town is seeking voluntary easements and for those that do not grant it, this will give the Town authority to condemn it if you must.

Citizen Anne Sjoerdsma asked to comment, and Mayor Bennett allowed comment.

Councilman Neal stated this discussion has helped tremendously with the understanding. As it exists today, I can condemn the simple title property on any property to build a wastewater plant, storm water drainage, playground, hospital, that authority exists today. I can be radical as a Council Member and take the land and develop it through this quick take provision. The only authority that is being altered or amended or changed is to have add a quick take authority to the ocean front parcel of your land and that land that is eastward of the standard vegetative line. That current land, you can't call the police on a trespasser, you can't develop, you can't use it for lot coverage purposes. It has already been practically condemned by the state. Now, that's probably not legal example but you already don't really have the use of that property in the same way you would your property west of that.

Town Attorney Gallop further stated this is only necessary if voluntary easements are not granted.

**MOTION:** Mayor pro tem Morey moved to amend the original motion (excluding section 11 in the title) and adopt resolution 2020-07-03 requesting the North Carolina General Assembly to consider adoption of certain legislation authorizing the Town to acquire property for the purposes stated in G.S. 40a-3(b)(10) and to be able to make such acquisitions via the procedures allowed by G.S. 40a-42(a)(2). The motion was seconded by Councilman Holland. The motion as amended passed unanimously (5-0).

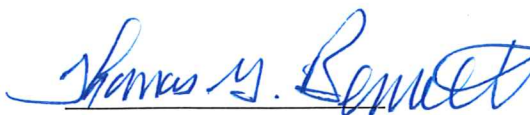
**MOTION:** Mayor Bennett moved to direct staff, the Town Manager and Town Attorney to seek voluntary easements for beach nourishment. The motion was seconded by Councilman Conners. The motion passed unanimously (5-0).

**ADJOURN**

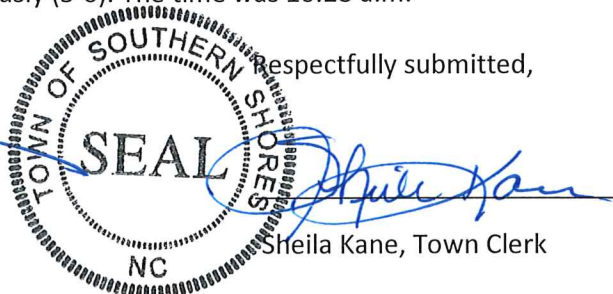
Hearing no other business, Mayor Bennett called for a motion to adjourn.

**MOTION:** Councilman Holland moved to adjourn the meeting. The motion was seconded by Mayor pro tem Morey. The motion passed unanimously (5-0). The time was 10:28 a.m.

ATTEST:



Thomas G. Bennett, Mayor



Respectfully submitted,

Sheila Kane, Town Clerk