



# Town of Southern Shores

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May 19, 2020- WORKSHOP MEETING MINUTES

MAY 19, 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: Interim Town Manager Wes Haskett, Finance & Human Resource Officer Bonnie Swain, Town Attorney John Leidy, and Town Clerk Sheila Kane

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

Mayor Bennett moved to approve the agenda with an amendment to include a request by Dan Lewis, Outer Banks Restaurant Association to address temporary outdoor seating. The motion was seconded by Mayor pro tem Morey. The motion passed unanimously (5-0).

General Public Comment

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

Public Comment-Gerri Sullivan-submitted by email-concerned about the basis used for county tax revenues used in the financial analyses for beach nourishment.

Public Comment- Joe Van Gieson-submitted by email- the importance that the town seek expert assistance to peer review the models used by CPE-NC to support the need for, and the design of, the beach nourishment project CPE-NC has recommended be conducted.

Public Comment-Dan Lewis, President of Outer Banks Restaurant Association-submitted by email-due to COVID-19, the restaurant industry expects that outdoor dining, takeout and curbside delivery options will continue to play a much larger role in their business model for a much longer time. He is requested that all towns create an exception for restaurants to be able to use their own carts/kiosks/trucks on their own operational premises. (Council amended agenda to address item)

Business Items

**COVID Recovery Ordinance Compatibility /Temporary Outdoor Dining (Outer Banks Restaurant Association)**

Dan Lewis, President of Outer Banks Restaurant Association submitted letter:

*I am reaching out to you all as head of the Outer Banks Restaurant Association (OBRA), a member of the NC Restaurant & Lodging Association's (NCRLA) Government Affairs Committee, and a member of the recently*

*formed NCRLA COVID-19 Recovery Task Force. NCRLA has been in daily contact with Governor Cooper's office since the crisis began and is now working with them on a reopening timeline and procedures, including the NC Restaurant Promise and COVID-19 training programs for restaurant personnel in conjunction with DHHS and NCSU Extension. Based on the task force's recent recommendation to the governor's office, we are expecting NC phase two to occur in late May, and will include among other things, restaurants opening at 50% capacity seating inside and on patios, and/or maintaining separation of tables/chairs to comply with social distancing expectations. This would be expected to last at least 4-6 weeks in a best-case scenario. Regardless of the timeline, our industry expects that outdoor dining, takeout and curbside delivery options will continue to play a much larger role in our business model for a much longer time. And the fact of the matter is, without other support or stimulus options, many restaurants here and across the country will not make it through this crisis.*

*With that said, I ask that all our municipalities take a look at two areas in their zoning that may work against efforts to service our guests in options other than inside dining. First is the itinerant/mobile vending ordinances that prohibit the use of carts, kiosks, and food trucks in most towns. I fully understand and agree with the intent of these ordinances: to not allow just anyone set up shop anywhere. But, especially now, with the tremendous need to serve guests for takeout, I would ask that all towns create an exception for restaurants to be able to use their own carts/kiosks/trucks on their own operational premises.*

*The second area of concern is the outdoor dining ordinances, many of which set a limited amount of square footage based on things such as lot coverage, parking, etc..., but don't necessarily take into account the number of people. In our new era, I would ask that all towns consider modifications to those limits in order to allow restaurants to space their tables in compliance with social distancing standards while still maintaining a viable number of seats with those spacing expectations.*

*I understand that most of these asks require either a text amendment, a zoning variance, and/or a conditional use application, along with a fee and a timeline that may take 2-3 months for any movement. But during these extremely trying times, I would ask if there is any way to expedite the process, and the possibility of waiving any fees that might be incurred. I would also be happy to have an OBRA member point person from each town work with all of you individually on these matters.*

*As many are having upcoming town council meetings shortly, I ask that the above be read in public comments, or added to the agenda, with exception of Town of Duck, as I have my own specific business interest there and will draft a separate version for their meeting on May 6.*

*Thank you again for your service to our community, and your consideration. -Dan Lewis*

Mayor Bennett called on Linda Coates, owner of Steamers Restaurant in the Southern Shores Crossing Shopping Center, for comment. Ms. Coates stated business was up 20% in both sales and profitability. Since the pandemic, sales are down 61%, and profitability 68%. She stated customers, and herself included, are more comfortable with outdoor seating at this point. She is asking for options, what Council deems reasonable will be greatly appreciated.

Interim Town Manager Wes Haskett briefed Council on measures that other towns are taking to accommodate the restaurant industry. He stated the Town of Kill Devil Hills is taking steps to allow for a certain percentage of the restaurants parking lots for outdoor dining (25%). Other options under consideration are mobile food trucks, kiosks, or food stands on the premises of the restaurant. One or two towns are addressing this temporary dining by amending their state of emergency declaration, others by ordinance text amendments. The Town of Duck is doing a text amendment. Mr. Haskett reminded Council that Southern Shores requires the Planning Board to consider zoning text amendment language for a minimum of thirty days.

Mayor Bennett questioned why the emergency powers should not be utilized to speed the process along. Town Attorney Leidy stated emergency powers are designed to allow the government to impose prohibition and restrictions, not to impose exemptions to existing ordinances.

Councilman Conners stated we are talking about people's livelihood, not just catering to the vacationers. He recommended doing both; utilizing the emergency powers for immediate relief and then getting the text amendment process started.

Councilman Neal stated the zoning text amendment process would take until July, and this will not have the immediate help needed for our people.

Town Attorney Leidy stated by utilizing the emergency powers method, you are open to challenge and you never know who may challenge it.

Councilman Neal stated he is willing to take that risk and agrees with Councilman Conners by also seeking the zoning text amendment concurrently. He also stated he would like to seek a zoning text amendment removing the 30-day Planning Board review requirement.

Mayor pro tem Morey agreed, stating she is aware there is a risk, but our community is willing to help those businesses the best they can, in a way that is safe, and Council needs to do what they can.

Councilman Holland inquired as to what will be needed from the property owners of the business/shopping centers? Interim Town Manager /Planning Director Wes Haskett stated the text amendment will require the property owner's permission.

Mike Stone, Southern Shores Crossing Shopping Center owner, provided comment. Mr. Stone stated he was willing to allow the restaurants some parking area to accommodate dining and social distancing as part of the emergency declaration and on a temporary basis, in helping to provide a viable year for these businesses.

Councilman Holland stated he felt the emergency powers route was the way to go, while we wait for the text amendment change. The restaurants cannot wait until July. Asking the restaurants to just ignoring the ordinance and go ahead, is too much of a risk. That would also set a precedence down the road that we do not want to take. The emergency declaration gives them the confidence to move ahead while we fix the issue by text amendment.

Interim Town Manager Wes Haskett stated if that is the route Council would like to take, then that is a process that can be authorized through the Mayor and our State of Emergency that we are currently under. We will work with the Town Attorney for his approval. Staff will work on the text amendment, as well as the thirty-day waiting period.

Councilman Neal asked Town Attorney Leidy to once again recap the risks.

Mayor pro tem Morey concluded the discussion by stating, remember that zoning violations are complaint driven. She would also not commit to a percentage of outdoor dining area. Let the business and property owner work out among themselves what is best for the health and safety of employees and customers, and the wellbeing of the business.

**Motion:** Mayor pro tem Morey moved to proceed on essentially a two-track path. One track is to amend our current State of Emergency Declaration issued by the Mayor; the second track will be to ask staff to begin a zoning text amendment, actually two zoning text amendments, #1 to address this issue of outdoor seating, and

#2 to look at getting rid of the 30 day notice for the planning board procedures. The motion was seconded by Councilman Holland. The motion passed unanimously (5-0).

Mayor Bennett allowed comment from Mr. Price, resident and commercial property owner. Mr. Price thanked Council for taking the initiative to help the commercial property owners/ restaurants to the best of their ability. He stated we are in unprecedented times, so not getting caught up too much with all the risks is the way to go. He stated his original comment was to be on beach nourishment, which he does support.

#### **Closed Session**

**Motion:** Mayor Bennett moved to go into closed session- pursuant to NCGS 143-318.11 (A)

- o Section (3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege; and
- o Section (6) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee.

The motion was seconded by seconded by Councilman Holland. The motion passed unanimously (5-0).

#### **Appointing of Town Manager and Reviewing and Approving Any Associated Employment Contract**

**Motion:** Upon returning to open session, Mayor Bennett moved to hire Cliff Ogburn to be the manager for the Town of Southern Shores under the terms of the contract presented by the town attorney, with the hiring to be effective, as of July 1, 2020, or such other date as he becomes available. The motion was seconded by Councilman Conners. The motion passed unanimously (5-0).

#### **Beach Nourishment Discussion & Publicity/Educational Options for Future Public Hearing Proposed from Staff**

Mayor pro tem Morey stated this agenda item's purpose is to have a robust discussion on beach nourishment and the timeline involved.

Councilman Conners stated he was concerned that the timeline prepared by Ken Willson lacked details that a citizen would find important, or easy to follow.

Mayor Bennett stated we have been through this before, as far as attending the meeting, getting the necessary permits, and easements. The steps will be the same as nourishing one mile or 4 miles, just the sand amount and dollar amount will change.

Councilman Neal asked Ken Willson to address the email claiming a conflict of interest. Ken Willson explained that his company has nothing to do with the contracted companies chosen to do the project, they have the construction oversight portion of the project; amounting to about 5-9% of the total cost of the project. Having the same consultant familiar with the feasibility studies and prior reports can benefit the community over a long period of time.

Councilman Neal stated he has struggled with the decision, that there is no clear scientific point. Southern Shores has essentially the same erosion rate as the Town of Duck, and they moved forward with the project. The debt burden will not be experienced by a majority of the town's constituents, but rather those with a close proximity to the ocean. Councilman Neal further stated he would like to hear from them. If they are willing to pay for it, then I am willing to vote to move forward.

Mayor pro tem Morey stated she felt Council was ready to make a final decision to move forward or not. She is advocating to pause for just a moment more to have an official public hearing. If Council could go ahead and add it to the timeline, she proposed to have a public hearing on June 16, 2020. This is a month away and, in the meantime, it allows time for the public to comment. On June 16<sup>th</sup> after the public hearing Council will take a final vote on the matter. She stated the MSD's are out there and how much it will cost the property owners to do a beach nourishment project. Now the citizens can look at these models and tell us if they still think it is a good idea or not. Ultimately, it comes down to the Council needing to make a decision, it is what the citizens elected us to do.

Councilman Holland stated that if Council decides not to do the project than the rest of the dates on Ken Willson's timeline are not needed.

Councilman Conners felt strongly about updating the timeline as soon as possible, in order to see the big picture.

Town Attorney Leidy explained the easement process, as requested by Councilman Holland. He explained the Town will seek voluntary construction easements from property owners. This will be a construction easement from the ocean area to the toe of the dune. Easements can be perpetual or for a specific period of time. For those that will not volunteer an easement, the town may seek to get an easement through the process of condemnation. Construction cannot commence until easements are in hand.

**MOTION:** Mayor pro tem Morey moved that a public hearing on a beach nourishment project be set for June 16, 2020; to direct staff to solicit public comment in the ways staff has already described and an opportunity for any written comment to be compiled beforehand and all of that shared with Council on June 16<sup>th</sup>, and Council schedule a vote to approve or not approve a beach nourishment project on June 16<sup>th</sup>. The motion was seconded by Councilman Conners. The motion passed unanimously (5-0).

#### COUNCIL COMMENTS

Councilman Neal stated he has struggled with the beach nourishment decision. His inclination is to not modify what mother nature gave us. There is also 300 million dollars of ocean front property at risk potentially. He stated he has many oceanfront, or near oceanfront friends, clients, and associates that have expressed a concern of the perceived erosion. CAMA has established a declining shoreline for us, not as drastic as South Nags Head, just declining. I look at this as a subjective decision for our long-term future and the burden of the cost is overwhelmingly placed on the municipal service districts (MSD). This is not occupancy tax, not land transfer tax, not sales tax. This is property tax assessment based on the MSD in which your property is in. Councilman Neal further stated that if citizens have questions, to please email him and he will be happy to explain how these MSD's are taxed. He concluded by stating he wants everyone's eyes wide open for what additional tax may be placed on them and if overwhelmingly the people that are forced to make those payments are in support of this financing model, then I am supportive of altering our beach with beach nourishment.

Councilman Holland reminded the public that we are still dealing with COVID and to practice the three W's (wear your mask, wait, and wash).

Councilman Conners thanked Councilman Neal for having such a good understanding on the municipal service districts and an explanation for the public. He also thanked Ken Willson and told him that he would never be in favor of hiring a consultant to evaluate another consultant.

Mayor pro tem Morey stated she was a sceptic when Nags Head did their initial beach nourishment project. She was concerned that the creatures and critters would not return to the beach, that the beach itself may not be the same beach as it was before. After the project was completed and all the data collected, it showed the

critters did come back and it was a better beach for people to visit. She is less skeptical now, but stated it is a huge undertaking. She concluded her comments my stating if we as a town decide to do this project, then that means the citizens are willing to pay more taxes. Please provide your comments to Council on this beach nourishment project, by phone or email before the public hearing on June 16<sup>th</sup>.

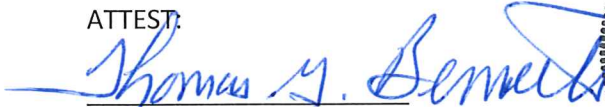
Mayor Bennett thanked everyone for their thoughtful comments. He stated he does not think his voice could be heard entirely when making the town manager motion and so repeated it. MOTION: Mayor Bennett moved to hire Cliff Ogburn to be the manager for the Town of Southern Shores under the terms of the contract presented by the town attorney, with the hiring to be effective, as of July 1, 2020, or such other date as he becomes available.

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

ADJOURN

**MOTION:** Councilman Holland moved to adjourn the meeting. The motion was seconded by Mayor pro tem Morey. The motion passed unanimously 5-0.

ATTEST:

  
Thomas G. Bennett, Mayor



Respectfully submitted,

  
Shella Kane, Town Clerk