



Town of Southern Shores

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

Phone 252-261-2394 / Fax 252-255-0876

www.southernshores-nc.gov

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Or dial +1 646 558 8656, enter meeting id/passcode followed by the # key

OCTOBER 6, 2020

COUNCIL MEETING-5:30 P.M.-PITTS CENTER

1. Opening
 - A. Call Meeting to Order
 - B. Pledge of Allegiance
 - C. Moment of Silence
 - D. Amendments to / Approval of Agenda
 - E. Consent Agenda
 - i. Council Meeting Minutes – September 1, 2020 & August 18, 2020 **EMAILED**
2. Employee recognition
 - A. 10 Years of Service-Tracy Mann
3. Presentation
 - A. FY 2019-2020 Annual Audit-Teresa Osborne (Dowdy & Osborne)
4. Staff Reports
 - A. Deputy Town Manager/Planning Director
 - B. Police Chief
 - C. Fire Chief, Southern Shores Volunteer Fire Department
 - D. Town Manager's Report
 - E. Town Attorney's Report
5. General Public Comment (Limit: 3 minutes per speaker.)

(Note: All matters heard or considered by the Council are subject to possible action by the Council.)
6. Old Business
7. New Business
 - A. Beach Nourishment Easements **TAB 1**
 - i. Resolution 2020-10-01 Authorizing Acquisition of Easements for Beach Nourishment Project
 - ii. Budget Amendment -Easement Acquisitions for Beach Nourishment
 - B. Annual Appointment of Reconstruction Task Force **TAB 2**
8. General Public Comment (Limit: 3 minutes per speaker.)
9. Other Business
 - A. Mayor's Comments & Responses
 - B. Council Member's Comments & Responses
10. Closed Session- G.S. 143-318.11(a)(1) to approve closed session minutes and general accounts.
11. Adjourn



Agenda Item Summary Sheet

Date: 10-06-2020

Item #: 7A

Item Title: Resolution Approving Acceptance of Easements for Beach Nourishment Construction Project.

Item Summary: At its July 21, 2020 Workshop, the Council directed staff, the Town Manager and Town Attorney to seek voluntary easements for beach nourishment. In furthering the efforts to obtain easements, staff has worked with the town's attorney to develop the attached timeline and budget for easement acquisition. Before staff can record the easements with the Dare County Register of Deeds, the Council will need to take action to accept the easements. That action is in the form of a resolution which is attached.

Staff Recommendation: Staff recommends that council approve the resolution to accept the easements for the purposes of beach nourishment construction and to approve the budget amendment to cover the expense of acquisition.

Requested Action: Staff requests that Council approve the attached resolution and budget amendment.

Attachments:

- 1- Resolution approving easements for beach nourishment construction project.
- 2- Budget amendment for associated legal expenses.
- 3- Estimated Budget and timeline for Easement
- 4- Draft of easement with Notary Instructions.



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RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHERN SHORES, NORTH CAROLINA REGARDING BEACH NOURISHMENT EASEMENTS

(Resolution #2020-10-01)

WHEREAS, the Town of Southern Shores (the "Town") is located adjacent to the Atlantic Ocean; and

WHEREAS, due to erosion, both constant and sudden, the Town may at some point in the future desire or be required to construct beach erosion control or flood and hurricane protection works, including beach renourishment upon the ocean beaches located within the Town (collectively "Beach Protection"); and

WHEREAS, the Town may in the future engage in or participate with other governmental entities in acquiring, constructing, reconstructing, extending, or otherwise building or improving Beach Protection including, but not limited to, the acquisition of any property that may be required as a source for beach renourishment; and

WHEREAS, the Town finds that it is prudent to obtain beach nourishment easements by voluntary conveyance to the greatest extent possible prior to the implementation of any future Beach Protection project; and

WHEREAS, the Town finds that the timeliness of obtaining property via easements or otherwise for Beach Protection could affect the implementation of a future Beach Protection project; and

WHEREAS, the Town finds that it is in the interest of the public's health, safety, and general welfare that the Town should move forward to obtain voluntary conveyance of beach nourishment easements in support of future Beach Protection projects.

NOW, THEREFORE BE IT RESOLVED, that the Town Council provides as follows:

1. The Town Manager and Town Attorney or their designees are authorized and directed to procure beach nourishment easements in the form attached hereto as Exhibit 'A' from the owners of the affected properties, and may negotiate easement reasonable modifications of the terms satisfactory to the Town and its consultants.

2. The recording with the Dare County Register of Deeds by the Town Manager or his designee of a beach nourishment easement in the form attached hereto as exhibit 'A' or otherwise as negotiated by the Town Manager and/or Town Attorney or their designee acts an acceptance of the beach nourishment easement and rights granted therein by the Town of Southern Shores.

Adopted this ____ day of _____, 2020.

Tom Bennett, Mayor

Attest:

Sheila Kane, Town Clerk

**Town of Southern Shores
Budget Amendment Number # 12**

**Streets, Beaches, Canals
Increases**

Decreases

<u>Account Number</u>	<u>Description</u>	<u>Amount</u>	<u>Account Number</u>	<u>Description</u>	<u>Amount</u>
	<u>Revenues</u>				
40-39909	Unassigned Fund Balance	\$32,100			
	<u>Expenditures</u>				
57-50155	Beach Nourishment- Legal	\$ 32,100			

Explanation: The cost for easement acquisitions for beach nourishment.

Recommended By:

Cliff Ogburn, Town Manager

Approved By:

Tom Bennett, Mayor

Date

Hornthal, Riley, Ellis & Maland, LLP
Estimated Budget for Easement Acquisitions for 2020 Beach Nourishment Project
162 Parcels, Town of Southern Shores

Step	Task	Time Frame	Attorney Time	Paralegal Time	Attorney Cost	Paralegal Cost
1	Collect copies of vesting deeds, estate records, and tax office parcel records	3 weeks from authorization to proceed	5	50	975	7,000
2	Prepare initial easements and tax office affidavits of consideration	2 months after completion of Step 1	50	0	9,750	0
3	Negotiate revisions to easements after receiving feedback from property owners	Depends on the number of revisions received and number of property owners requesting revisions	35	0	6,825	0
4	Preparation of miscellaneous agreements	Depends on the number of agreements requested by property owners or the project engineer	10	0	1,950	0
5	E-recordation of signed easements	Upon receipt of signed easement(s)	0	40	0	5,600
TOTAL ESTIMATED FEES ² : \$32,100						

Notes:

1. All time figures set forth above are in whole hours.
2. The figures above are estimates. Actual attorney and paralegal time will be billed pursuant to the Town Attorney contract with the Town.
3. Recording fees, e-recording portal fees, and any governmental excise taxes paid to third parties are not included in the above estimates and will be billed separately pursuant to the Town Attorney contract with the Town.
4. The above estimates do not include a full or limited title examination of the parcels to be encumbered by the easements. Only with a title examination can the Town be assured that all property interest holders are parties to the easements. As requested by the Town, title examinations will not be conducted for this project. Instead, the Town Attorney will rely on current vesting deed or estate information as disclosed in the records of the Dare County Tax Office.

EXHIBIT A

Space Above This Line For Recording Data

EASEMENT

Return to Grantee

Excise Tax: \$-0-

Transfer Tax: \$-0-

Parcel #: _____

North Carolina, Dare County

THIS EASEMENT, dated _____, 20____, by and between _____, whose mailing address is _____ (the "Owner"), and the TOWN OF SOUTHERN SHORES, a North Carolina municipal corporation, 5375 N. Virginia Dare Trail, Southern Shores, NC 27949 (the "Town").

Owner is the owner in fee simple of certain real property, situated in the Town of Southern Shores, Atlantic Township, Dare County, North Carolina and more particularly described as follows:

Property Address: _____, Southern Shores, NC 27949; and

- Described in that certain deed to the Owner recorded in Book/Page _____, Dare County Registry;
- OR
- Other:

_____ (the "Property"), and Owner desires to grant a perpetual easement to the Town for the purposes stated below, and Town has agreed to accept such easement from Owner.

NOW, THEREFORE, for a valuable consideration, including the benefits Owner may derive therefrom, the receipt of which is hereby acknowledged, Owner has dedicated, bargained and conveyed and by these presents does hereby dedicate, grant and convey to Town, its successors and assigns, a perpetual, nonexclusive, irrevocable and assignable ambulatory easement and right-of-way in, on, over, through and across the hereinafter described land for use by the Town, its representatives, agents, employees, officials, engineers, consultants, surveyors, contractors, subcontractors, permittees, assignees, and invitees. The easement area shall be that portion of the Property located between (1) the mean high water mark of the Atlantic Ocean, and (2) the landward toe or the Frontal Dune or Primary Dune. In the absence of a discernable Frontal Dune or Primary Dune, the easement area shall be that portion of the Property located between (3) the mean high water mark of the Atlantic Ocean, and (4) the waterward edge of any Permanent Structure located on the Property as of the date of this Easement. In the absence of a discernable Frontal Dune of Primary Dune or a Permanent Structure, the easement area shall be that portion of the Property located between (5) the mean high water mark of the Atlantic Ocean, and (6) a northern and/or southern extension of the western

boundary of the easement area for the property or properties adjoining the Property on the north and/or south whose comparable easement areas have been established using either the Frontal Dune or Primary Dune or a Permanent Structure located on such adjoining property (the "Easement Area") . Owner also grants and conveys to Town a nonexclusive pedestrian only access easement across any portion of the Property for the purpose of permitting Town's inspection and, if necessary, observation, maintenance and repair of the Town's work and activities within the Easement Area (the "Access Easement").

TO HAVE AND HOLD the said easement unto the Town, its successors and assigns, forever. The Town shall have the right to temporarily or permanently assign this easement to the federal, state, or county governments, or any agencies or department thereof or any governmental authority formed to implement beach nourishment, renourishment and/or stabilization on the Ocean Beach in the Town, but only for the purposes set forth in this easement agreement. This easement shall be binding on the Owner, Owner's heirs, successors and assigns, and shall run with the title of the Property in perpetuity. The terms, uses, conditions and restrictions of the Easement are as follows:

1. Town may use the Easement Area to evaluate, survey, inspect, construct, preserve, patrol, protect, operate, maintain, repair, rehabilitate, and replace a public Ocean Beach, a dune system, and other erosion control and storm damage reduction measures, including the right to (a) deposit sand; (b) accomplish any alterations of contours on said land; construct berms and dunes; (c) nourish and renourish periodically; (d) move, store and remove equipment and supplies; (e) erect and remove temporary structures; (f) perform any other work necessary and incident to the construction, periodic renourishment and maintenance of the Project; (g) plant vegetation on said dunes and berms; (h) erect, maintain and remove silt screens, sand fences and other sand collection measures; (i) facilitate preservation of dunes and vegetation through the limitation of access to dune areas; and (j) trim, cut, fell, and remove from said land all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles within the boundaries of the Easement Area. Town will not engage in any of the foregoing activities in the Easement Area without holding a permit to do so, to the extent a permit for such activity or activities is required by law.
2. THERE IS RESERVED, HOWEVER, to the Owner, Owner's heirs, successors and assigns, the right to construct an Improved Dune Walkover Access structure within the Easement Area in accordance with any applicable Federal, State or local laws or regulations, provided that such structures shall not violate the integrity of the dune in shape, dimension or function, that same are consistent with Town zoning, and that prior approval of the plans and specifications for such structure is obtained from the Town. Such structure shall be subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the work authorized herein. There is further reserved to the Owner, Owner's heirs, successors and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired.
3. Owner becomes the owner of any sand deposited into the Easement Area by Town at the time of the deposit. Owner acknowledges and agrees that use of the Ocean Beach is subject to traditional public trust rights. Town, its officers, employees, and agents may enter the Easement Area and the Access Easement whenever reasonably necessary for the purpose of inspecting same to determine compliance herewith, to maintain as may be necessary or convenient thereto. Owner shall in all other respects remain the fee owner of the Property and Easement Area, subject to any existing traditional public trust rights, and may make all lawful uses of the Property not inconsistent with the easements described and conveyed herein. Nothing in this easement shall hinder or impair the Owner's littoral and riparian rights associated with the Owner's Property. The designations Owner and Town shall include the parties, their heirs, successors and assigns.

4. The existence of this Easement shall not prevent Owner from applying for permits from the Town or any other agency to repair or replace a Permanent Structure, to the extent the Town's ordinances or the rules or regulations of any other permitting agency would not otherwise prohibit the proposed repair or replacement for other reasons, and provided that such structure does not violate the integrity of the dune in shape, dimension or function, and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the Project.

5. Definitions. The following capitalized terms as used in this Agreement shall have the following meanings:

Accessory Building: A subordinate Building consisting of walls and a roof, the use of which is clearly incidental to that of a Principal Building on the same lot.

Building: Any structure enclosed and isolated by exterior walls and constructed or used for a residence or business. The word Building includes the word Structure.

Frontal Dune: The first mound of sand located landward of the Ocean Beach having sufficient vegetation, height, continuity and configuration to offer protective value.

Improved Dune Walkover Access: A raised walkway constructed for the purpose of providing access to the Ocean Beach from points landward of the dune system.

Ocean Beach: The lands located seaward of the natural indicators of the landward extent of the State's ocean beaches which include, but are not limited to, the first line of stable, natural vegetation; the toe of the frontal dune; and the storm trash line. Ocean Beach includes those lands located above the mean high water mark that may be publicly or privately owned and, for the purposes of this easement, those publicly owned lands located below the mean high water mark out to the three (3) nautical mile extension of State waters.

Owner: The owner of the Property as identified on page 1 of this Easement.

Permanent Structure: A Building, including a Principal Building and any Accessory Building(s), covered decks, swimming pool, and improvements associated with a swimming pool, but not including any uncovered decks or any Improved Dune Walkover Access or any associated gazebos or other improved portions of an Improved Dune Walkover Access.

Primary Dune: The first mound of sand located landward of the Ocean Beach having an elevation equal to the mean flood level (in a storm having a one percent chance of being equaled or exceeded in any given year) for the area plus six feet. The primary dune extends landward to the lowest elevation in the depression behind that same mound of sand (commonly referred to as the dune toe).

Principal Building: A Building in which is conducted the principal use of the lot on which it is located.

Property: The real property described on page 1 of this Easement.

Project: The Town's Beach Nourishment Project.

Town: The Town of Southern Shores, a North Carolina municipal corporation.

IN WITNESS WHEREOF, Owner has executed this instrument, the day and year first above written.

(signatures begin on the following page)

EXECUTION AND NOTARY CERTIFICATE FOR AN OWNER WHO IS AN INDIVIDUAL

Owner:

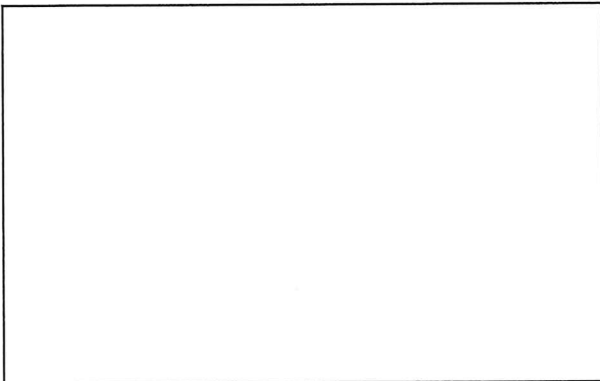
_____ (SEAL)

_____ (SEAL)

State of _____, County or City of _____

I certify that the following person personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: _____
(names of owner(s)).

Date: _____, 20_____.



Affix Notary Seal Inside This Box

Signature of Notary Public

Typed or printed name of Notary Public

My commission expires: _____

EXECUTION AND NOTARY CERTIFICATE FOR AN OWNER WHO IS A CORPORATION,
LIMITED LIABILITY COMPANY, TRUST, PARTNERSHIP OR OTHER ENTITY

Owner:

Typed or printed name of Owner-Entity

BY: _____
Signature of authorized officer or manager

Typed or printed name and title of person signing

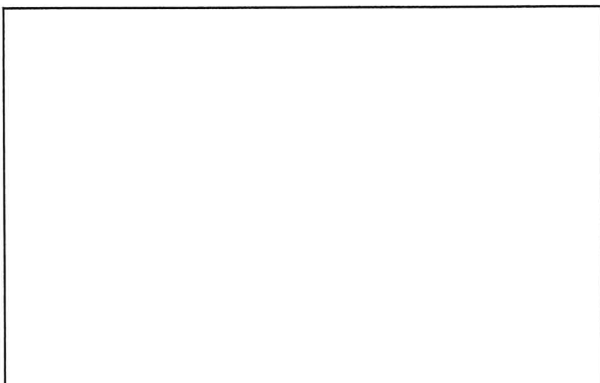
State of _____, County or City of _____

I certify that the following person personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

_____ (Name of Person), the _____
(the Person's Title)

of _____ (name of Owner-entity).

Date: _____, 20_____.



Affix Notary Seal Inside This Box

Signature of Notary Public

Typed or printed name of Notary Public

My commission expires: _____



Agenda Item Summary Sheet

Date: 10-06-2020

Item #: 7B

Item Title: Annual Appointment of Reconstruction Task Force

Item Summary: Section 12-69 of the Town Code requires an annual appointment of a Reconstruction Task Force which would be activated upon the declaration of a building moratorium following a major storm event. The task force is responsible for advising the Town Council on a wide range of post-storm reconstruction issues. A primary function of the task force is to receive and review damage reports and other analyses of post-storm circumstances and to compare these circumstances with mitigation opportunities identified prior to the storm, to discern appropriate areas for post-storm change and innovation. The Task Force consists of two elected officials, two Planning Board members, Town Staff, a representative from the building or realty community, one representative from the SSCA, and one representative from the CPOA:

- Mayor
- Mayor Pro Tem
- Planning Board Chairperson
- Planning Board Vice Chairperson
- Town Manager
- Deputy Town Manager/Planning Director
- Police Chief
- Fire Chief
- SSCA President
- CPOA President
- Construction Community Representative

Staff Recommendation: Appointment of the Reconstruction Task Force.

Requested Action: A motion to appoint the Task Force with subsequent second and vote of approval.

Submitted by: Wes Haskett