

**Minutes  
Town of Atlantic Beach, North Carolina  
Town Council Meeting  
Tuesday, January 17, 2006**

The regularly scheduled meeting of the Atlantic Beach Town Council was held Tuesday, January 17, 2006 at 6:00 p.m. in the Council Meeting Room.

**Members Present:** Mayor Tootsie Vinson; Mayor Pro Tem Doug Creech; Council Members Eddie Dawkins, Jim Bailey, and Tom Doe

**Members Absent:** Council seat # 5 is vacant.

**Others Present:** Chuck Cooper, Town Manager; Derek Taylor, Town Attorney; A.K. Miller, Police Interim Major; Marc Schulze, Public Works Director; Lee Smith, Planning Director; Joe Tarascio, Chairman of Planning Board; Kim Glover, Admin. Asst.

**CALL TO ORDER AND ROLL CALL**

Mayor Vinson called the meeting to order at 6:00 p.m.

**PRAYER AND PLEDGE OF ALLEGIANCE**

Reverend Patrick Williams led the assembly in the prayer and Pledge of Allegiance.

**APPROVAL OF THE AGENDA**

A motion was made by Councilman Bailey to amend and approve the agenda, by adding as item #1a, discussion and possible approval of a group housing request for T & H Atlantic Beach, Inc. and discussion and possible scheduling of a public hearing for a re-zoning request of 1105 and 1107 W. Fort Macon Rd. for RR Resort Residential to RA-1 Single-Family Residential. Seconded by Mayor Pro Tem Creech, vote was unanimous, 4-0.

**CONSENT AGENDA**

**All items listed below are considered to be routine and will be enacted by one introduction/motion/second/roll call vote. There will be no separate discussion of these items unless a Council Member so requests, in which event the item will be removed from the Consent Agenda and considered separately.**

**1. Tax Collection Report for December 2005 (FYI)**

Ms. Buda submitted the tax collection report for December 2005 which showed that \$664,988.56 had been collected. The year-to-date collection total for 2005 at the end of December was \$1,627,161.36.

**2. Tax Releases (\$1,600.36)**

The Tax Collector submitted the following 2005 tax releases for approval:

<u>NAME</u>	<u>ACCOUNT#</u>	<u>AMOUNT</u>	<u>YEAR</u>	<u>REASON</u>
Smith, Jerry W	1882	\$ 75.90	2005	Billed in error
Normann Rest Home	337221	\$ 356.50	2005	Incorrect owner
Kelly, Randy	367448	\$ 908.27	2005	Billed in error
Davis, J Terry	384394	\$ 82.80	2005	Billed in error
Stephenson, Larry W	55076	\$ 9.12	2005	Incorrect value
Bell, Wanda Kinney	55902	\$ 52.05	2005	Billed in error
Tilghman, Richard G	158236	\$ 115.72	2005	Billed in error
	<b>TOTAL</b>	<b>\$ 1,600.36</b>		

**3. Request for Tax Refunds (87.07)**

Tax Collector Laura Buda submitted the following request for tax refunds:

- a. Kinney, David J.                      \$36.80                      Double billed
- b. Kinney, Michael F.                      \$50.27                      Double billed

**4. Town Council Meeting Minutes-December 19, 2005**

The Town Manager requested approval of these meeting minutes.

A motion was made Councilman Dawkins to approve the Consent Agenda. Seconded by Councilman Bailey, vote was 4-0, unanimous.

**CITIZEN REQUESTS/COMMENTS**

**1. Scott Rice, MD, 402 Henderson Blvd., Atlantic Beach, NC**

Dr. Rice stated he and his wife Nancy had purchased their home in July 2005. He said they had seen a lot of changes on Henderson Blvd. in a short amount of time. The entire boulevard is concerned, especially with the issue of beach access. Apparently, there is none there at the present and the potential for none in the future. There has been customary use of the area for beach access. He had spoken with Lee Smith, Town Planner about having some of the land to the west side designated for beach access. He thinks it may be possible for parking and facilities at this area, not to be the size of Atlantic Beach access park, but something similar.

Since Henderson Blvd. is the largest boulevard on the island, it only seems appropriate and would allow Carolinians to have access to their beach which is getting harder and harder to do.

Councilman Doe referred to an e-mail he had received from one of Dr. Rice's neighbors, Mr. Nichols of 104 Cooper Ave. Councilman Doe said he had responded to the e-mail today and Mr. Nichols was concerned about the same issues as Dr. Rice. The developer of the motel site had asked the Town to re-accept the dedication to Ocean Ave. on the west side which had been done. There are other things in negotiation which he feels will result in access to the beach there. Councilman Doe said he would do everything that could be done to make sure that the Henderson Blvd. and Triple S Mobile Home Park citizens have continued use of that access to the beach.

**2. Tristan Mercado, representing her sister, Tiffany Young Woodard, Atlantic Beach, N.C.**

Ms. Mercado told the Council that her sister wanted her to convey to the Council that she was upset because she was told the topic of the purchase of the Food Lion property was not going to be on the agenda any time soon. Her sister, Tiffany Woodard was out of town in Hawaii. Ms. Woodard thought there had not been ample notification of the public hearing tonight and other homeowners were unaware, too. She felt that things were happening too fast. Ms. Mercado asked if the Town had decided what was going to go on the property once it was purchased. Mayor Vinson assured her that it would not be decided tonight what would be put on the property. Mayor Vinson also stated she had been the one Ms. Woodard had talked to about the issue. She told Tiffany that if anything would come up as to what would go there, because Tiffany had been concerned about the sewer issue, it would be later on down the line. Ms. Mercado said her sister also wanted to know why we sold the circle property with intentions to purchase the property on Ft. Macon Rd. Councilman Doe told Ms. Mercado that the Circle project was a different issue and there would be no discussion on the Circle project tonight. Ms. Mercado asked if the citizens would have input on what would be put on the Food Lion property. Mayor Vinson assured her there would be a public hearing on the issue and the public would be notified of the hearing. Councilman Doe reminded Ms. Mercado to tell her sister about the internet site with all the Town information on it.

<b>ACTION AGENDA</b>
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**1. Planning Board Report-Planning Board Chairman**

Joe Tarascio, Planning Board Chairman asked the Council if they would like for Lee Smith, Planner to give the Planning Board report since he is a principal party in one of the items on the agenda. Mr. Tarascio stated the other two items they addressed were re-zoning of lots on Fort Macon Road. The Planning Board felt that the re-zoning would be good.

The second item they reviewed was the Land Use Plan. The Planning Board hoped the Town would spend the extra money and send the survey out to everyone. The Town really needs to know what the citizens want. Councilman Doe said he liked the idea of the survey but only if it's done properly. Councilman Doe asked Mr. Tarascio who they were going to survey. He responded with it would probably be property owners who get the water bills. Councilman Doe would like to see a professional do it. His concern lies with citizens not responding because of lack of knowledge about a subject. Mr. Tarascio stated he thought the Planning Board would be happy if a professional does the survey. Planner Lee Smith stated the Town has come to a time where there needs to be a decision made on the survey. CAMA requires that the survey be a part of the process to complete this project. He said that he had brought it to the Town Council a couple months ago and had not received any input from them. Mayor Vinson asked what type of time element he was talking about and Mr. Smith answered he needed those immediately in order for the consultant to put together something that could be completed in the next couple of weeks. Councilman Doe said he did not see how we could get accurate survey results in that time frame. Councilman Bailey asked Mr. Smith who prepared the questions for the survey and he answered Holland Consultants. Mayor Pro Tem Creech said he is in favor of doing the survey with the consultant firm. Mr. Smith said the survey would be done by individual mailings. As part of the contract with the Land Use Plan, the consultant has to mail to at least 25% of the out of town residents. Councilman Dawkins was of the same opinion as Mayor Pro Tem Creech. He stated that he was in agreement to have the survey done by the consultants. Councilman Bailey and Mayor Pro Tem Creech agreed to give it to the professional and let them get it done.

Mayor Pro Tem Creech made a motion to let Mr. Smith have authority to turn the survey over to the consultants and have the survey done as they see fit at the 25% level and to also fine tune the questions on the survey. Seconded by Councilman Dawkins, vote was 3-1, with Councilman Doe voting in the negative.

The third item discussed by the Planning Board was the T & H housing development. It is a group housing project request. This request is for a two building, four unit development and a conservation easement on eight plus acres of land. The Planning Board has made the recommendation for approval. This item will require Town Council approval and no public hearing is required and could be voted upon at the Council's discretion.

**1a. Planning Board Recommendations-T & H Atlantic Beach, Inc. and zoning request changes for 1105 & 1107 W. Fort Macon Road.**

Councilman Bailey made a motion to approve the request for group housing project T & H Atlantic Beach, Inc. Seconded by Mayor Pro Tem Creech, vote was 4-0, unanimous.

Councilman Bailey made a motion to call for a public hearing on February 21, 2006 for a change of rezoning requests of 1105 and 1107 W. Fort Macon Road. Seconded by Councilman Doe, vote was 4-0, unanimous.

## **2. Public Hearing-Purchase and Financing of Property at 915 West Fort Macon Road-Town Manager**

Town Manager, Chuck Cooper said it would be best for him and Town Attorney, Derek Taylor to introduce the topic and then the Council could go into public hearing. He stated the Town Council had called for a Public Hearing on the purchase and installment financing of the acquisition property at 915 W. Fort Macon Road. This property has the potential to be used by the Town for public purposes to include: (1) development of a Town sewer treatment system, (2) development of storm water impoundment and treatment areas, and/or (3) development of Town facilities to address overcrowded and aging infrastructure. The town is following the requirements of G.S. 159-148, G.S. 160A-20 and the N.C. Administrative Code in pursuing this property acquisition.

Chuck Cooper stated that the Council directed him and the Town Attorney at the November 21, 2005 meeting to move forward with the negotiations on the purchase of this property. The Town has worked very closely with the Local Government Commission to assure this purchase follows their policies and procedures. The Town is now prepared to execute this purchase and seek Local Government Commission approval for the installment debt financing at their February 7, 2006 meeting.

Mr. Cooper said the Town's current debt is approximately \$757,000.00 while the statutory Town of Atlantic Beach debt limit is \$69,000,000.00. We have a very low debt in this Town. The purchase of this property is for \$4,000,000.00 and would be executed through an installment note over a term of fifteen years at an interest rate of 3.91%. The Council has been provided an amortization schedule for the installment note from the successful bidder BB&T. The Town followed the requirements of G.S. 160A-20(g) that requires giving proper notice for this public hearing. This installment financing could result in a tax increase necessary to meet the sums to fall due under the proposed contract of up to \$.05 / \$100.00 of property valuation.

At the conclusion of the public hearing and upon favorable consideration, the Council will be asked to approve two resolutions related to this purchase. Resolution # 06-01-01 is a "Resolution Approving Financing Terms" and approves the financing contract with BB&T for the installment note. Resolution # 06-01-02 is a "Resolution Authorizing the Filing of an Application for Approval of a Financing Agreement Authorized by North Carolina General

Statute 160A-20" and approves the financing contract for the Local Government Commission and moves the formal application to the Local Government Commission forward for the February 7, 2006 Local Government Commission meeting.

Town Attorney, Derek Taylor informed the Council that there are three components to these issues. There are two resolutions which have been identified and the purchase contract. The Council would be asked to approve both resolutions and the purchase contract. He stated this is what the situation is: the Town of Atlantic Beach found out through the grapevine that the Food Lion property was possibly available for purchase. We found out that there was a private entity that had already begun negotiations with the seller to purchase the property. Since there are so few large tracts of the land left in Atlantic Beach, we felt the Council and public should know about it as soon as possible. We called the sellers and their attorney and told them the Town had an interest in the property as well. We intended to use the property without need for re-zoning the seller felt like the cycle we would be on to purchase the property was a much shorter cycle than the other private entity that was interested. The seller would not accept less than the same price but they were willing to talk to us about other things associated with the sale. We did not have a large amount of time to work with. The reason the seller would rather sell to us is we can shorten the cycle. The contract is for \$4,000,000.00. As of today, the appraised value of the property is \$3,625,000.00, not the full \$4,000,000.00. The appraisal is based on us taking the property, taking the building off the property, or land only. The appraiser had deducted from the value of the property the demolition costs. We had not been able to reach him to find out what the resale value would be, which comes the basis for the \$3,625,000.00 value from the appraisal. There are four tenants on the property. Food Lion has moved across the street but they still have a lease on the building. Food Lion would be delighted to step away from their lease if we would allow them. We don't have it in writing but they said they would remove their sub-leaser sign if we would let them out of the contract. This is not true of Eckerd's. They have actually exercised their right to one of two five year extension periods, which would take them through 2010. We have been unable to get the right individual on the phone to discuss with Eckerd's whether or not that's something they intend to move all the way to 2010 or if they are just holding their position until they can find a better location. The third lease is Wicker Beach. The owner is on a month to month lease so there's no long term issue concerned with them. The fourth lease is the automatic teller. Nobody seems to know who is in control of the teller machine. We have made several phone calls but still no leads. We would be willing to bet if we could work out everything else in the building that the teller's value would be less and less as we go along. Right now, we just do not know about the automatic teller situation. As to the contract, the selling price is \$4,000,000.00, \$100,000.00 down, \$900,000.00 at closing which is currently scheduled on February 10, 2006. We have done everything we can do. The survey, title work and appraisal are completed. Everything we could do to get this passed by the Local Government Commission has been pretty much completed. We cannot negotiate the price down, it's \$4,000,000.00 or we are out. Attorney Taylor asked if anyone had any questions.

Councilman Doe asked what was going to be the response from the Local Government Commission to the difference between the pricing and the appraisal. Attorney Taylor stated he thought the Local Government Commission would let us have \$3,625,000.00 and no more. It would be up to the Town to come up with the balance. Councilman Doe mentioned tearing down the old building for around \$75,000.00 and Councilman Bailey stated you could not touch it for that. It would probably cost around \$200,000.00. Councilman Doe stated the evaluation had been done absent the value of the building. What would the value of the building be? Attorney Taylor stated he has not been able to get an answer to that question yet.

Councilman Bailey said he would not vote to terminate any leases until we decide what else we are going to do. So that would be \$200,000.00 a year in lease payments the Town could receive. Attorney Taylor stated he would like to let the public know that on the current Food Lion lease there is annual rent of \$133,805.00 per year. The Eckerd lease rent is \$69,120.00 per year. On top of that we would get 2% of sales out of Eckerd's in excess of their base rent. It could be a revenue stream; however, they won't let that property stand idle. Councilman Doe asked if we were to terminate the leases, would we just have to pay them the lease money back. Attorney Taylor said we would allow them to not have to pay us. Doe asked if it is possible to tell Eckerd's we are going to have to break their lease. Attorney Taylor said there is nothing in the lease that would allow us to do that. We are going to be encumbered by the lease agreement by Eckerd's.

Attorney Taylor suggested the Council open the public hearing. Councilman Doe asked if it would be possible to destruct around Eckerd's and leave enough parking to support them and do what we want to do around them. Attorney Taylor said there are parking requirements in the lease. He believed there are 166 spaces required in the Eckerd's lease. Councilman Bailey stated that was not exclusive parking, it was common parking. Attorney Taylor told the Council he invited the people from Eckerd's to come tonight but it looked like no one had showed up. He reminded the Council that until we get rid of the leases that the Town would be in the landlord business. The Town will have expenses.

Councilman Doe made a motion to go into public hearing. Seconded by Councilman Creech, the vote was 4-0, unanimous.

**A. James Newman Willis, III, 104 Atlantic Beach Causeway, NC, 28512**

Captain Jim stated he presumed the Town received some compensation from the sale from FMB that we should have on hand if we needed some funds to help with the Food Lion Property. He reminded the Council they do have the power of eminent domain. If need be, the leases could be taken with just compensation being paid to the lease. He stated he would like to see the Town buy the site and put in a sewer plant to cover the Circle property. He said he could just see the plant that Fred Bunn is going to put in on West Bogue Blvd. and West

Drive breaking down during summer. If we have the plant down at Food Lion the stench would go into the natural area instead. You would not get the sewage running down the main road. In addition, Fred Bunn would not have to invest all that money in a package plant down there and could use that site for a higher use which would bring in additional tax funds. Captain Jim asked that he be left out of sewer treatment. He is not in the market of selling. The only thing sewer could do for him would be to allow the crowd at the County to raise his valuation. If you are going to sewer the Causeway just design it so he would be left out

Councilman Doe said they all know that the Food Lion property would not be big enough to sewer the Causeway or the Town. This is just one piece of the puzzle. The Town is already looking at some other properties as possibilities for sewer. There will not be a sewer in Town until the people of Atlantic Beach have voted a bond referendum to approve the money for that sewer project.

**B. Donna Ballantine, 220 Old Causeway Rd., Atlantic Beach, NC**

Ms. Ballantine stated she is in favor of a sewage plant for Atlantic Beach. She asked the Council if the people without the sewer would have to pay the taxes, too. She was assured if she wasn't on sewer she wouldn't have to pay for it. Councilman Doe said he hopes the Council would one day be able to come to the voters and say for this amount of money we can provide sewer for Atlantic Beach. He told her he did not have the answers to any of those questions now. Councilman Creech disagreed with Councilman Doe and said if they can't sewer the whole Town then it would be nothing. He said he would not vote to just sewer the Circle.

**C. Llewellyn Ramsey, 118 Bowen St., Atlantic Beach, NC**

Mrs. Ramsey stated she felt like this is a historic event we were discussing tonight. The question is does the Town need this land. She said it was a public hearing and the citizens are the ones who should say if the Town should spend \$4,000,000.00 to buy some land for possibly sewer, Town Hall or an Amusement Park. She stated she wholeheartedly endorses this project.

Town Attorney, Derek Taylor, read aloud verbatim, Resolution #06-01-02, to the Council and citizens.

Attorney Taylor then asked the public to continue with their comments and questions. There were none.

Councilman Dawkins made a motion to go out of public hearing. Seconded by Mayor Pro Tem Creech, vote was 4-0, unanimous.

Attorney Taylor requested the Council give consideration to Resolution #06-01-02 first.

Councilman Bailey made a motion to approve Resolution #06-01-02 with changing the 2005 to 2006 on page one and page two, and also changing under #1, page one the word "or" to "and" in that sentence. Seconded by Councilman Doe, the vote was 4-0, unanimous.

**(Clerk's note: Copy of Resolution #06-01-02 is attached and hereby made a part of these minutes.)**

Attorney Taylor requested the Council address Resolution #06-01-01. This is the Resolution required by the lender.

Councilman Doe made a motion to approve Resolution #06-01-01 Approving Financing Terms of the land purchase of the Food Lion properties. Seconded by Councilman Bailey, vote was unanimous 4-0.

**(Clerk's note: Copy of Resolution #06-01-01 is attached and hereby made a part of these minutes.)**

Attorney Taylor requested the Council approve the Contract for Purchase between the Fourm Meshekoff Family Limited Partnership, seller and the Town of Atlantic Beach, purchaser as presented to the Council.

Councilman Doe asked Attorney Taylor if he was satisfied with the terms and the Council's approval of the contract. Attorney Taylor said yes.

Councilman Doe made a motion to approve the contract. Seconded by Councilman Bailey, vote was 4-0, unanimous.

Councilman Bailey thanked Town Attorney, Derek Taylor for negotiating a good contract under difficult time constraints. Mayor Vinson concurred.

Attorney Taylor stated that the February 10th time frame that we have has been built in for a \$50,000.00 cost for a thirty day extension if we need it. Attorney Taylor said he and Mr. Cooper are doing everything they can to keep from having to spend that \$50,000.00. There is that contingency plan. There could be expenditure for the Town of \$50,000.00 non-refundable amount of money to be able to extend for another thirty days. The \$50,000.00 can be applied to the purchase price.

Councilman Bailey stated for the record that he hated that the appraisal came in where it did, but he is in this business and he is very comfortable it is worth what we are paying for it.

### **3. Crystal Coast Banners-Emerald Isle Mayor, Art Schools**

Mayor Schools discussed the placement of “Welcome Banners” to promote the Crystal Coast. He explained that a survey had been done to see how many people had actually heard of the Crystal Coast and where our visitors are coming from. The name “Crystal Coast” was well known in the state of N.C. but out-of-state it was hardly known at all. He passed around posters for the Council and citizens in the audience to look at. The idea was that they wanted to get the names Crystal Coast, Southern Outer Banks and the names of the major cities out there so when someone thinks of one, they would think of the other. Our contact person would be Lisa Williams at Mosca Designs. Mayor Schools stated the price would be one to five banners at \$235.00 each, ten or more would be \$110.00 each. He stated that Emerald Isle would be ordering ten.

A motion was made by Councilman Doe to authorize Town Manager; Chuck Cooper to purchase ten “Duke Blue” colored banners. Seconded by Councilman Bailey, vote was unanimous, 4-0.

The Council took a break from proceedings at 7:40 p.m.

The Council resumed the meeting at 8:00 p.m.

### **4. Zoning Amendments-Planning Director-Lee Smith**

Mr. Smith informed the Council that what they had before them tonight were copies of the proposed Zoning Amendments as revised and frequently asked questions. This particular draft had left out the grandfather clause. The ordinance on the Town’s webpage is the correct one. Mr. Smith stated that the numbers in this draft are what everyone had discussed which was 5,000 square feet for the base for a minimum lot size for a single family and then multiples of 3,600 for each additional unit, which kept it at 12 units per acre. Councilman Bailey and Mayor Pro Tem Creech stated they thought they had decided on going to 8,000. Councilman Dawkins asked if the Planning Board had addressed the 8,000. Mr. Smith said the 8,000 had come up at the last meeting but he had not been told to do anything with it. Councilman Bailey stated he thought we needed to be clear we had agreed on 8,000 for a duplex, 10,000 for a triplex and 12,000 for a quadriplex. Mr. Smith apologized if he had misunderstood the Council.

Councilman Bailey stated he wanted to mention something that had been on his mind that he had discussed with Mayor Pro Tem Creech. He said if 3,600 square feet per unit is 12 units per acre, and we’re comfortable with 12 per acre, let’s hold at 5,000 square feet for a single unit. Then everything after that happens at 3,600. Two units would be 7,200, etc. If the density is set at 12 units per acre what really is the difference as long as they can meet the other criteria. Mr. Smith asked the Council at what particular size project do they think the

approvals would need to be beyond the staff level. Councilman Bailey responded with 4 units, which is where it is now. The Council seemed to be in agreement with 5,000 square feet per single family and anything over a single family is 3,600 square feet per unit. When you get to the fifth unit you have to go to the Council to get approval.

Councilman Doe said he has two issues he would like to address. One being the storm water being maintained on site. The ordinance said in the absence of a storm water management plan, all grading and site excavating work would be designed to direct water run-off into the interior of the parcel rather than onto adjoining lots or state or local right-of-ways. He stated he would like for someone in Town to show him where this has ever happened before. He asked have we ever done this before and would it be enforced. Councilman Bailey stated it is in our ordinance now and we do not have a good way to track it. The key that makes this work is that the Town requires an engineered storm water plan and we require the engineer to say it was installed that way. Councilman Doe's final concern was the aspect that says if he has a commercial piece of property he could go the Board of Adjustments and tell them he would like to build a house on this piece of property. Normally, each decision made by the Board of Adjustments had a very specific clause in the conditions that has to go in the owner's deed, which is the owner/applicant understands this property is located in a commercial district. Councilman Doe stated he has a real problem saying the only way you can have a residential in a commercial district is if you make part of it commercial. He has personally watched commercial property sit vacant for years. Councilman Bailey suggested the word "only" be removed from sentence one in Section 18-145. Mr. Smith asked the Council if he could give them the background of why the word was in there. Part of the reason is, we have to better define where our commercial areas are and we need to protect where they are. He could guarantee the Council it would be hard to find anyone who says there is a lot of commercial potential in Atlantic Beach at this time. The high value is going to residential property. The attempt in this was to take a more proactive approach and decide what those commercial areas that we think have the most potential would be. We as a Town should adopt better policies on where our commercial zonings ought to be and then protect them by saying if you want to go residential, fine, but still keep some sort of commercial activity there so in time it could continue to be a commercial hub. That is why we left the "only" in the sentence.

Councilman Bailey stated the concern he had with forcing the issue was that we would force it to be vacant or unimproved. It takes sewer and other things we do not have yet to fulfill commercial development.

Councilman Dawkins agreed he liked leaving the choice to the property owner.

Councilman Doe agreed with the goals. He stated he would vote on a moratorium tonight regarding the issue. We are a recreational, resort and retirement town and that is not going to change.

Derek Taylor, Town Attorney reminded the Council in order to do a moratorium we would have to publish for that.

Mayor Pro Tem Creech stated he thinks we shouldn't be able to tell people what to put on their property.

Mr. Smith stated if the incentive was to be able to get a couple more units, you could still get your residential units out of it but we would still like you to leave some commercial viability to this parcel. If the Town wants to take it away, we would certainly begin to threaten what we said we wanted to protect which are some of our commercial corridors. The Planning Board was going on what they thought had been a directive.

Mr. Tarascio, Planning Board Chairman, asked the Council for clarification and said he understood the Council's concern. He stated we are consistently rezoning property where there are residential units that have commercial zoning but are surrounded by residential units. These properties are zoned commercial and if we do nothing but leave them commercial with residential as a special use we achieve the same thing. The Planning Board could take the position that until we work this out we are not going to convert commercial property to residential zones. The property owner that owns that property has owned it as a commercial piece of property. We would not be taking or forcing anything on them. We are not giving that person the ability to turn it into a residential development. Every time a real estate agent comes in with a crying towel about how much more this land is worth with residential development, we turn them down and they come to the Council and you pass it then what is going to happen is this is just going to be a residential community. Like Mr. Smith said, if that's what the Council wants, if real estate value rules and that's the basis on which we make planning decisions just let the Planning Board know because we could avoid a lot of long meetings. That is what Mr. Smith's problem is. We have enough commercial stuff in the Town but it keeps turning over to residential property. If the only way to stop it is to stop these rezoning except for where they are clearly residential areas, then we need to agree as Boards what we are going to do. Right now the Planning Board is getting mixed messages.

Llewellyn Ramsey said she does agree with Mr. Tarascio. We could leave the commercial and let residential go in as a special use. This Town is in a state of constant change right now. The best way to keep from having old vacant buildings like we use to have around the circle is to allow the property to stay zoned commercial and allow under special use to go in and build.

Mayor Pro Tem Creech stated that in Topsail Beach you had to go to Snead's Ferry to get gas now. They have more people there than we do, because they used the land for what the people wanted to use it for. Councilman Creech doesn't want to see our Town go to making our citizens hold onto a piece of property when they can not make a living at it. If anyone

could have made it Gary Walters could have made it work. Councilman Creech would agree with taking the word “only” out of the sentence.

Councilman Bailey stated if there are enough people here and not enough services or demand for those services, somebody will want to take their house and put a service station on it. The economics will take care of itself.

Mr. Smith agreed, but that is not planning, it is reacting. If this is what the Council wants just let him know.

Councilman Doe would like to see Section 18-145 removed. With that gone the existing special use never died and then the Planning Board can come back and help us fine tune it so we do not get unintended consequences.

Mayor Vinson wanted to make sure the grandfather clause is included.

Councilman Doe asked Derek Taylor, Town Attorney if he was able to craft what the Council got a consensus on into a motion. Attorney Taylor asked Mr. Smith if he was comfortable enough to delete Section 18-145. Mr. Smith answered yes.

Attorney Taylor told the Council that there is a point they may or may not have crossed, which is if you make enough changes to an ordinance the public hearing that you had isn't any good anymore. In this case it appears the changes have weakened the restrictions in every case in which you have made a change which is to your benefit. If it is less restricted, generally you can pass an ordinance that is less restrictive than the one presented at the public hearing. There should not be any action tonight if there is any confusion in anybody's mind. The only way to prevent that is to have the ordinance re-written and presented to the Council in its changed form.

Attorney Taylor stated to proceed the motion would be as follows: Adopting Ordinance 06-01-01, however changing the criteria associated with the development to read that 5,000 square feet would be acceptable for single-family dwelling units, in multiple units up to four it would require 3,600 square feet per unit and more than four would stand by its current standard that you must go to the group housing code. Also, deleting section 18-145, any reference to it in any other section in this ordinance that we are now passing and adding to the ordinance the grandfathering clause that was published on the Town's website.

Attorney Taylor suggested after talking with the Council and Mr. Smith that the vote be put off until Mr. Smith could get the ordinance drafted properly.

Mr. Smith stated he did not remember any changes in the condotel ordinance 06-01-02.

Attorney Taylor reminded the Council that when they discussed this at the last meeting there was an attorney in the audience that is also present tonight, who had requested that the equities would dictate the application they have before the planning department for a conversion of working law be covered by the old ordinance. If the Council decides it is acceptable tonight, he has some language that could be put in the motion that could take care of that.

Councilman Doe said he had done some looking into the situation. He has not yet been satisfied that a legitimate and lawful application had been made.

Attorney Richard Stanley reminded the Council that his clients had closed on three motels. They have paid a huge sum of money and they are not changing the uses, it is going to continue to be a motel. The rooms will be individually owned. They cannot meet the density requirement in the new ordinance. It was unanimous last time at the Council meeting that they would be grandfathered and not subject to the new ordinance so they could proceed.

Councilman Doe reiterated that he is still not comfortable with what the facts are. He was really concerned about the conversion from camper parks to buildings.

Attorney Stanley stated that there were no camper parks involved and that no changes have been made at all.

Llewellyn Ramsey asked Councilman Doe what exactly it was he couldn't make a decision on.

Councilman Doe said he could not make a decision whether this would be carried forward as a pre-existing condition, or a lawful and legitimate application has been made. He had spent several hours out of this room trying to get some answers.

Councilman Dawkins stated the reason he did not have any problems with this is it seemed they met the requirements. He perceived this kind of a concept as a way for a family to purchase something on Atlantic Beach at a price where they could live on the beach. Right now there is no where for a family to go unless they can pay \$500,000. Some people can not afford high dollar housing.

Mayor Vinson stated she understood Mr. Stanley to say that what they are asking is to be grandfathered under the previous ordinance before the adoption of the new ordinance. The Mayor asked Councilman Doe what exactly he could not find out.

Councilman Doe answered he is being told the contrary. He said until he gets the full facts he did not want to bring it before the Council.

Mrs. Ramsey reminded Councilman Doe she had spoke with him prior and told him it needed to come out in public and get decided. She asked again for Councilman Doe to tell everyone what he had a problem with.

Councilman Doe said the Town Planner had told him the project didn't meet standards so he felt the need to get to the bottom of it. He had not been able to get answers that would satisfy his concerns. He is waiting on a report to be written up by Mr. Smith, Town Planner.

Mrs. Ramsey stated she thinks the paid staff had not done his job if this had been on his desk for six months. She told Mr. Smith she hated to throw stones but this had been drawn out too long.

Mayor Vinson asked for some direction from Derek Taylor, Town Attorney.

Attorney Taylor said if the Council is uncomfortable with making an exception to this ordinance tonight, they should not pass it. Attorney Taylor stated that he and Attorney Stanley are in the process of discussing things and there are some unique issues in that this motel conversion doesn't meet the standards for density. They are trying to balance out the fact that they are changing ownership without changing use. Attorney Taylor had the same concerns as Councilman Doe.

Councilman Bailey said he thought this issue had been discussed at a work session. He stated he thought the Council's intention at that time was the conversion of a condotel to the extent that it was a change in ownership and not a change of use was okay.

Attorney Taylor stated that is why it had taken so long. They were trying to justify a change in ownership without a change of use.

Councilman Creech asked that back when the owner bought this and applied, didn't we have motels already doing this?

Councilman Doe stated they were conforming motels and this was not.

Councilman Creech is not taking any sides, but they had applied long before these changes were ever brought up.

Councilman Bailey made a motion to table the zoning amendment requests. Seconded by Councilman Doe, vote was 4-0, unanimous.

## **5. Freeboard Issue-Town Council**

The Council was in agreement to move the freeboard issue until the next regular session Council meeting on February 21, 2006. A motion was made by Councilman Creech, seconded by Councilman Dawkins, vote was 4-0.

#### **6. Dredging Grant Application-Town Manager**

Town Manager, Chuck Cooper stated as part of the process that we went through in getting the permit, we had Coastal Science & Engineering to reach and see if there were potential grants available for our dredging project. They prepared the grant and it has been submitted. The Town is asked to pass a resolution approving the grant and it will move forward or die. The grant offers the Town the opportunity to have 80% of the dredging costs paid from State Water Resource Development Funds.

Councilman Doe made a motion to approve Resolution # 06-01-03 a “Resolution Approving the Water Resources Development Grant Application”. Seconded by Mayor Pro Tem Creech, vote was unanimous 4-0.

**(Clerk’s note: Copy of Resolution #06-01-03 is attached and hereby made a part of these minutes.)**

#### **7. Police Grant –Town Manager**

Two applications for grants from the NC Governor’s Crime Commission prepared by Police Chief Scott Kilpatrick were presented for the Council to approve. One grant was for Community Policing segways and the second was for drug enforcement.

Councilman Doe stated the Town had been promised for years once the Circle was gone the staffing for the Police Department would come down. He said we need to focus our staffing on our times of need. To him, trying to go from a part-time staff to a full-time staff is wrong. As it relates to the segways, he said the Police Department has bicycles they are not even using.

Mayor Pro Tem Creech stated the segways are very nice and go around 35 mph. They are used everywhere in the communities. Emerald Isle and Myrtle Beach both have them and agree they work well for them.

A.K. Miller, Interim Major of Atlantic Beach Police Department stated their staff had held a meeting and they are trying to find innovative ways to break barriers down between the public and police officers. He said if an officer was driving through someone’s neighborhood on a segway, the citizen would be more apt to engage in conversation with the officer.

Councilman Doe commented he is totally in favor of having the officers in the neighborhoods but bicycles could be used.

Chuck Cooper, Town Manager stated that from the Town's perspective it is not that much money and it is not going to make or break us. He said let's not all get upset over something as simple as this. He has to remember we did get a nice boat grant already.

Councilman Bailey made a motion to approve the segway grant application. Seconded by Councilman Dawkins, vote was 3-1. Councilman Doe was in opposition.

## **TOWN MANAGER'S REPORT**

### 1. Dredging

Chuck Cooper, Town Manager stated he came prepared tonight with a permit from CAMA to go out for bids for Clamshell Dredging and the problem is that this type of dredging has gotten very expensive. He did not have the ability to write the check or to sign that contract. Emerald Isle is paying for 5700 cubic yards, \$29.00 per cubic yard. The County did an emergency 1,000 yards which was \$60.00 per cubic yard, which ran them \$185,000. Councilman Bailey had the opportunity to find other avenues for us such as hydraulic dredging which is cheaper. We are not sure what that price is but we do believe it to be less than \$29.00 per cubic yard. We still need to find a suitable spoils site.

Councilman Bailey asked the Council to authorize up to \$200,000 to be used on the hydraulic dredging and allow Councilman Bailey and Mr. Cooper to pursue for a couple of days only, the conversion of our permit from its present bucket and barge to hydraulic dredging and authorize Mr. Cooper to enter into a contract up to \$200,000 to dredge the channel. Also, we would be investigating the construction of a long-term dredge spoils depository site on the acreage that the Town already owns next to the water Tower on Highway 85. It may not work. There could be a number of issues that could throw it off, but it's worth a try.

Councilman Dawkins commended Councilman Bailey, Councilman Doe and Mr. Cooper and suggested we appropriate the monies.

Councilman Dawkins made a motion to make available the \$200,000 needed for the dredging. Seconded by Mayor Pro Tem Creech, vote was 4-0, unanimous.

## **TOWN ATTORNEY'S REPORT**

Derek Taylor, Town Attorney had nothing to report.

## **MAYOR/COUNCIL REQUESTS/COMMENTS**

Councilman Doe stated he would like to say he would like to vote for Councilman Creech for Mayor Pro Tem and appreciated everyone's patience with his absence from the last meeting.

Mayor Pro Tem Creech thanked Captain Jim Willis for his public apology at the last meeting.

## **ADJOURNMENT**

There being no further business before the Town Council, Councilman Creech made a motion to adjourn the meeting. Councilman Dawkins seconded, and approval was unanimous, 4-0. It was 10:00 p.m.

Submitted by:

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Kim Glover, Deputy Town Clerk

These minutes were approved by the February 21, 2006 meeting of the Atlantic Beach Town Council.

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Tootsie Vinson, Mayor