

**Minutes  
Town of Atlantic Beach, North Carolina  
Town Council Meeting  
Tuesday, February 21, 2006**

The regularly scheduled meeting of the Atlantic Beach Town Council was held Tuesday, February 21, 2006 at 6:00 p.m. in the Council Meeting Room.

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

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

**Others Present:** Chuck Cooper, Town Manager; Derek Taylor, Town Attorney; Marc Schulze, Public Works Director; Lee Smith, Planning Director; Donna Turner, Inspections Director; Kim Glover, Deputy Town Clerk.

**CALL TO ORDER AND ROLL CALL**

Mayor Vinson called the meeting to order at 6:00 p.m. All Council members were present.

**PRAYER AND PLEDGE OF ALLEGIANCE**

Reverend George Schneider led the assembly in the prayer and Pledge of Allegiance.

**APPROVAL OF THE AGENDA**

Mayor Pro Tem Creech stated that Mr. Fred Bunn was present tonight to talk about The Grove and would like to add him as Item # 1a to the Action Agenda. Councilman Doe asked to move Item #6 from the Consent Agenda to Item # 1b on the Action Agenda. Town Manager, Chuck Cooper asked to remove Item #7 from the Consent Agenda and move it to the March 20, 2006 meeting.

Mayor Pro Tem Creech made a motion to revise the agenda with the previously mentioned changes and to adopt the Consent Agenda. Seconded by Councilman Doe, vote was 4-0, unanimous.

**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 January, 2006 (FYI)**

Ms. Buda submitted the tax collection report for January 2006 which showed that \$304,306.85 had been collected. The year-to-date collection total for 2006 at the end of January was \$1,931,042.71.

**2. Tax Releases (\$2,816.87)**

The Tax Collector submitted the following 2006 tax releases for approval:

<u>NAME</u>	<u>ACCOUNT#</u>	<u>AMOUNT</u>	<u>YEAR</u>	<u>REASON</u>
Darden, James H	1893	\$ 16.60	2005	Billed in error
Hoggard, Harry M Jr	51932	\$ 40.82	2005	Incorrect value
Baker, Worth	52543	\$ 119.92	2005	Billed in error
Kelley, Randy	348221	\$ 176.49	2005	Billed in error
Kelley, Gordon R	47915	\$ 213.72	2005	Incorrect owner
Allen, Audrey Carter	358613	\$ 46.08	2005	Located in Emerald Isle
Mobley, Stephen C	375544	\$ 16.74	2005	Billed in error
Heath, Jonathan	360669	\$ 76.48	2005	Incorrect value
Coastal Invest of Cart Co	1758	\$ 106.89	2005	Incorrect value
Herring, Kenneth	51633	\$ 43.64	2005	Located in Indian Beach
Page, Robert J	879	\$ 483.00	2005	Incorrect owner
Leach, Howard C	1371	\$ 1.53	2005	Release interest-post office delay
Franklin, Jeffrey B	294486	\$ 1,420.25	2005	Located in Morehead City
Wiggins, K. Etal Rehm	379614	\$ 21.57	2005	Incorrect owner
Ellerson, Greg	53055	\$ 22.76	2005	Sold in 2004
Farley, Miller McNeil	361550	\$ 10.38	2005	Located in Morehead City
	<b>TOTAL</b>	<b>\$ 2,816.87</b>		

**3. Requests for Tax Refunds (\$1,062.40)**

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

a. Dunes Club, Inc	\$668.01	Equipment billed in error
b. Allen, Audrey Carter	\$ 99.57	Billed in error
c. Norman, Betty	\$ 11.48	Refund interest
d. Coastal Investment of CC	\$104.80	Value incorrect
e. Rankin, William	\$178.54	Boat located in Pine Knoll Shores

**4. Authorization to Advertise and Post Tax Liens (\$33,878.47)**

In accordance with NCGS Section 105-369(a), the Tax Collector submitted a list of all taxpayers owing taxes for the tax year 2005, which are liens on real property. As of February 13, 2006 the amount was \$33,878.47. In accordance with that same statute, Ms. Buda requested authorization to post and advertise tax liens on March 3, 2006.

**5. Budget Amendment No. 7**

Budget Amendment No. 7 appropriated \$4,135 from the General fund balance for a \$1,100 increase for ten Crystal Coast Banners, \$2,500 for deposit paid for double amount of fireworks for July 4th, 2006, and \$535 additional fee for 05-06 for EAP program due to increased use. \$1,537.77 amendment to Fire Department vehicle maintenance from Insurance Proceeds due to reimbursement for preventative maintenance on Engine 4. Amendments to cover FEMA reimbursed expenses due to Hurricane Ophelia totaling \$93,161.00. Amendments involving restructuring of staffing and equity levels.

A motion was made by Mayor Pro Tem Creech to approve the Consent Agenda. Seconded by Councilman Doe, vote was 4-0, unanimous.

**CITIZEN REQUESTS/COMMENTS**

**1. Mayor Vinson read a letter from Barbara B. Coyne, 607 Ocean Ridge Dr. Atlantic Beach, NC.**

**(Clerk's note: A copy of the letter is attached and hereby made a part of these minutes.)**

**2. Captain James Willis, III, 104 Atlantic Beach Causeway, Atlantic Beach, NC**

Mr. Willis stated that he wanted to present Part A of a presentation on rezoning. He stated he had spoken with Lee Smith, Town Planner, and Mickey Suggs. Mr. Suggs had stated that if we keep on with this rezoning pretty soon we would not have anything here to attract people to stay in all these condos and town houses. Mr. Willis said he felt the purpose of zoning was to keep people from doing what they want with their property. By rezoning you could also keep the tax evaluation down of the people who live here. We could end up with a big residential area and nothing to do.

**ACTION AGENDA**

**1a. Discussion on The Grove-Fred Bunn**

Mr. Bunn stated that finally things are kicking in and those resources that we have been pulling on to help us with The Grove are in action. He was specifically talking about the taller buildings. He said there would be a new billboard in the next thirty days. He hopes to have some signs on the property depicting what will be at The Grove and for the real estate companies, he hopes to have pricing done in ninety to one hundred twenty days. The Grove is a comprehensive, mixed development which takes a little more time. Economy willing things will move ahead as it should.

Mayor Vinson asked if anyone on the Council had any questions. Councilman Doe asked Mr. Bunn if it would be possible for the Town and him to work together on Sail America. Councilman Doe told Mr. Bunn that on Saturday, July 3, 2006 there would be a Class B race in front of Atlantic Beach and fireworks on July 4. The bottom line is there will be a need for a lot of parking. Mr. Bunn stated he would be more than happy to help in anyway he can.

Ruth Barnes asked Mr. Bunn if he had any businesses signed on yet. He said no and until we could show pricing and what is going to be where, it is really pre-mature.

Mayor Vinson asked Mr. Bunn about the pretty pictures he had to display during the 4th of July. He stated he intended to put up as many as the Town allowed him to. Mayor Vinson thanked Mr. Bunn for coming and sharing with the Council and Town tonight.

**1b. Minutes of Meetings-January 17, February 2, and February 9, 2006**

Councilman Doe asked that the following corrections be made on the minutes of January 17, 2006. On page 4, second paragraph, change Mayor Creech to Mayor Pro Tem Creech. On page 9, seventh paragraph, change Council and Attorney Taylor to Town Manager Cooper and Attorney Derek Taylor.

Councilman Doe made a motion to approve the minutes for January 17, February 2, and February 9, 2006 meetings. Seconded by Mayor Pro Tem Creech, vote was 4-0, unanimous.

**1. Planning Board Report & Public Hearing Requests-Planning Board Chairman & Planning Board Director**

Lee Smith, Planning Director stated the action items for the Planning Board consisted of a small agenda. The Board made a couple of amendments to the Land Use Plan survey and approved it for distribution by the consulting firm. The mail outs were to 25% of the non-resident property owners and it is on the Town's website. Councilman Doe asked Mr. Smith would we know exactly how many people there were surveys addressed to after the results come in. Mr. Smith said yes. They also had a rezoning request for 202 and 208 Atlantic Blvd. The Planning Board did make a recommendation on it and it is included in tonight's packet. The Planning Board would like for the Council to set a Public Hearing for the next Town Council meeting on March 20, 2006.

Councilman Dawkins made a motion to set a Public Hearing on the requested rezoning at 202 and 208 W. Atlantic Blvd. for the March 20, 2006 Town Council Meeting. Seconded by Councilman Doe, vote was 4-0, unanimous.

**2. Public Hearing-Rezoning of 1105 and 1107 West Fort Macon Road-Planning Director**

Councilman Bailey made a motion to go into Public Hearing. Seconded by Mayor Pro Tem Creech, vote was 4-0, unanimous.

Lee Smith, Planning Director stated he had a request for the rezoning of properties at 1105 and 1107 West Fort Macon Road from RR (Resort Residential) to RA-1 (Single-Family Residential). The Planning Board recommends approval of these requests.

**1. James Willis, III, 104 Atlantic Beach Causeway, Atlantic Beach, NC**

Mr. Willis stated this is Part B of his comments. The thing he hates most about zoning is every time the Council meets zoning can change. One thing he has admired about zoning, it gives some kind of stability to the community. He said he felt like there wasn't any stability anymore. He questioned the need for zoning unless we are going to hang in there and keep a little degree of stability instead of it changing every time the Council meets.

Mayor Pro Tem Creech made a motion to go out of Public Hearing. Seconded by Councilman Doe, vote was 4-0, unanimous.

Councilman Doe made a motion to approve the rezoning request for 1105 and 1107 West Fort Macon Road. Seconded by Councilman Dawkins. Councilman Bailey asked to respond to

Captain Willis's comments. He stated he looked at these rezoning requests as down-zoning to a less dense use. He said that zoning is supposed to be dynamic and things do change. It is not intended to be static forever. There are times when it is appropriate to change the zoning. In response to Captain Willis's "part A", he thinks he has his math wrong. He was uncomfortable correcting him on his math, but if the property next to him gets sold for \$10,000,000.00, while that may affect the evaluation of his property, it does not necessarily change his tax bill. He agreed with Captain Willis 100% about losing the Town's amenities. Maybe we should take the taxes on that \$60,000,000.00 development and maybe go buy a pier or a beach access.

Councilman Doe stated he was troubled by some of Captain Willis's comments, too. In this case of rezoning it seems like a logical change. Also, when we first went to zoning the Planning Board was trying the best they could and knowing things could change in the future they did the best they could. We need change but need to prevent ourselves from going over board.

The Council voted unanimously 4-0 for the rezoning of 1105 and 1107 West Fort Macon Road.

### **3. Presentation of Audit for FYE June 30, 2005-Charles Smith, Carter Williams & Scarborough, LLP**

Carters, Williams & Scarborough, LLP, the Town's independent auditors, presented the results of the annual audit of the Town's financial activities and reports for the fiscal year July 1, 2004 through June 30, 2005.

Mr. Smith informed the Council that the Town of Atlantic Beach had engaged the firm to perform the annual audit required by the Local Government Commission (LGC). He stated that the auditors conducted its audit in accordance with auditing standards accepted in the United States of America and in the auditor's opinion, based on their audit, the Town's financial statements present fairly in all material respects, the financial condition of the Town. The auditors gave the Town an unqualified report, which is the kind of report you want to receive.

Mr. Smith presented a slideshow for the Town Council and citizens.

**(Clerk's note: Copy of the Auditors slideshow is attached and hereby made a part of these minutes.)**

Councilman Doe congratulated the Town Manager, Chuck Cooper for his fine work. He also asked if anyone had put together a five year plan for the water department and if there were

any big projects that they felt like they needed that much money to tap into. Marc Schulze, Public Works Director, said they do have some long range goals and they would be discussing them during the Town Council Retreat. Councilman Doe asked if all the Powell Bill monies had been used. Mr. Cooper stated the Town does have plans for the Powell Bill monies.

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

Councilman Jim Bailey stated he had asked the Council to look at this issue several months ago. Doug Harris had been the one who brought this to his attention. They both had asked a number of questions which had gone to Raleigh. Donna Turner, Inspections Director finally got a response for us. The concern Councilman Bailey had with the ordinance is the Town required the builder to be two feet above freeboard. Most of the property in this Town that is of any age is built an inch above flood, which would be an inch above the Base Flood Elevation. (BSE) If Mr. Harris's house is destroyed 51%, under our ordinance he would have to raise his house two feet from its existing position. However his insurance would write him a check for 51% of the insurance. In effect he would be out-of-pocket all the costs of conforming with the current building code. The other issue is what it does for the Town to have that freeboard. Obviously, we are forcing our citizens to build higher which they should. It does save a small amount of money, only about \$50,000.00. He would like to propose to the Council to change the ordinance back to just base flood. We have to notify Raleigh that we would like to make that change effective on the anniversary date which is July 13, 2006. We have to be considered base flood or we would not qualify for FEMA.

Councilman Doe stated that the two foot freeboard is good for Atlantic Beach. He asked what would prevent us from saying from this point forward, all new construction, and grandfather the old properties.

Donna Turner, Inspections Director stated that all the towns on this island are at the two foot freeboard. Her theory about going into this two foot freeboard was to save the Town money. During Hurricane Ophelia the homes built at the two foot freeboard did not suffer the damage like the ones built at flood. If your home is destroyed more than 51% it would be condemned and rebuilt regardless if you are at flood or above flood.

Derek Taylor, Town Attorney asked is there an alternative to the coverage Mr. Bailey had already described. Councilman Bailey said no. It is not available on residential property.

Councilman Bailey made a motion that the Town notify FEMA that as of the anniversary date of our agreement, we intend to reduce our freeboard back to zero. Motion was seconded by Councilman Dawkins. Councilman Doe asked does it mean if he has an empty lot near the water, he can come in with some plans and build a house to zero to inch above base flood. Mayor Pro Tem Creech expressed his concern over getting thrown out of the program.

Councilman Doe hopes the Council doesn't consider this issue settled tonight. Mayor Pro Tem Creech stated he thought it was of real importance for Ms. Turner to get with FEMA and find out what our repercussions would be and let the Council know. Councilman Dawkins agreed with everything Council had said. The vote was taken and it carried 4-0, unanimous.

#### **5. Board of Adjustment and Eastern Carolina Council Appointments-Town Council**

Mayor Pro Tem Creech made a motion to appoint Mayor Tootsie Vinson to the Eastern Carolina Council General Membership Board. Seconded by Councilman Doe, vote was 4-0, unanimous. Mayor Pro Tem Creech made a motion to appoint Darrel Lawrence to a permanent position on the Board of Adjustment. By acclamation he also made a motion to appoint George Bailey and Gary Plough into alternate positions. Seconded by Councilman Doe, vote was 4-0, unanimous.

#### **6. Condotel Zoning Amendment-Planning Director**

Lee Smith, Planning Director stated there have been no significant changes to the text that was presented months ago. The issue revolved around a particular hotel in Town that wanted to change to a condominium form of ownership and they were worried that passage of this ordinance could hamper that conversion. This was the reason for the delay in passing this ordinance. With the condotels, you have a multi-ownership development rather than just one entity owning the entire building and leasing out the rooms. Instead we have multiple owners of the rooms and a management company that operates it as a hotel.

Councilman Bailey asked how the issue with the particular hotel had been resolved. Mr. Smith stated they came up with some language they were happy with in their covenants. We signed off on their development yesterday.

Town Attorney, Derek Taylor stated we required certain modifications to their condominium documents to assure the use remains as a hotel. We required them to have on-site management and some of the same services you would expect from any hotel. We required that their plan have an office on-site. Also, certain information has been placed on the plat which will identify it as hotel use.

Councilman Doe asked everyone if they were all satisfied with the modifications. Attorney Taylor said he believed this property was not in compliance. He did not go as far as making the Town a party to their covenants. He feels we have defined everything as well as we possibly could.

Councilman Bailey asked if we wanted to reference the Condominium Statutes of North Carolina. Attorney Taylor said yes we could. Councilman Bailey stated that the structure is

still owned by one entity. He was trying to tie to the condominium act because of some devious people who might show up and say it is still owned by one individual. He would like for us to define exactly what condominium form ownership is. Attorney Taylor asked the Council members to please let him know of any foot holes he might stumble upon. We are breaking new ground. Mr. Smith is getting e-mails from up and down the seaboard about what we are going to do about condotels. Councilman Bailey asked if we had a definition for short term or transient. Attorney Taylor stated it would be hard to define. Councilman Bailey asked that where we reference telephones could we use the term switchboard telephone services, which would make a difference in a motel versus a condominium.

Councilman Doe asked what is to prevent them from changing their covenants. He asked if anything had been built into this process that requires review. Attorney Taylor reminded him that we had not applied this ordinance to any situation yet. Nothing they could do with the covenants could allow them to come outside of compliance with our requirements that they run as a hotel.

Councilman Dawkins stated he felt like the ordinance is as good as it can be. He made a motion to adopt Ordinance No. 06-02-02 amending, Chapter 18, zoning, of the code of ordinances of the Town of Atlantic Beach, North Carolina. Councilman Bailey would like to amend motion by adding the word switchboard, on page 1, Section I, paragraph 2 making it telephone switchboard services. He would also like to add to end of paragraph to the last sentence making it read: A condotel is operated as a commercial hotel even though the units are individually owned pursuant to Condominium Statutes of the State of North Carolina. Seconded by Councilman Bailey, vote was 4-0, unanimous.

#### **TOWN MANAGER'S REPORT**

Town Manager, Chuck Cooper stated at the last Town Council meeting the subject of retreat planning came up. Since then Kim and Sabrina have found us some information on places to have the retreat. For the March 8, 2006 Retreat Meeting we have a couple of options. One being the CMST Building in Morehead City and the other being the Trinity Center in Pine Knoll Shores. Councilman Bailey stated he would rather stay on the island.

The Council /Planning Board Retreat for March 22, 2006 have several options. Councilman Doe asked out of all the options which would be most accommodating. Mr. Cooper said probably Loughry's Landing.

A motion was made by Mayor Pro Tem Creech to confirm March 8, 2006 as the Town Council Retreat at the Trinity Center in Pine Knoll Shores, North Carolina and March 22, 2006 at the Town Council/ Planning Board Retreat at Loughry's Landing. The public is encouraged to attend. Seconded Councilman Dawkins, vote was 4-0, unanimous.

Mr. Cooper stated he had been meeting with the organizers of the Tall Ships event to coordinate activities that would impact Atlantic Beach. The event organizers are offering access to resources to enhance our celebration around July 4, 2006 and offer visitors more reasons to stay on the beach after the race on July 3rd. Mr. Cooper asked if the Council would be interested in amending the Ordinance, Article V, that prohibits peddling except in certain circumstances. Mr. Cooper stated he did not want to change the Ordinance for one day but to create the environment for the Council to make the decision. Councilman Doe said this was one thing that really bothered him. He would prefer we cooperate with the Pepsi Sail Organizers in as much as we can. He does not think it is fair to our local merchants to bring in vendors. Mr. Cooper assured Councilman Doe he envisioned a controlled environment for this event. Councilman Creech stated four years ago, vendors were allowed on the circle by selling franchises. Mr. Cooper's intentions are to make money for the Town. Councilman Dawkins stated all that Mr. Cooper has asked is to bring a list of vendors to Council for their approval. Mayor Vinson stated she was at a meeting the other night about Sail America and all this has stemmed from that meeting. It would give Mr. Cooper the authority through the ordinance amendment; it would help Sail America out because they have a lot of vendors waiting to see if we can accommodate some of them. Town Attorney Derek Taylor said this would not be for just Sail America. It could be used for any event the Town chooses to get involved in.

Councilman Bailey made a motion to approve the Town of Atlantic Beach Ordinance 06-02-03, Article V, Peddlers and Solicitors as amended. Seconded by Councilman Dawkins, vote was 3-1. Councilman Doe voted in the negative.

## **TOWN ATTORNEY'S REPORT**

Councilman Doe asked Attorney Taylor if Council at some point and time had decided to give an individual or group an easement over public rights land. Then sometime down the road the Council revisited the situation and say that land is now under easement that was issued before is needed for the public use. Could the Town turn around and condemn a perpetual easement they had given previously. Attorney Taylor said you can condemn any property rights.

Attorney Taylor informed the Council of the litigation that was left over from the beach renourishment project where the Town of Atlantic Beach brought suit against Sportsman's Pier and Rippy's. Both of the matters have been settled. He informed the Council of his intent of providing the Board of Adjustment rules and procedures. Only one Council member has replied back to him. He stated he would be bringing the document to the Council soon.

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

Councilman Bailey commended Tax Collector, Laura Buda for a job well done. He stated she has an outstanding record and should be recognized for it. The Council asked Town Manager to pass this on to her.

## **CLOSED SESSION**

**Consult with Town Attorney re: (1) Pursuant to NCGS 143-318.11(a) (3) to protect attorney-client privilege, to give instructions concerning a judicial action titled Cooper vs. Atlantic Beach and (2) pursuant to NCGS 143-318.11(a) (5) to establish or instruct the staff or agent concerning the negotiation of the price and terms of a contract concerning acquisition of real property located at 917 Fort Macon Road and adjoining property.**

Mayor Pro Tem Creech made a motion to enter into closed session. Councilman Bailey seconded the motion. The vote was 4-0, unanimous. It was 8:30 pm.

A motion was made by Councilman Doe to go back into open session, seconded by Mayor Pro Tem Creech; the motion carried unanimously, 4-0. It was 9:12 pm.

## **ADJOURNMENT**

There being no further business before the Town Council, a motion was made by Mayor Pro Tem Creech to adjourn the meeting. It was seconded by Councilman Bailey and carried unanimously, 4-0. It was 9:15 pm.

Submitted by:

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Kim Glover, Deputy Town Clerk

These minutes were approved at the March 20, 2006 meeting of the Atlantic Beach Town Council.

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Tootsie Vinson, Mayor