

**Minutes  
Town of Atlantic Beach, North Carolina  
Town Council Special Meeting  
Tuesday, February 20, 2007**

The special meeting of the Atlantic Beach Town Council was held Tuesday, February 20, 2007 at 6:00 p.m. in the Council Meeting Room.

**Members Present:** Mayor Tootsie Vinson; Mayor Pro Tem Eddie Dawkins; Council Members: Jim Bailey, Ruth Barnes, Joe Tarascio and Mike Warren

**Members Absent:** None

**Others Present:** Derek Taylor, Town Attorney; Marc Schulze, Director of Public Works; Joey Starling, Inspector; Donna Turner, Inspections Director; Jessica Feister, Planning Tech; Landin Holland, Town Planner; Scott Kilpatrick, Chief of Police

**CALL TO ORDER AND ROLL CALL**

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

**PRAYER AND PLEDGE OF ALLEGIANCE**

Town Clerk led the assembly in the prayer and Pledge of Allegiance.

**APPROVAL OF THE AGENDA**

Council Member Warren made a motion to amend the Action Agenda by moving Item #5 'Public Hearing – Ordinance 07-02-03, Moratorium ordinance related to development within portions of Atlantic Beach currently zoned General Business (GB) and Resort Commercial (RC)' to be listed as Item # 1. Motion was seconded by Councilmember Dawkins. Vote was 5-0.

**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.**

Motion was made by Council Member Bailey to accept the Consent Agenda as written, seconded by Council Member Tarascio. Vote was unanimous, 5-0

Council Member Dawkins made a motion to accept the Action Agenda with corrections, seconded by Council Member Barnes. Vote was unanimous, 5-0.

**CITIZEN REQUESTS/COMMENTS**

**Buddy Cooper – 700 East Fort Macon Rd., Atlantic Beach, NC:** Mr. Cooper is in favor of a Call for Public Hearing on five (5) proposed ordinances. He gave a copy of his prepared statement to the clerk for entry.

**(Clerk's Note: Mr. Cooper's prepared statement is attached and hereby made a part of these minutes).**

**Fred Bunn – Atlantic Beach and Wilson, NC:** Mr. Bunn gave a two (2) month follow-up report and to answer any questions. He stated that not much change has taken place, but have met with contractor and in talks about costs of buildings and reviewing of those costs. Mr. Bunn stated that his target date is still early summer.

**Jay Randall – Property Owner & Resident:** Mr. Randall stated that he attended the public forum at the Dunes Club regarding the wastewater treatment and stormwater runoff. He wanted to question two (2) areas that were not addressed. The first area of concern was 1.) Liability – what is the budget aspect regarding liability and

insurance cost that will come with a wastewater treatment plant; 2.) Secondary costs - types of equipment the town will have to seek to obtain because of this plant or any changes in the regulations (i.e.: new fire apparatus for higher structures being developed).

**Tiffany Woodard – 308 Club Colony, Atlantic Beach, NC:** Mrs. Woodard spoke against a town-wide sewer system. She read from two (2) different handouts. She stated that the decisions we make now will affect our children's future.

**(Clerk's note: Mrs. Woodard's handouts are attached and hereby made a copy of these minutes).**

#### **ACTION AGENDA**

#### **1. Public Hearing – Proposed Ordinance 07-02-03, Moratorium ordinance related to development within portions of Atlantic Beach currently zoned General Business (GB) and Resort Commercial (RC).**

Councilmember Bailey made a motion to go into public hearing on the proposed ordinance, seconded by Councilmember Tarascio, vote was unanimous, 5-0.

Landin Holland, Town Planner introduced the proposed ordinance to the Council. He stated that the idea behind the moratorium ordinance stems from concerns that have been documented over time regarding protection of the Town's commercial and retail center. Landin noted the distinct differences between Resort Commercial and General Business. He stated that Resort Commercial is comprised of residential housing (i.e.: duplexes, triplexes, quadplexes, single family). He stated that currently if a property owner wished to build a residential home on an RC lot, they are forced to go before the Board of Adjustments and secure a Special Use Permit. This takes up a lot of time on all parties involved (i.e.: staff, Board of Adjustment, etc.). Concern to the General Business district is that through the issuance of Special Use permits and rezoning activity, the Town will eventually see the ultimate elimination of the commercial core. Through discussions with Council, the Planning Board feels that now is the time for the Town to make a decision to determine if their goal should be protecting the commercial core so that in the future the Causeway and East and West Fort Macon Rd. are not consumed by duplexes, triplexes and single family homes where the only commercial left would be the CDD. Landin did state that the proposal to adopt the moratorium centers on the fact that once the discussion begins there could be a rush to secure Special Use permits over the next several months or year as they do serve in perpetuity. So a property owner would still be able to submit applications for Special Use permits and request rezoning from the Council.

Councilmember Tarascio wanted to know how this affects applications that are already in the process.

Landin advised that any applications that are in the process for review by the Board of Adjustments, prior to this night's meeting, will be heard at the next regularly scheduled Board of Adjustments meeting

Derek Taylor, Town Attorney, wanted to verify from Landin that if the moratorium was passed it will not apply to the applications that are already in the process for review.

Landin confirmed that it would not apply to those applications.

Derek Taylor also wanted to get a timeframe from Landin for the moratorium.

Landin stated that if the moratorium was adopted at tonight's meeting, it would be repealed the night of the regular scheduled Town Council meeting on July 16, 2007. He did state that if a resolution has not been reached at that time, he felt that it was the Council's intention to repeal the moratorium at that time so a decision can be reached.

Before Mayor Vinson opened the floor to public comment, Derek Taylor, Town Attorney, asked if there was anyone who would like to hear an actual reading of the ordinance. Since no one acknowledged for the ordinance to be read aloud, Mayor Vinson proceeded to open the floor to public comment on the proposed ordinance.

**James Willis, III – 104 Atlantic Beach Causeway, Atlantic Beach, NC:** Mr. Willis stated that there were two (2) items he would like to bring to Council's attention. Those being: 1.) post the ordinance on the town website and also possibly send it out with the agendas; 2.) also if the ordinance is posted on the town website, it should include the full chapter, article and section for that ordinance. Mr. Willis stated that he has been a full-time resident since 1934 and has been studying the moratorium on the residential construction taking over the commercial area. Mr. Willis ended his commentary by paraphrasing an old adage "Why close the barn doors now, the horses are already out chasing residential dogs?"

**Scott Rice – 402 Henderson Blvd., Atlantic Beach, NC:** Mr. Rice started by thanking the Town staff, Mayor and Council, Planning Board and any others for their attention to this issue. He states that he lives in an area that reflects what can happen in a residential "domino effect". He referred to the converting of the pier area where it went to residential area, and knocked out all the commercial area. So the area went from residential to commercial to, what it is now, residential – no commercial. He stated that he would like to see a balance for the future.

**Joe Osborne - 137 Bowen St., Atlantic Beach, NC:** Mr. Osborne acknowledged his utmost respect for Landin Holland and stated that he felt Mr. Holland is a fantastic person and great improvement over what the Town had previously as a Planner. He agrees with Mr. Holland, but he is very much in opposition of a moratorium for three (3) reasons; 1.) a moratorium means, to him, that a government has failed or is broken; 2.) a moratorium is usually during an emergency; 3.) is there a reasonable expectation that the zoning will be changed so as not to allow residential use in RC and GB district? Mr. Osborne feels there is not a reasonable expectation for the zoning to be changed. He feels that Atlantic Beach does not have enough space for residential and commercial usage. He wanted to remind everyone of the problems the Town had to address on a previous night regarding the music from The Channel Marker Restaurant going across the water. He also noted the problems with Ziggi's, which is now gone. He went on to name a few other establishments the Town has had problems with. Mr. Osborne also read a list of business that have closed to include, but not limited to: Jungle Land, Sportsman Pier, Sportsman Grill and Walter's Exxon. He sees a trend in this as being that the Town wants to be a quiet, bedroom community with one shopping center across the bridge if needed. He feels that if residential use is stopped in RC and GB zones, the Town would create a "blithe" until either this Council or a future Council allows residential use.

Councilmember Dawkins made a motion to go out of public hearing, seconded by Councilmember Warren, vote was unanimous, 5-0.

Councilmember Dawkins commented that some very good comments were made and that Councilmember Tarascio also brought up some very good points. He did state that there is one thing that bothers him the most and that is there has been a tremendous trend from going commercial to residential. He does not want the Council to fail to where effort has not been made to go find out what is out there and other concepts there might be to try and maintain commercial use.

Councilmember Tarascio commented that there has been a lot of negative interaction between residential and commercial areas within the town. He noted the extreme traffic problems in Atlantic Beach every season and that if the small businesses are gone, this means more people are driving on Atlantic Beach roads to get to where they need to. So he feels that there are more ramifications beside how much money is going to be made and that even though this is a good trend, Atlantic Beach does not need to lose its entire commercial.

Councilmember Dawkins made a motion to approve and adopt Proposed Ordinance 07-02-03, Moratorium ordinance related to development within portions of Atlantic Beach currently zoned General Business (GB) and Resort Commercial (RC), seconded by Councilmember Warren. Vote was unanimous 5-0.

**(Clerk's note: Ordinance 07-02-03 is attached and hereby made a part of these minutes.)**

## **2. Planning Board Report – Landin Holland**

Landin stated the most important issues to date are the five (5) items regarding the CDD Ordinance. He is requesting Council to set Public Hearings for each of the following proposed ordinances for next month's regularly scheduled Town Council meeting or to vote down the request:

- Section 18-379, Elimination of the Requirement for a First Floor "Non-Residential" Use
- Section 18-377, Density Transfer for Off-Site Septic Areas
- Section 18-377(e), Density Transfer for Off-site Parking Areas
- Section 18-384, Provision of Compact Car Parking Stalls
- Section 18-379, Modification to the Requirement for a First Floor "Non-Residential" Use

Landin commented that two (2) out of the five (5) proposed ordinances are technically one in the same that related to the "non-residential" use component of the CDD. The initial ordinance was sent to Council for vote to hold a public hearing regarding concerns about the language. At the next Planning Board meeting, the issue was discussed, and an additional amendment, unrelated to the first amendment, was established, stating that "non-residential" could be provided on 75% of a given floor or level of a building so that there could be a rooftop restaurant or a spa on the some other floor, other than a first floor "non-residential" use. This is the modification.

Councilmember Dawkins made a motion to call for separate public hearings on the following ordinances at the next scheduled Town Council meeting on March 19, 2007:

- Section 18-377, Density Transfer for Off-Site Areas
- Section 18-377(e), Density Transfer for Off-Site Parking Areas
- Section 18-384, Provision of Compact Car Parking Stalls
- Section 18-379, Modification to the Requirement for a First Floor "Non-Residential" Use

The motion was seconded by Councilmember Tarascio, vote was unanimous, 5-0.

Councilmember Bailey felt that public hearings should be called for on all the proposed ordinances that were brought forth by the Planning Board and that to leave one out is a mistake and gives the impression of "prejudging" it before hearing from the public. Councilmember Bailey then made a motion to call for a public hearing on Proposed Ordinance Section 18-379, Elimination of the Requirement for First Floor "Non-Residential" Use at the next schedule Town Council meeting on March 19, 2007, seconded by Councilmember Barnes. Vote was 3-2, with Councilmembers Dawkins and Tarascio opposed. Motion was carried.

### **a. Acceptance of Planning Board Chairman Joe Tarascio's Resignation**

Mayor Vinson proceeded to speak on Councilmember Joe Tarascio's requested resignation as Planning Board Chairman. She stated that at a regularly held Planning Board meeting on November 20, 2006, Councilmember Tarascio tendered his resignation from the Planning Board. It was declined at that time due to his presence being vital to the Planning Board as Chairman. She suggested that a motion be made to accept Councilmember Tarascio's resignation as Planning Board Chairman at this time.

Councilmember Bailey made a motion to accept Councilmember Tarascio's resignation as Planning Board Chairman, seconded by Councilmember Tarascio, vote was unanimous, 5-0.

Councilmember Bailey wanted to take a moment to thank Councilmember Tarascio for his participation on the Planning Board and he also expressed his utmost respect for Councilmember Tarascio's sincerity, main-stay focus, thinking things through and doing what was right for the Town and everyone concerned.

Councilmember Tarascio wanted to reiterate for the record that, as he held dual roles as Planning Board Chairman and Council member, he offered any applicant the opportunity to have him not Chair the Planning Board meetings, if they felt it was in conflict with his role as Council member.

**b. Restructuring of the Planning Board Membership**

Mayor Vinson read a prepared statement regarding the Restructuring of the Planning Board Membership which she began by stating that "interesting circumstances have recently created a situation on our Town Planning Board that apparently requires the attention of this Council. Because of the impact and the importance of Planning Board decisions, determinations and recommendations to the Town Council regarding the Town's planning and development ordinances that regulate all development in our Town, it is imperative that those decisions, determinations and recommendations be made in an atmosphere of clear and neutral consideration and deliberation. With assurance of fairness and equality for all of those who appear before the Board to present their recommendations balanced against a vision towards the best interest of all the citizens of the Town. It is important that all matters brought before the Planning Board are given consideration, free of a member's preconceived perceptions, prejudices, and undue pressure from outside influences for any other special considerations. It is equally important that the public have confidence that the matters brought before the Planning Board will be considered in an atmosphere where there is not even the potential appearance of conflict of interest, whether or not such conflicts may rise to the level of being legally impermissible. Decisions, determinations, recommendations made by the Planning Board cannot be associated with, what may be perceived, as an improper procession. The Council has been made aware of a recent occurrence where a family member and a fellow employee of a presenter before the Planning Board were placed in a very difficult position of having to discuss and to vote on the approval and/or recommendations for changes in Town regulations and ordinances that would directly benefit the presenter and have a potential effect on all development of land in a particular district within Atlantic Beach. It is regrettable and wholly unfair that these Planning Board members were placed in the awkward position of having to carry out their responsibilities on the Planning Board by divorcing themselves from the particular applicant and project being presented. Any action on these actions on these members part necessarily distracts from the confidence that the public has placed in the final decisions of the Planning Board and the concerns of the public are important to this Board. We have tried to remedy this situation by instructing the Town Attorney to talk with those members to recuse themselves in these matters and that they chose not to abide by the directions of the Town Council and the Town Attorney. The Council has therefore felt compelled to place upon the Action Agenda tonight the consideration of the Reconstruction of the Planning Board membership with the purpose of avoiding the kind of problems and appearance that might have recently occurred. We are sorry that in some circumstances the responsibility of being a member of the Planning Board can create such difficulties for some of its members. If this Council should determine to make changes to the Board's memberships tonight, that those members released, if any, please accept the gratitude of the Town, this Council and the Mayor for your faithful service to Atlantic Beach and we look for other areas where you might be of service to your Town. If the Council should determine not to reconstruct the membership of the Planning Board tonight, we ask that all of the Planning Board members give consideration to helping us to establish rules and structures that will avoid this kind of perceived improprieties in the future." Mayor Vinson then opened the floor for any discussion.

Councilmember Dawkins made a motion for Trace Cooper and Tom Outlaw to be replaced on the Planning Board as of today's date, February 20, 2007, seconded by Councilmember Warren, vote was 4-0. Councilmember Tarascio abstained from the vote. Motion was carried. Mayor Vinson thanked Mr. Cooper and Mr. Outlaw for their service to the Town up to this point.

Councilmember Dawkins made a motion to nominate Rebecca Marks to replace Trace Cooper, Ray Langley to replace Councilmember Tarascio and Pierce Lattimer to replace Tom Outlaw for the three (3) vacancies on the Planning Board effective immediately, seconded by Councilmember Warren, vote was unanimous, 5-0.

Mayor Vinson stated that the Board was open to further nominations to the Planning Board. With no further nominations to the Planning Board, Councilmember Warren made a motion to close the nominations, seconded by Councilmember Barnes, vote was unanimous, 5-0.

### **3. Storm water and Wastewater Project Update – Councilmember Jim Bailey**

Councilmember Bailey gave a brief summary of where the project is at to this point. He stated that Mr. Raymond Cordon and Mr. Dan Dawson, both engineers from W.K. Dickson, will be presenting a Wastewater Preliminary Engineering Report presentation and next month will receive the information regarding Stormwater. At this point, Councilmember Bailey turned the floor over to Mr. Raymond Cordon for the presentation.

Mr. Cordon went over briefly what the presentation will consist of.

1. Background Information on why a wastewater system
2. Existing wastewater systems currently in Atlantic Beach
3. Preliminary Engineering Report
4. Collection Systems
5. Treatment System Alternatives
6. Effluent Disposal Options for Atlantic Beach
7. Summary costs and funding mechanisms

**(Clerk's note: The Wastewater Preliminary Engineering presentation is attached and hereby made a part of these minutes.)**

Councilmember Bailey wanted to make several comments to Council for them to remember what their goals were set for and those being:

- Want a no-discharge system where the effluent is not discharged to public waters
- To keep all disposal within Town limits
- To have a system that was affordable

Councilmember Bailey noted that the Town has enough land to provide sewer for what is already established here and that it is important to understand that this plan is not designed for "explosive" growth. He stated that with the Phase II Stormwater and Coastal rules that are coming into play that if the Town does not implement a central sewer it will create a serious, negative impact to the point where it will drive up the tax rate and other implications.

Councilmember Barnes questioned the initial assessment fee and what method would be used to pay for it.

Interim Town Manager Tommy Combs responded by stating that Council can allow property owners to pay the fee up front or can allow up to ten (10) years to pay with interest in yearly installments.

Councilmember Bailey wanted to state that this plan was designed without any property tax monies being involved.

Councilmember Dawkins wanted to clarify what Councilmember Bailey was stating in that he said the current tax rate is twenty six (26) cents (0.26), if revenue neutral took them down to eleven (11) cents (0.11) (using this figure as an example), what is being said is that taxes would not be increased if this is what it came out to be.

Councilmember Bailey stated that yes, if Council chose to elect to do it the way it is being shown, there would not be any tax revenue assumed.

Councilmember Dawkins continued on by stating that the Town cannot address stormwater flooding without first addressing septic system problems. He stated that he has had a lot of inquiries as to why this can not be done.

Mr. Raymond Cordon responded by saying what they were referring to is the requirement that the state regulations prohibit additional discharges to the sound or to the ocean. They can help some of the flooding issues by moving the water around, but it still has to infiltrate into the ground. He stated that another option is that if the quality of stormwater is improved, then the state may allow additional discharges in existing outfalls.

Mayor Vinson called for a five (5) minute recess at 7:58 p.m. Council reconvened at 8:05 p.m.

#### **4. Stormwater and Sewer Citizens Advisory Committee Discussion – Councilmember Jim Bailey**

Councilmember Bailey stated that eight (8) citizens have been chosen for the committee. And those members are: Mr. Billy Brewer; Mr. Donald Clements; Mr. Thomas Lenweaver; Mr. John Lotspih; Mr. Bruce McFerren; Mr. George Richardson; Mr. Alan Shelor and Mr. Jim Willis. Mr. Larry Moolenaar will be the facilitator for these meetings. The committee has been asked to meet anywhere from eight (8) to ten (10) times over the next few months so both stormwater and wastewater issues can be looked at and provide feedback, not only to Council, but to the public as well. Councilmember Bailey stated that these meetings would be Special Call Meetings so that more than two (2) members of Council could attend and listen to what progress is being made and questions being asked. Councilmember Bailey stated that the committee should be ready to start functioning over the next couple of weeks. Mayor Vinson thanked all the citizens for volunteering.

#### **5. Public Hearing – Proposed Ordinance 07-02-02, Amendment to Chapter 18, Zoning, Section 18-141, Subsection 6**

Mr. Landin Holland, Town Planner stated that this ordinance is directed to stormwater provisions that were adopted approximately a year ago and what exactly this applies to. He advised that this ordinance amendment will make it very clear that proposed developments, if it is an existing development (i.e. addition to a home, structure of an outbuilding, storage building), that that portion of the development is what will be required in terms of an engineered stormwater plan. Currently the ordinance does not explicitly spell out what is or is not required to be retained on site regarding the first inch and a half of rainfall. He advised that this ordinance amendment will clarify that issue.

Councilmember Dawkins made a motion to go into Public Hearing of the proposed Ordinance 07-02-02, seconded by Councilmember Tarascio, vote was unanimous, 5-0.

Mayor Vinson, at this time, opened the floor to public comment on Proposed Ordinance 07-02-02, Amendment to Chapter 18, Zoning, Section 18-141, subsection 6.

**Mr. Joe Osborne – 137 Bowen St, Atlantic Beach, NC:** Mr. Osborne commented that he was in favor of the proposed ordinance amendment.

With no further discussion from either the public or Council members, Councilmember Tarascio made a motion to go out of Public Hearing, seconded by Councilmember Dawkins, vote was unanimous, 5-0.

Councilmember Tarascio made a motion to approve Proposed Ordinance 07-02-02, Amendment to Chapter 18, Zoning, Section 18-141, subsection 6, seconded by Councilmember Bailey. Vote was unanimous, 5-0.

**6. Citizens Sewer Discussion – Tiffany Woodard (TENTATIVE)** As this was a tentative item on the agenda, let the record reflect that Mrs. Tiffany Woodard was not present at this time.

**TOWN MANAGER’S REPORT**

Interim Town Manager, Tommy Combs stated that there is not a FYI report this week, but that the Mayor’s office received a letter from The Division of Water Quality notifying of potential designation of Phase II with a deadline of March 31, 2007 for comments. He also stated that a representative from the department is willing to come and explain the regulations if needed. He also wanted to advise that Atlantic Beach Fire Department received a \$6,500.00 grant for Swift Water Rescue, 100%, no matching.

**TOWN ATTORNEY’S REPORT**

Mr. Derek Taylor, Town Attorney had no report at this time.

**MAYOR/COUNCIL REQUESTS/COMMENTS**

Mayor Vinson stated that Ms. Judy Hills from Eastern Carolina Council is ready to meet regarding the filling of the Town Manager position. Mayor Vinson suggested that the meeting be set for March 5, 2007 at 4:00 p.m. Councilmember Tarascio made a motion for a Special Meeting to be set for March 5, 2007 at 4:00 p.m. as Executive Session, seconded by Councilmember Bailey, vote was unanimous, 5-0.

**CLOSED SESSION**

Councilmember Bailey moved to go into closed session in order to consult with the Town Attorney re: (1) To protect the attorney-client privilege and (2) to consider and give instructions concerning a potential or actual claim, administrative procedure, or judicial action pursuant to N.C.G.S. 143-318.11(a)(3). Motion was seconded by Councilmember Warren, vote was unanimous, 5-0. Council entered into closed session at 8:30 p.m.

Councilmember Joe Tarascio moved to go out of closed session and back into open session. Seconded by Councilmember Eddie Dawkins. Vote was unanimous, 5-0. Council reconvened to open session at 9:30 p.m.

**ADJOURNMENT**

There being no further business before Town Council, Councilwoman Barnes made a motion to adjourn the meeting, seconded by Councilman Tarascio, vote was unanimous, 5-0. It was adjourned at 9:35 p.m.

Submitted by:

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Kelly L. Nash, Administrative Assistant

These minutes were approved at the May 21, 2007 meeting of the Atlantic Beach Town Council.

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Joyce Vinson, Mayor