

**Minutes**  
**Town of Atlantic Beach, North Carolina**  
**Town Council Special Meeting**  
**Monday, September 1, 2008**

A Special Meeting of the Town Council of Atlantic Beach was held on Monday, September 1, 2008 at 6:00 p.m.

**Members Present:** Mayor A. B. Cooper; Mayor Pro Tem Harry Archer; Councilmember: Ann Batt, Eddie Briley and Vada Palma

**Members Absent:**

**Others Present:** Pete Allen, Town Manager; Derek Taylor, Town Attorney; Marc Schulze, Public Services Director; Mr. Buddy Cooper and Donald Safrit, representative from McKim & Creed

**Call to Order** Mayor Cooper called to order the Special Meeting of the Atlantic Beach Town Council at 6:00 p.m.

Councilmember Briley made a motion to recuse Mayor Cooper from the Special Meeting. Motion was seconded by Councilmember Batt. Vote was unanimous, 4-0. Motion carried. The time was 6:01 p.m.

Marc Schulze, Public Services Director (**sitting in for Kelly Cyrus, Town Clerk**) called roll.

**1. Review of Application for Request to Grant Easements to Ocean King, LLC**

**Buddy Cooper, 700 East Fort Macon Road, Atlantic Beach, North Carolina**

Mr. Cooper began his presentation by stating that he is at this night's meeting on behalf of Ocean King, LLC with requests for two (2) easements. He started off presenting his first request for an easement by displaying a map of the proposed area. He stated that this particular easement request would be for underground utilities and gave the coordinates and specifics for such. He then proceeded to explain that the second easement request would be to preclude the town from being able to install a water supply well in the designated area. Councilmember Briley asked Marc Schulze, Public Services Director if the Town has any intention of putting a well in this area and Mr. Schulze's response was that there are no intentions for the town to install a well in that area and it would not be common practice. Councilmember Briley wanted to confirm, from Mr. Schulze, that the Town is currently looking at another site for a well installation at which time, Mr. Schulze gave confirmation that Councilmember Briley's statement was true. Councilmember Briley proceeded to the topic of monitoring wells. Mr. Cooper stated that the request would give Ocean King, LLC the right to install monitoring wells and enter upon the land for monitoring and remediation, if necessary. Mr. Cooper explained that the purpose of the monitoring wells would be to determine if any contaminants were getting into the ground. At this time, Mr. Cooper referred all engineering questions and concerns to Mr. Donald Safrit, Engineer with McKim & Creed and Engineer for this project. Mr. Safrit stated that the compliance boundary is to serve as a "sentinel". Monitoring wells will be around the system and will be monitored on a periodic basis, approximately three (3) times a year, every four (4) months. The wells will be installed to monitor ground water and help to characterize background conditions and to serve as a monitoring program as the system becomes operational in the future. The response for these types of infiltration system is to place this monitoring network around the system so there are not any problems in the future. Councilmember Briley went back to the request for the underground utility easement and asked that this particular request be stated again. Mr. Cooper stated that the easement would be eight feet (8') in width along the southern edge of the right-of-way on Atlantic Boulevard and the utilities running would be just about everything except water. Councilmember Palma wanted to know what assurances the Town will have should the water quality be comprised in and around this area. And if the water quality is comprised due to the system that Ocean King would be installing, where would the corrective responsibility lie or would the Town assume this burden? Mr. Cooper stated that in order for Ocean King, LLC to maintain the permit, this would be their responsibility and it would be highly unlikely something like that would occur. Mr. Safrit confirmed this response by stating that the reclaim water systems produce a very high quality affluent and associated

with these systems are reliability components that require auxillary power continuously and also requires a certified operator that is educated and qualified to operate this type of treatment system. Mr. Safrit stated the safety measures not only include standby power and highly trained operator who would be on-call 24/7, and 5 –day upset pond. He reiterates that this system is state-of-the-art treatment facility. He also noted that this technology is used in various areas of North Carolina. Mr. Cooper stated that if the monitoring wells pickup any contaminates, very serious letters go out from the Department of Water Quality to the operators of the treatment plant. So this results in a problem being taken care of before it becomes a problem.

Derek Taylor, Town Attorney commented that the easement the opportunity for remediation as well. He asked that Mr. Safrit describe what remediation is. Mr. Safrit explained that there are two (2) types of remediation, passive and active. Passive meaning that you let it attenuate and it will return to the ground water standards over time while active remediation means you engineer a system to either remediate it in the ground water or extract it through recovery wells if problems are found in the ground water and then it would be treated. Mr. Taylor noted that with fuel tanks that the ground is dug up and the contaminated soil is gotten rid of. He asked as to whether the roadway would be in jeopardy of this sort of thing. Mr. Safrit stated that it is a very slim chance things would get that far. He feels that if the system is properly operated and maintained there will never be any compliance issues either in the facility or at the compliance boundary and even though, he feels, any discussion about remediation activity are very remote, they have to be prepared to do it. Councilmember Briley asked if the system that FMB has is the same as this system they are discussing tonight. Mr. Safrit advised he feels it is the same system but possibly a different manufacturer. Mayor Pro Tem Archer asked of Mr. Cooper if either one of the easements affect, in any way, East Boardwalk. Mr. Cooper stated no they do not.

Derek Taylor, Town Attorney commented that he had to do a little revision to the proposed easements such as correcting the East Boulevard to East Drive and some numbering that was included so the copies that some of the assembly have may not have the updated versions but he has the revised documents with him. He stated that he has put numerous conditions on the easements and requested that Mr. Cooper look the documents over and indicate as to whether or not he is ok with the revisions and the meeting will proceed.

Mr. Cooper stated that there were a couple of items he would like to discuss and stated he would do so one item at a time. He stated that from his understanding the Town would be more comfortable if the easements were granted with a deadline and not run in perpetuity without being utilized for the intended purpose. The timeline or deadline that Mr. Cooper requested was five (5) years instead of the suggested three (3) years by the Town and that some sort of language would be included as to it noting that substantial work would be done within those five (5) years or something along those lines. Mr. Taylor explained to Council that what Mr. Cooper was referring to was a similar clause that was included in the contract with FMB basically stating that if Ocean King, LLC is going to do this project it will not be “sitting out there” until everyone is dead and gone and no one remembers anything, but put some period of time as to where Ocean King has to put this program together. His reasoning for selecting a three (3) year deadline is that the monitoring wells have to be in place so that those things are taken care of and the town does not have to worry about this aspect of it and Ocean King can add or attach to it the way they want but the easement area these things would have to be done in a three (3) year period. He noted that Mr. Cooper is requesting a five (5) year period for this deadline and it will be the decision of the Council as to what deadline will be accepted. Mr. Cooper noted the other item for discussion was regarding stormwater. Mr. Taylor advised that he included, everything he could think of, that the town might want to use the easement areas for such as if the town decided to install stormwater systems in one of those same areas the town wanted it understood that the Town could put their utilities in the same location and he from his understanding Mr. Cooper had some concerns regarding this. Mr. Cooper stated that at this time he is not sure as to whether Ocean King would have a problem with this until they proceed to Raleigh. He then asked Marc Schulze, Public Services Director if he felt that the town would be using any part of a blue shaded area on one of the maps displayed for any part of a stormwater system. Mr. Schulze advised that there is already a stormwater system in place and depending on how the construction proceeds in that area, that system may need to be expanded. He noted that currently there are no plans for expansion. Mr. Cooper’s response was such that if there is already a system installed then his question is mute. Mr. Safrit interjected at this time to ask if the installed stormwater system is a infiltration system or just a conveyance line. Mr. Schulze advised it was a conveyance line. Mr. Safrit then responded by stating he feels that the powers to be will state that when they are ready to install the groundwater

monitoring system to get it as close to the fifty foot (50') line as possible and he stated that is where the utility identification will begin to see if they will be able to get it at the fifty foot (50') point or forty nine foot (49') point. Mr. Cooper asked Mr. Schulze if the existing stormwater drain is in the right-of-way of East Drive. Mr. Schulze advised that the drain is on both the east and west side. The main line is on the west side of East Dr. Mr. Taylor at this time, recommended that Mr. Cooper get with his "people" and whoever devised the "as built" to make sure his system will work in the specified areas. Mr. Safrit commented that he did not think this is a very significant issue other than dropping a well into a clean ground. He did want to add a comment regarding the request for a five (5) year timeline is that the permits that are issued from DWQ are normally for five (5) year period also and they were just trying to coincide with DWQ's timelines. Mr. Taylor then stated that he had one last point to discuss. He explained that as the caveats were being read the town only has the authority to grant easements in areas that are town roads. He advised there is some issue as to whether this area is a town or state road. He also noted that he believes there is a deed where DWQ states that the town has given us this easement. Councilmember Briley commented that the dilemma as to who owns the roads has been going back and forth for some time and as far as he is concerned the town owns the streets. Mr. Taylor asked Mr. Cooper is he is ok with all the other terms and conditions in the easements. Mr. Cooper stated that he is. Mr. Taylor then gave, for public purposes, a brief "layman's" explanation of the contract. He advised that the contracts basically state that if the project messes up and the town has to stop the easement even if it means shutting down the project and condemns the properties and if there is any violation of the easement so be it, Ocean King has accepted the responsibility and the town will have to do what the town will have to do. Mayor Pro Tem Archer stated that out of all this discussion the questions at hand are whether a three (3) or five (5) year deadline, the issue of the currently installed storm water pipes running through the specified area and who actually owns the roads. He stated that he will now allow any citizens to speak on the issues at hand.

**Joe Tarascio, 113 Hoop Pole Creed Drive, Atlantic Beach, North Carolina**

Mr. Tarascio commented that on the face he does not have a problem with easements for utilities but he is surprised by the time-sensitive nature to where a meeting had to be called on a holiday prior to any of this being reviewed by the Planning Board and in the absence of the Town Planner. He feels that a multi-million dollar project would not just have stuff "jump up" at it. He's is confused about what could be so time-sensitive in this issue. He noted that he is glad that the town attorney has reviewed the documents and revised to an acceptable means. He asked the question as to whether the town will forfeit anything or any additional property owners that are in the affected easement areas lose any rights in this. He also noted that the easement is part of a compliance boundary but he thinks it means that the town is not only granting the right to run pipes and utilities but is part of something that would be required on this system and he's not sure that this is appropriate as to whether this be part of town property. He also noted that he is quite surprised that the town is monitoring the movement of affluent in the ground. He thought this question had been answered.

**James Willis, III – 104 Atlantic Beach Causeway, Atlantic Beach, North Carolina**

Mr. Willis commented that he understands why Ocean King, LLC is not getting the easement across the mouth of East Atlantic Blvd. because they are just getting it from Buddy, he owns the fee to the street. He also stated, in regards to the ownership of Atlantic Blvd., he will bring the deed and map to the next meeting and hopefully it will relieve Councilmember Briley's disbelief.

Councilmember Briley responded by stating that the issue regarding the streets has been going around and around. He explained that the state had the intent to turn the streets over to Atlantic Beach. He stated he was not conjecture because the town has them but the only problem was that the state never transferred the deed. He feels that the issue of intent will hold up because the town has spent money on and maintained the streets and it's a legal mish-mash and that as far as he is concerned the town owns them. He noted that he will not get tangled up on the issue of ownership and will not spend a vast amount of money to find out who actually owns the streets because as far as he is concerned since the town controls the streets the town owns the streets.

**Andy Blades, 126 East Boardwalk, Atlantic Beach, North Carolina**

Mr. Blades directed his comments to Councilmember Briley. He commented that he feels that it is fool-hearty to sit back and say 'the way I see is that we own it because we put money into it'.

Councilmember Briley's response was such that he feels that every time something comes up there is always a problem over technicalities of who owns what. He explained himself again to say that he is not going to get in the middle of who owns it and that Mr. Blades misinterpreted what he stated. He clarified that what he was saying is that as far as he is concerned in regards to making a decision, he is going to say that the town owns the streets until someone says the town doesn't.

Derek Taylor, Town Attorney requested Mayor Pro Tem Archer as to why the meeting is being held on a national holiday and having to address this issue on this day. Mayor Pro Tem Archer referred the issue over to Mr. Cooper to give an explanation. Mr. Cooper responded with by stating that it is not uncommon for a town council to hold a meeting on a holiday where out-of-town property owners are usually in town during this time and because months and months were spent preparing the application for a wastewater system to submit to the Department of Water Quality. He continued by stating that was asked and required for by the rules. He stated that Ocean King had met several times with representatives from DWQ on site and a pre-meeting, explained what they had and DWQ understood. Then met with DWQ in a "real meeting", delivered the application where Ocean King was granted admission to the express review procedure where if all goes well a permit could be issued in a several weeks as opposed to several months. He stated that two (2) weeks ago, Ocean King met with DWQ who advised that Ocean King need a fifty foot (50') compliance boundary which was brought out of the clear blue sky. He stated that prior to this it was told to him that there was a fifty foot (50') compliance boundary but it could be waived by the neighbors, were directed to the website to download the waiver, instructed on how to revise the wording. Ocean King revised the waiver, got the required signatures of the neighbors, submitted it and then was told that Ocean King will need the fifty foot (50') compliance boundary. He stated that they were quite surprised after accomplishing all of this and was still told that a compliance boundary would be needed which brings them to this called meeting on this date because the deadline to submitting the required information is 5:00p.m. on tomorrow's date, September 2, 2008. He also commented that on a holiday, after hours and with advertising this gave anyone concerned the chance to attend the meeting.

**Joe Goodson, Atlantic Beach, North Carolina**

Mr. Goodson asked whether the town will need the property in question as far as getting down into the aquifer. He does not want us polluting the water because Atlantic Beach has just begun to grow and he hopes the water will be there for this growth. He also asked if there are areas within Atlantic Beach limits where the town can have pure water to drink and this system could poison the water system and ruin the entire beach. He is concerned that this new water system under the current owner or any future owners will not be maintained properly and to the point it poisons the water at some point. Mr. Goodson also asked who is using this system within the state of North Carolina.

Mr. Safrit responded by saying that the state has permitted at least eight of these systems within North Carolina. He continued to speak on the reliability of the system by stating that the water that will be infiltrated will be spread out within the top thirty feet (30') of the surface.

**Joe Tarascio, 113 Hoop Pole Creek Drive, Atlantic Beach, North Carolina**

Mr. Tarascio questioned whether the eight foot (8') a necessary part of the compliance boundary specifically without the eight foot (8'0) easement could they satisfy the compliance boundary on their own property and secondly even though it's been stated that the deadline is tomorrow, September 2, 2008 does not mean it is the only deadline and wants to know if this is an artificial timeline.

Mr. Safrit explained that the eight foot (8') easement refers to the utility line and the fifty foot (50') compliance boundary easement is the second easement which is East Drive.

**Katherine Abbitt, 314 East Boardwalk, Atlantic Beach, North Carolina**

Ms. Abbitt stated that she would feel a lot safer if the town took control of this issue and until everybody understands what's going on, leave it alone.

Councilmember Batt questioned the location of the monitoring wells if they will be placed in the streets. Mr. Cooper responded by stating they have certain amount of discretion as to their locations and they will try to install them. They will try not to install them in the streets but there will be tree planting areas along the streets and try to put them there.

**Steve Chestnut, 302 West Bogue Boulevard, Atlantic Beach, North Carolina**

He wants to be assured that this system will not have any impact on the ability of the town to maintain the water softening system that is currently in place. Marc Schulze responded by stating that it does not.

Councilmember Briley made a motion to grant the two (2) easements to Ocean King, LLC as presented. Motion was seconded by Councilmember Palma. Vote was unanimous, 4-0. Motion carried.

With there being no further business before the Town Council, Councilmember Batt made a motion to adjourn the meeting. Motion was seconded by Councilmember Briley. Vote was unanimous, 4-0. The time was 7:20 p.m.

**(Clerk's Note: A copy of all documents and maps are hereby attached and therefore made a part of these minutes.)**

Submitted by:

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Kelly L. Cyrus, Town Clerk

These minutes were approved at the September 22, 2008 Atlantic Beach Town Council Meeting.

Approved by:

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A. B. Cooper, III, Mayor