



**Minutes**  
**Town of Atlantic Beach, North Carolina**  
**Town Council Special Meeting**  
**Thursday, July 9, 2009**



The Special Meeting of the Atlantic Beach Town Council was held July 9,, 2009 at 6:00 p.m. in the Council Meeting Room.

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

**Members Absent:**

**Others Present:** Pete Allen, Town Manager; Derek Taylor, Town Attorney; Kelly Cyrus, Town Clerk; and Jessica Fiester, Planning Director

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

Mayor Pro Tem Archer made a motion to *approve* the agenda as written. Councilmember Batt seconded the motion. Vote was unanimous, 5-0. Motion carried

**1. Review and Discussion – Draft of Unified Development Ordinance (UDO):**

Mayor Cooper opened the meeting stating that the Council, along with the Planning Director, will be working through some specific areas of the proposed draft of the Unified Development Ordinance, making some minor revisions to those areas of the document and with possible scheduling of the public hearing for adoption of the UDO. The Mayor also noted that public comment will be taken during the review and discussion of the UDO. He explained that Jessica Fiester, Planning Director will begin the discussion by noting the areas of the document for possible changes. At this time, Mayor Cooper gave the floor to Miss Fiester.

Jessica Fiester, Planning Director explained that during the last work session of the UDO with Council, several changes /revisions were suggested and have been incorporated into the document for further Council review. Miss Fiester proceeded to go through the areas that would be up for discussion. The following areas that were up for discussion are as follows:

- Zoning/re-zoning of the “cottage district”
- Zoning of the west side of the town
- Conservation Zone
- Off-premise signage
- Defining the Causeway Overlay District

Mayor asked Miss Fiester to define exactly what the Causeway Overlay District is. Miss Fiester stated that any area that is zone General Business (GB) which is down the Causeway and the first part of east and west of Fort Macon Road. She also noted that any area that is zoned General Business (GB) is eligible, if so choose, for participation in the Causeway Overlay District which offers incentives for providing public uses.

**Conservation Zone** – Miss Fiester stated that Atlantic Beach has never sited an area as a Conservation Zone until recently and the area that is currently zoned Conservation on the west side of Fort Macon Road was believed to be unbuildable so in turn zoned Conservation. Miss Fiester noted that it was recently brought to her attention that several of the lots in this particular area were buildable as deemed by Coastal Area Management Association (CAMA); the Division of Coastal Management and the Army Corps of Engineers, who oversee building in and around wetlands, both coastal and 404. She proceeded further to say that her office has received quite a number of comments from citizens requesting to expand the town’s conservation areas and comments from property owners of lots in the proposed conservation area stating that the town cannot deem the lots that they own in the specific areas as unbuildable because the lots may very well be buildable. Miss Fiester explained that for this particular reason, it was advised that this issue has been removed from the draft document for legal purposes and to allow state and federal agencies to regulate the build ability in those areas.

Derek Taylor, Town Attorney made additional comments on the legal side of this issue by explaining that if such an area was inserted into the Unified Development Ordinance may hurt the town. Mr. Taylor backed up his statement by explaining that conservation zones that are so restrictive as to take away basically all the use of the property from a property owner sets the town up for possible litigation which is referred to as “takings”, essentially condemning land without paying someone for it. He further explained that it is unfair to place all of the benefits of the public on single property owners. In essence, although it would be good for all of Atlantic Beach to deem a specific area a Conservation Zone never to be developed, the Town would be saying, ok, you as a land owner, are going to have to bear the burden of that benefit for the entire public and that is considered not to be a lawful “taking” of the property. In regards to regulatory takings, a rezoning restriction cannot deprive an owner of virtually all of the beneficial use of his property and generally if a piece of property is rezoned and the property now has no practical use or reasonable value then the Town has taken the property’s value and the Town must pay for that value. Mr. Taylor explained that this would set the town up for potential liabilities of being sued in an “Inverse Condemnation Suit”. He further noted that there are “safety catches” for the town as to where, if the property owner desire to build on these types of lots, they would have to adhere to the CAMA regulations; 404 wetlands regulations, etc. and obtain the permits from these organizations as to whether or not it is permissible to build anything on their lots and that these agencies have much more resources to fight these types of battles than the town. Mr. Taylor strongly suggested that the Town leave this issue to the agencies that regulate those areas.

Miss Fiester proposed that the areas appearing to be “wetlands” be zoned Resort Services (RS).

Councilmember Palma read a statement she advised was told to her via telephone by Ted Tyndall, Assistant Director of the Permits of Environmental Concern with the Coastal Area Management Association (CAMA) where he stated that the areas in questions are, in fact, already clearly designated and protected as coastal wetlands & marsh lands by CAMA with no chance of the areas being built upon.

**Knollwood Neighborhood** – Miss Fiester brought Council’s attention to the proposed zoning within the Knollwood neighborhood where it has been proposed to change the zoning on the west side of Town from Fairview to Pelican from R1-M (allows mobile homes & single family stick-built homes) to R1-7 (does not allow new mobile homes); Knollwood through Lee at R1-M; and the north side of Knollwood to R1-7.

No questions or comments were heard from either Council or the town attorney on these proposed changes.

**“Cottage Districts” (neighborhoods east and west of “the circle”)** – Miss Fiester emphasized that these areas are not special or overlay district, it is just a zone and they were originally zoned Residential 2 (R2) which allows single family homes and duplexes. She advised that her office received a significant amount of feedback requesting that the areas be zoned single family only and received just as much feedback requesting to continue the allowance to build duplexes. Miss Fiester proposed to revert back to her and the UDO committee’s original recommendation of zoning these areas R2 which would allow both duplex and single family stick-built homes. Miss Fiester did note that it is not recommended to set any type of design standards on duplexes in these areas because if that is done then this standard would have to apply to all duplexes across the town, not just these areas.

Mayor Pro Tem Archer noted that he has personally spoken with residents of oceanfront homes to the east and west of the circle and it was the general consensus to keep this area’s zoning as single family only. Councilmember Briley pointed out also that the residents of Club Colony are requesting that the zoning be kept to single family only with absolutely no allowance for duplexes, triplexes, etc. Mayor Cooper and Miss Fiester explained that there is not any proposed thought for change to the zoning of the Club Colony Drive whatsoever.

Derek Taylor, Town Attorney made a suggestion to Council in regards to an additional change that took place where street design standards were removed from the document and new streets will be subjected to approval of the Technical Review Committee. The attorney’s suggestion is that the Town find a standard street that would be acceptable to take into the town as a town street meaning that if the town is ever faced with the option of taking over a private street as a town street that street would have to meet the required street design standards before the transaction could take place.

**PUBLIC COMMENT:**

**Tom Lenweaver, 107 Island Quay, Atlantic Beach, NC**

Mr. Lenweaver presented to Council a petition from various residents and property owners in and of Atlantic Beach requesting an amendment to the proposed draft Unified Development Ordinance (UDO). Mr. Lenweaver proceeded to explain the requested amendment as a change in the zoning classification from Resort Service (RS) to Conservation/Open Space (C) for the salt/brackish marsh lands within the corporate town limits bordered on the west by 81/2 Marina development, on the south by Island Quay and East Fort Macon Road, on the east by Triple S Marina, and on the north by Bogue Sound.

Mr. Lenweaver requested the town to really look at the areas that should be zoned as Conservation and rule on the zoning the area as such, to make a zone reflect its use. He also questioned as to how a town can fairly compensate a property owner monetarily for a parcel that has no value to begin with. Mr. Lenweaver commented that zoning an area as Resort Service (RS) is a “catch-all” and an easy way out.

**(Clerk’s Note: the petition is hereby attached and therefore made a part of these minutes.)**

**Joe Tarascio – 113 Hoop Hole Creek, Atlantic Beach, NC**

Mr. Tarascio first spoke on the issue of Conservation zoning. He commented that the town should identify property that is valuable and which is unusable and zone the properties accordingly and not use a blanket zoning classification for an area. He also noted that there is a possible incentive for the town to where if there is no real use or monetary gain for a property and it cannot be offered as a conservation easement to the state, the town could acquire the property for little or no money as zone as Conservation. The town would not be “bullying” the minority/individual and it would be a fair incentive to all.

Mr. Tarascio also noted several other areas of concern he has with the proposed draft of the Unified Development Ordinance (UDO). Those concerns being:

- Road frontage for lots will change from fifty feet (50’) to twenty-five feet (25’) – can the twenty-five foot (25”) requirement be applied anywhere, not just flag lots?
- No mention of fee amounts in the document – are the fees for reviews and permits going to remain the same?
- If a permit is not required, then why is the issuance of a Certificate of Occupancy based on an inspection process?
- Temporary storage – is this issue that complex?
- Encroachments – encourages town to make encroachments as difficult as possible to obtain by the public.
- Forbidding septic fields and setbacks – advises town to be careful with the smaller lots.
- Requesting the town to be careful it is not practicing contract zoning.

At this time, Mayor Cooper read into the record for Public Comment an email received from Jim Exum.

**(Clerk’s Note: email is hereby attached and therefore made a part of these minutes.)**

**Mary Jo Jefferson, 117 Club Colony Drive, Atlantic Beach, NC**

Mrs. Jefferson commented that she is against any multi-family dwelling in the Club Colony area. She also questioned as to how a citizen is informed about town meetings that are scheduled.

**Zachary Taylor – absentee landowner, New Bern, NC**

Mr. Taylor stated that he has a technical question regarding the Administrative Review process and referenced the language in Article 4, page 4-18, paragraph C under 4.5.5; Permit Revocation and stated that he is not sure what this particular section applies to whether it is applies to subdivisions or building permits for single family housing. He felt that in his opinion, the permit holder needs to be able to cure the problem before the permit is revoked. He asked the question as to whether it is “understood” that there is a “cure period” allowed or if it needs to be specified. Mr. Taylor made the suggestion to Council to specifically insert language to the fact that there is a “10-day cure period” prior to the revocation of a permit.

**Jim Willis, III – 104 Atlantic Beach Causeway, Atlantic Beach, NC**

Mr. Willis made the suggestion to print information about joining the Sunshine List on the back of the town's monthly water bills so that citizens will be notified of future scheduled meetings.

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

Mr. Rice commended and thanked the Council on the additional changes that have been made to the draft Unified Development Ordinance (UDO) since its presentation to the Council for adoption a couple of months back.

Mayor Cooper called for a ten (10) minute recess. The time was 7:30 p.m.  
Mayor Cooper reconvened the meeting at 7:40 p.m.

At this time, Mayor Cooper called for Council discussion on the proposed changes and comments that were presented in order to give specific direction to the UDO administrator.

Mayor Cooper began by directing Jessica Fiester, Planning Director/UDO Administrator to, at staff level, look at the concerns of Mr. Tarascio and Mr. Taylor and to handle accordingly. The Mayor proceeded to address the larger concerns and to give direction on those issues. The concerns and direction are summarized below:

**Causeway Overlay District:**

- Prior concern – to define this district
- Correction made – district was defined in this draft of the ordinance

**Knollwood Neighborhood:**

- Prior concern - zoning that included mobile homes
- Forward direction given – to zone a portion of this area as Single Family without Mobile Homes
- General consensus of Council – yes

**“Cottage Districts”:**

- Prior concern – zoning of structures on north and south side of Boardwalk
- Forward direction given:
  1. change the zoning of Residential 2 (R2) to Residential 1 (R1) with five foot (5”) setbacks on the north and south sides of Boardwalk
  2. investigate Atlantic Blvd., east and west of the “circle” area to determine if it should be zoned Residential 1 (R1) or if the lots were large enough to remain zoned Residential 2 (R2).
- General consensus of Council – yes

Prior to giving forward direction on the issue of whether or not zoning specific areas as Conservation, each Councilmember gave input as to their views on these areas.

Councilmember Ide felt that the town needs to take advantage of the privilege bestowed upon them to provide conservation areas within the town limits.

Councilmember Briley felt that the adoption of the Unified Development Ordinance should be at the forefront for action and in moving forward with the adoption of the ordinance feels that the areas of concern as related to conservation can be protected until at such time the Council can further research those areas and zone them as they should be.

Councilmember Palma felt that it would be “overkill” to zone the areas in question as Conservation zones due to the statement of reassurance she quoted from a member of the Coastal Area Management Association and that these areas are already viewed as unbuildable.

Mayor Pro Tem Archer felt that a meeting with a representative from the Coastal Area Management Association to look at these areas and identify their usability prior to any zoning that takes place.

**Conservation Zones:**

- Prior concern – to determine what areas should be zoned Conservation

Forward direction given:

1. change the zoning of a parcel that is west of the north side of Island Quay from Resort Service (RS) to Residential 1-7 (R1-7)
2. schedule a meeting with Mr. Ted Tyndall to identify these areas and report back to Council at the next scheduled meeting.

Councilmember Briley felt that the fee amounts should be included as a reference to the Unified Development Ordinance (UDO) and to check on the setbacks before adding any language into the ordinance.

Councilmember Palma suggested that invisible fencing be included as a type of fence in the language of Article 7-3; Design and Performance Standards; Fences

Councilmember Briley made to motion *to schedule* a public hearing on the proposed Unified Development Ordinance at the August 24, 2009 Town Council meeting. Councilmember Palma seconded the motion. Vote was unanimous, 5-0. Motion carried

Mayor Pro Tem Archer made a motion *to adjourn* the meeting. Councilmember Batt seconded the motion. Vote was unanimous, 5-0. Motion carried. The time was 8:18 p.m.

#### **ADJOURNMENT**

There being no action taken nor any further business before the Town Council, Mayor Cooper adjourned the meeting at 8:18 p.m.

Submitted by:

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Kelly L. Cyrus  
Town Clerk

These minutes were approved at the July 27, 2009 meeting of the Atlantic Beach Town Council.

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Harry Archer, Mayor Pro Tempore