

**Minutes
Town of Atlantic Beach, North Carolina
Town Council Meeting
Monday, March 21, 2005**

The regularly scheduled meeting of the Atlantic Beach Town Council was held Monday, March 21, 2005 at 6:00 p.m. in the Council Meeting Room.

Members Present: Mayor Eddie Dawkins; Mayor Pro Tem Doug Creech; Council Members Harry Archer, Jim Bailey, Tom Doe and Christie Roberson

Members Absent: None

Others Present: Chuck Cooper, Town Manager; Derek Taylor, Town Attorney; Scott Kilpatrick, Police Chief; Marc Schulze, Public Works Director; Lee Smith, Planning Director; Leslie H. Eldredge, Town Clerk

CALL TO ORDER AND ROLL CALL

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

PRAYER AND PLEDGE OF ALLEGIANCE

Mr. Herbert Pate led the assembly in the prayer and Pledge of Allegiance.

APPROVAL OF THE AGENDA

Councilman Doe moved to approve the agenda as presented. Councilman Archer seconded, and approval was unanimous, 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.

1. Tax Releases (\$545.54)

The Tax Collector submitted the following 2004 tax releases for approval:

a.	Conseco Finance Vendor	\$ 73.07	Double billed – Acct No. 50435
b.	Coronado, Jeff	\$ 16.45	Double billed – Acct No. 363804
c.	Harrison, Brenda	\$ 15.22	Double billed – Acct No. 386069
d.	Okalimeras, Inc.	\$ 440.80	Billed in error

2. Tax Collection Report for February 2005 (FYI Item)

Ms. Buda submitted the tax collection report for February 2005 which showed that \$28,224.62 had been collected. The year-to-date collection total for 2004 at the end of February was \$1,909,437.86 (97.61%).

3. Budget Transfer (FYI Item)

NCGS Section 159-15 allows the Town's Budget Officer (the Town Manager) to make periodic budget transfers from one line item to another within the same fund. While these transfers do not affect the total budget, the statute requires that the Council be notified of the transfers at its next scheduled meeting following the transfers.

Council was notified that \$1,200 was transferred from the Administration Department's Health/STD/Life Insurance line item to the Supplies line item to cover expenses required for the remainder of the year. The transfer was completed in March.

4. Resolution No. 05-03-01, "Resolution Authorizing Membership in the Down East Rural Transportation Planning Organization"

At its March 7, 2005 work session the Town Council was informed of the advantages of membership in the Down East Rural Transportation Planning Organization (RPO). Municipalities that participate in an RPO might get preference for grant monies from the North Carolina Department of Transportation. Morehead City, Emerald Isle, Pine Knoll Shores and Bogue currently participate in the Down East RPO. The Town Manager or his designee will represent the Town of Atlantic Beach on the Rural Technical Coordinating Committee of the Down East RPO.

5. Resolution No. 05-03-02, "Resolution Designating Official to Sign Papers and to Otherwise Represent the Atlantic Beach Town Council in Connection With Mosquito Control"

This resolution designates the Town Manager as the official designated to sign papers, carry out agreements, and perform all other acts that are proper and necessary in connection with mosquito control program of the Division of Environmental Health, North Carolina Department of Environment and Natural Resources.

6. 2005 Assistance to Firefighters Grant

As discussed at the March 7 work session, the Atlantic Beach Fire Department has the opportunity to apply for a grant from the Federal government for needed equipment that

requires a minimal 5% match on the part of the Town. The total grant request will be \$84,961 budgeted for FY 2005/06 as follows:

Town request	\$68,561.00
Town 5% match	\$ 3,428.05
Volunteer FD request	\$16,400.00
Volunteer FD 5% match	\$ 820.00

Councilman Archer moved to approve the Consent Agenda as presented. Councilman Creech seconded, and the Consent Agenda was approved by a unanimous vote of 5-0. (**Clerk's Note:** Copies of Resolution Nos. 05-03-01 and 05-03-02 are incorporated herein by reference and hereby made a part of these minutes.)

CITIZEN REQUESTS/COMMENTS

James N. Willis III, 104 Atlantic Beach Causeway, Atlantic Beach, NC: Mr. Willis walked from the Triple "S" pier to the Circle yesterday and said that the beach from the beginning of the nourishment area to the Dunes Club had the greatest density of mudballs that he had ever seen in his life. He thinks the beach was so wide offshore that some of the mudballs were covered up and now they are being washed up on shore. From the beginning of the nourishment about 500 feet west of Triple "S" and heading west for about 1,000 feet (Councilman Doe said between MP markers .7 and .9), there are a lot of stones and pieces of metal in the sand at the high water mark, and he asked if the Town would get them picked up.

Councilman Creech asked Mr. Willis if dragging the beach would help break up the mudballs or if they would just go away in time. Councilman Doe said that it is best to let them dissipate naturally. However, if people would carry the mudballs up to the high tide line when they come across them, the Town could pick them up since the Town routinely patrols that area for trash.

ACTION AGENDA

- 1. Public Hearing – Proposed Amendment to Chapter 13, Planning and Development, Article II, Planning Board, of the Atlantic Beach Town Code – Town Attorney**

Councilman Creech moved to enter the public hearing regarding the proposed amendment to Chapter 13, Planning and Development, Article II, Planning Board, of the Atlantic Beach Town Code. Councilman Doe seconded the motion, which carried unanimously, 5-0.

The Town Attorney explained that this is a “housekeeping” action. The Town of Atlantic Beach used to have an extraterritorial jurisdiction (ETJ) but does not have one now. One of the members of the Planning Board was appointed as an ETJ member by the Carteret County Board of Commissioners. Since there is no longer an ETJ, an ETJ member is not required. Mr. Taylor prepared an ordinance to amend the Town Code to eliminate the ETJ member of the Planning Board and replace that member with an in-town member. The Planning Board will remain at seven (7) members with staggered three-year terms. The terms of four members will expire on December 31, 2005 and the terms of three members will expire on December 31, 2007.

There were no one signed up to speak at the public hearing. Councilman Creech moved to go out of the public hearing, Councilman Archer seconded, and the motion carried by unanimous vote of 5-0.

Councilman Archer moved to adopt Ordinance No. 05-03-01, “An Ordinance Amendment Chapter 13, Planning and Development, Article II, Planning Board, Sections 13-22 and 13-24, of the Code of Ordinances of the Town of Atlantic Beach, North Carolina. Councilman Doe seconded the motion, which carried by unanimous, 5-0, vote.

2. Public Hearing – Proposed Amendment to Chapter 18, Zoning, Section 18-204, Ground Sign, of the Atlantic Beach Town Code – Planning Director

Councilman Creech moved to enter the public hearing regarding the proposed amendment to the ground sign ordinance. Councilman Archer seconded, and the motion carried unanimously, 5-0.

After the joint Town Council and Planning Board work session on January 12, 2005, several additional items were identified that needed to be addressed with regard to the ground sign ordinance. Staff revised the ordinance and copies were provided to the Council and the Planning Board. The Planning Board reviewed the revised ordinance at its February 1, 2005 meeting and made one small revision, *i.e.*, deletion of the reference to the permit fee at the end of the ordinance. (Permit fees are already contained in the fee schedule which is adopted annually as part of the budget ordinance.) The Planning Board voted unanimously to forward the revised ordinance to the Town Council with a positive recommendation.

Planning Director Lee Smith said that the new language limits the number of ground signs for individual businesses and for larger complexes. Off-site and off-premises advertising was

reviewed and a variation was created where ultimately a ground sign has to be on a parcel where a business is operating. If that business wants to allow some off-site advertising for another business, a portion of signage (up to one-half) could be donated for off-site advertising for the other business.

Steve Thrift, Lamar Outdoor Advertising, Rocky Mount, NC: Mr. Thrift lives in Wilson, NC. His company owns a billboard at the intersection of Durham Avenue and NC Highway 58, which the company acquired from Mako Media in September 1999. Lamar's Operations Manager was in the market because there are certain standards in their industry that they must meet, especially with the newer steel boards or anything that is in the ground that is steel. What they wanted to do with the billboard in Atlantic Beach is sleeve the existing pole because it is steel and it is corroded, and redo some of the infrastructure that is inside the structural makeup of the sign. This would fit under the existing sign ordinance because the sign is 8 feet by 20 feet (160 square feet), which is 20 square feet less than the 180-foot limit of the existing ordinance. Most (99%) of the billboards they do follow industry standards, ranging anywhere from 14 feet by 48 feet (672 square feet) down to 10 feet by 22 feet (220 square feet). He said any time a sign ordinance is altered, there will be at least one sign company that is unhappy, and "he happens to be it." He wanted to go on record that his company will essentially lose its sign in Atlantic Beach because under the new ordinance, they will not be able to repair it and make it structurally safe, and rather than leave up an unsafe structure, they would take it down. He wanted to go on record that "they hate to lose billboards."

Councilwoman Roberson asked Mr. Thrift about the term "industry standard." Mr. Thrift replied that Lamar belongs to the Outdoor Advertising Association of America and the North Carolina Outdoor Advertising Association. By "industry standard," he is referring to nationwide standards. The top of that tier is 14 feet by 48 feet and the bottom is 10 feet by 22 feet for single-pole steel structures. Councilwoman Roberson asked if there was an industry standard for pricing, and Mr. Thrift said there was not. His company's prices are based on the market area. For example, a billboard in Raleigh would cost more than a billboard in Morehead City.

Councilman Bailey moved to go out of the public hearing. Councilman Creech seconded, and the motion carried by unanimous, 5-0, vote.

Councilman Archer, seconded by Councilman Bailey, moved to adopt Ordinance No. 05-03-02, "An Ordinance Amending Chapter, Zoning, Section 18-204, *Ground sign*, of the Atlantic Beach, North Carolina Code of Ordinances." Approval was unanimous, 5-0.

3. Planning Board Report – Planning Board Chairman

The Planning Director reported on behalf of Chairman Joe Tarascio, who was unable to attend this evening's meeting. Mr. Smith said that the Planning Board's only agenda item was the Town's Land Use Plan Update. The Planning Board is still doing background work which should be finished by May. After completing the background work, the Planning Board will start working on policies and possible courses of action for the second phase of the plan update, which will begin in mid-summer.

Councilman Archer asked if they had received any input from citizens and Mr. Smith said yes. Every meeting is open to the public, but there was one meeting that the consultants specifically invited everyone to (written invitations were mailed). There was not a big turnout, but the Planning Board did receive a lot of good comments from citizens. Councilman Doe said that the consultants need to figure out a way to get more people to attend the public hearings that will be required during this process. Councilman Archer said that the Carteret County Planning Commission held an open house. They printed 8 x 10 posters and distributed them to churches and businesses in an effort to increase attendance.

4. Appointments to Planning Board and Board of Adjustment – Town Clerk

The Town Clerk reported that there are currently two vacancies on the Planning Board due to the resignations of Ellen Womer and Dewey Bordeaux, and one vacancy on the Board of Adjustment for an alternate position due to the appointment of Vada Palma to the Planning Board. The two Planning Board terms would end on December 31, 2005 and the Board of Adjustment term would end June 30, 2007.

Councilman Archer nominated Trace Cooper to the Planning Board to serve until December 31, 2005. There were no other nominations. Councilman Doe moved that the nominations be closed and that Trace Cooper be appointed to the Planning Board by acclamation. Councilman Creech seconded, and approval was unanimous, 5-0.

Councilman Doe nominated Jim Womer for the second open seat on the Planning Board. Councilman Archer nominated George Bailey for the same seat, and Councilwoman Roberson nominated Norman "Monk" Livengood. Councilman Creech stated he would like to postpone the vote on these nominations until he had a chance to talk to two candidates he had not been able to reach. He then moved to table consideration of the Planning Board appointment and the Board of Adjustment alternate appointment until April 18, 2005. Councilwoman Roberson seconded the motion, which carried by unanimous vote of 5-0.

Councilman Archer noted that there are currently four alternates on the Board of Adjustment. He has spoken with the Chairman of the Board of Adjustment, and they both agree that four

alternate members are enough. Councilman Doe reminded the Council members that they had recently authorized up to five alternate members, but did so with the understanding that the Council would not be compelled to appoint five.

5. Parking Meters – Town Manager

Mr. Cooper provided an updated Schedule of Parking Fees for consideration by the Town Council which reflects the revisions made by the Council at its March 7, 2005 work session (eliminate meters on East Drive, West Drive and Central Drive and eliminate 30-minute parking spaces).

Councilwoman Roberson, seconded by Councilman Creech, moved to adopt the Schedule of Parking Fees as presented.

Councilman Creech confirmed with the Public Works Director that the handicapped parking spaces would remain. Councilman Archer spoke against elimination of the parking meters because of the loss of revenue for the Town. The parking meter revenue helps offset the costs associated with maintenance of the streets and parking lots in the metered areas and other services provided by the Town at the Circle. He suggested dispensing with the parking stickers, keeping the meters on East and West Drives and New Bern Avenue, and keeping the meters at the CAMA beach access. While Councilman Doe said he was afraid of what the Council would be looking at from a budget standpoint, he thought Councilwoman Roberson's suggestion had merit. He pointed out that crowds draw crowds, and if there is a certain amount of free parking available, people will visit the Circle all summer long and it will not look empty. If it looks like a busy place, that will attract more people. The public will be happier if they do not have to pay for parking on the Circle, more people will visit the Town, and he believes in the end the Town will realize the same amount of income as it would if the Town kept the parking meters. Councilman Archer said he respected Councilman Doe's opinion; however, if that is the philosophy being followed, then he suggests doing away with all parking meters except those on New Bern Avenue. He does not believe that if the parking meters are removed, the Town would receive revenues enough to offset the expenses for operating the Circle.

Mayor Dawkins called for the vote on Councilwoman Roberson's motion. The motion carried by a vote of 4-1, with Councilman Archer voting in the negative.

6. Replacement of Rescue-2 Pickup Truck (Fire Department) – Town Manager

Mr. Cooper told the Council that he and Fire Chief Adam Snyder had further investigated alternatives to the replacement pickup truck proposed during the March 7 work session. They assessed alternative vehicles on the North Carolina State Contract Website and re-canvassed

local dealers. As a result, they were able to save approximately \$1,000. The original proposal for a 2005 Silverado 2500HD was \$24,989.38 and the proposed alternative truck, a 2005 Silverado 1500HD, could be obtained for \$23,980.88. They received a late quote earlier today for a local dealer, and that quote is \$24 higher than the State Contract price for the 1500HD from a dealer in Raleigh.

Mr. Cooper recommended purchasing the less expensive truck. He said basically the question is whether to purchase that truck through the State Contract program or pay \$24 extra to buy it through the local dealer.

Councilman Bailey asked about undercoating, and Councilman Archer said he does not know of a dealer in North Carolina that will undercoat a vehicle now. Councilman Archer asked Mr. Cooper if the vehicle would be financed and if so, what type of financing did he plan to use. Mr. Cooper said he had not investigated financing yet, as he was waiting for Council approval to purchase the vehicle first. He and the Council members agreed that financing was the best way to purchase the vehicle. Councilman Doe was still displeased that no action had been taken about the current vehicle which failed at 45,000 miles. He was also displeased that the Town's business could not be planned well enough to purchase within the budget buying cycle. Finally, he said that the Town should purchase the vehicle locally.

Councilman Bailey said he would like the Town Manager and the Fire Chief to determine a way to launch the jet ski into the breakers without taking the truck into the water. Councilman Creech had talked to some boat dealers about this, and they had offered several suggestions, including use of a 10-foot tongue, use of a bounce wheel halfway up the tongue, and larger tires on the trailer.

Councilman Bailey moved that the Town purchase the 1500HD truck from the local dealer through installment purchase. Councilman Creech seconded, and the motion carried by unanimous vote of 5-0.

7. Petition to Close Central Drive – Town Attorney

Mr. Taylor said the Town had received a petition from FMB, Inc. to close at least a portion of Central Drive, which is bordered on either side by property owned by FMB. There is a statutory procedure for closing a roadway, and the first step is for the Town Council to make a determination to publish its intent to close Central Drive. He has prepared a Resolution of Intent, which puts the public on notice that the Council is making the potential of closing Central Drive and sets a public hearing date for April 18, 2005 at 6:00 p.m. The resolution must be published once a week for four weeks prior to the hearing. Signs must be posted on the property along the roadway to be closed, and notice must be mailed to the adjoining property owners, in this case FMB. After expressing and publishing its intent to close the

street, the next step would be to hold a public hearing. The Council must consider make two findings: (1) that closing the road is not contrary to the public interest, and (2) that no individual is deprived of any reasonable ingress and egress to his/her property.

Councilman Doe asked why the map line drawn to show the portion of Central Drive that will be closed does not extend to the end of the dogleg that goes to East Drive. Mr. Taylor said no one knows who owns that little piece of land; it is not in the property of FMB's descriptions. It is a piece of dirt that, as far as he can tell, is essentially a median in the roadway. If it is, then the Council may want to consider closing the road all the way to the point where East Drive becomes a parallel line going out.

Mr. Taylor suggested one modification to the Resolution of Intent. In the third "Whereas" paragraph, the language should read "the Town Council would like to consider permanently closing *all or the majority of* said street." Likewise, in the paragraph numbered 1, the language would state that the Council "declares its intent to close *all or the majority of* Central Drive . . ." This would give him time to try to determine if anyone has an ownership interest in that small spit of land.

If the Circle redevelopment project does not go forward, asked Councilman Doe, is there a reversion clause in the contract of sale between the Town and Mr. Bunn for the Circle properties that would cover putting Central Drive back into public dedication. Mr. Taylor replied that if the Town closes Central Drive, the only way it could get it back is if it were rededicated to the Town. Even if such a clause was in the contract, the General Statutes vests it in the adjoining property owners upon the closing of the street. The Town could not get it back without a deed or some other process external to anything that could be done in the contract. Councilman Doe asked how it could be done, and Mr. Taylor said he knows of no good way except to perhaps make an arrangement with FMB, Inc. to deed it back. It could not be done by reversion. Councilman Doe said he would like something like that put in place, if Council agrees with him, because he feels Central Drive is critical to control of any Circle project. It is not in the contract, stated Mr. Taylor, and if the Town closes Central Drive, it is permanently closed. Councilman Doe said closing the street is one of the conditions of the contract and he has no problem with closing it and turning it over to FMB if Mr. Bunn plans to start construction right away. However, if Mr. Bunn is not going to actually start working on anything until the fall or winter, it would be nice to be able to keep the street open as long as possible and available to the public for parking or other purposes, even though the paperwork may be different.

Attorney Neil Whitford, 710 Arendell Street, Morehead City, NC: Mr. Whitford addressed the Council on behalf of FMB, Inc. With respect to Councilman Doe's last question, the contract provides that until the construction actually starts, Central Drive will remain open. With regard to the question about reversion of the closing of Central Drive,

Mr. Whitford said that is something that FMB and the Town can discuss to see if it can be worked out.

Mr. Whitford commented that closing Central Drive has been a part of the redevelopment project from the very beginning. There are many essential components to Circle redevelopment and over the next months, FMB will no doubt be appearing before the Council as it moves certain aspects of the project forward. The closing of Central Drive is a key component of the redevelopment and of the phase that is beginning to start very soon, and FMB asks that the Council start the process tonight by adopting the Resolution of Intent to Close Central Drive.

Councilman Creech moved to adopt Resolution No. 05-03-03, "Resolution of Intent to Close Central Drive" with the adjustment that the third "Whereas" paragraph shall state that "the Town Council would like to consider closing *all or a majority of* said street" and in the paragraph numbered 1, the language would state that the Council "declares its intent to close *all or the majority of* Central Drive" Councilman Archer seconded the motion, which carried unanimously, 5-0.

TOWN MANAGER'S REPORT

TOWN ATTORNEY'S REPORT

MAYOR/COUNCIL REQUESTS/COMMENTS

Councilman Doe said that installation of sand fence is the next step after beach nourishment. He has been getting a lot of contacts on it and has done this in the past as a private business enterprise with Council approval and support. Since he is now a Council member, he does not feel it would be appropriate this time for him to solicit business that is Town-related. His first step was to identify a candidate he felt could do the project, do it correctly, and do it cost effectively, and he has found someone. He provided Council with a proposed sand fence plan so they would understand his objective, and said he wanted to get preliminary approval from the Council. If the Council members are comfortable with it, in about a month he would come back to the Council with specific pricing and would introduce the person who would be doing the work so they could answer any questions the Council might have. His preliminary sand fence plan is as follows:

1. Except for precise design and location on beach, project to be much the same as in 1986 and 1993-94.

2. Project done in the private sector with Council approval and support.
3. As in the past, project to be privately funded in front of private property, Town funded in front of Town and public property.
4. In order to avoid a conflict of interest, Councilman Doe will not have a financial interest in this project except for a possible loan to fund the initial purchase of materials.
5. A qualified and competent contractor has been identified and will be introduced to Council at such time as the final project proposal is brought to Council, hopefully within the next couple of weeks.
6. Past experience has shown that overwash on a seven-foot beach is sufficient to keep sand fence knocked down and vegetation salt poisoned. The plan is to install sand fence along the escarpment up to the grade of the high beach (12-foot elevation). With Mother Nature's cooperation, the captured sand dunes will be planted next fall with rye grass and with sea oats over that in the spring. Natural spreading of the already existing sea oats at the top edge of the escarpment, may make planting necessary.
7. Sand fence to be installed with 50-foot by 4-foot sections running northwest to southeast, facing prevailing southwest winds. Parallel sections run every 40 feet down the beach. Sand fence sections will start at or near the top of the escarpment, running southeast down the escarpment and out on to the tidal washed beach. Due to the seven-foot beach elevation for this project, there is not enough space to run a second row of fences, facing in the opposite direction, as was done in the past. Due to the meandering nature of the natural escarpment, this project will require sight-specific design work.
8. Participation is voluntary. If any owners would like to do the work themselves or by their staff, contractor will, at no cost, meet with the owners to show them where to put their fence to blend into the pattern.

The Town's Building Inspector, who is also the Town's CAMA officer, can issue a project permit, but does not have to issue individual permits. There would be no charge for sand fencing permits. Councilman Doe recommends putting up screening to stop the blowing sand while the fence is being installed. The sand fence will be just on the other side of the row of trash cans that are 65 to 80 feet from the water.

Councilman Archer asked the Public Works Director for the status and time frame report on the Durham Avenue beach access facility, and whether it would be built by summer. Mr. Schulze deferred to the Town Attorney because there is a pending legal issue raised by one of the adjoining property owners. Mr. Taylor explained that this property owner claims that access to his garages would be limited or cut off if the construction was raised to a point where it was more than ground level. People are driving over what is currently there to access the garages. The issue is whether or not the property owners have a right to use this right-of-

way to drive into their garages. Councilman Archer said he knows the property owner they are talking about and the last time this issue came up, when the access was built, the contractor stayed away from the area where the owner is located so the owner could get a vehicle under the garage if necessary. Mr. Taylor has reviewed the grant application and the title opinion provided by Mr. Whitford's office, and has discussed the opinion with Melissa Berryman, an associate in Mr. Whitford's office. There are "some loose ends to be dealt with," he said, but they are being worked on.

Councilman Archer asked Mr. Schulze to meet with the Police Chief to determine whether there are any shrubs that need to be pruned at any street corners, especially at 4-way intersections, for visibility and safety purposes before the summer season begins.

Mayor Dawkins said he thinks that the Town Council needs to consider staggered terms for Council members.

CLOSED SESSION

Consult With Town Attorney re Matters Protected by the Attorney-Client Privilege or Potential Litigation Pursuant to NCGS Section 143-318.11(a)(3)

Councilman Creech moved that the Council enter closed session in accordance with North Carolina General Statute Section 143-318.11(a)(3) to consult with the Town Attorney regarding matters protected by the attorney-client privilege and to consider and give instructions concerning a potential or actual claim, administrative procedure or judicial action or potential litigation. Councilman Doe seconded, and the motion carried unanimously, 5-0.

Mayor Dawkins called for a break in the proceedings at 8:11 p.m. The meeting was reconvened at 8:20 p.m. and the Council entered closed session immediately.

The Council reconvened to open session at 9:00 p.m.

ADJOURNMENT

Councilman Doe made a motion to recess the meeting to 4:30 p.m. on Tuesday, March 22, 2005. Councilman Creech seconded, and approval was unanimous, 5-0. It was 9:09 p.m.