

**Minutes
Town of Atlantic Beach, North Carolina
Town Council Meeting
Monday, April 18, 2005**

The regularly scheduled meeting of the Atlantic Beach Town Council was held Monday, April 18, 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; 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 Archer moved to accept the Consent Agenda and the Action Agenda as presented. Councilwoman Roberson 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 (\$115.60)

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

a.	Gay, Richard	\$ 38.57	Sold in 2003
b.	Henry, Wayne	\$ 16.51	Billed in error
c.	Johnson, David	\$ 14.43	Located in Newport
d.	Miedema, Carol	\$ 46.09	Value incorrect

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

Ms. Buda submitted the tax collection report for March 2005 which showed that \$17,432.78 had been collected. The year-to-date collection total for 2004 at the end of March was \$1,926,870.64 (98.51%).

3. Budget Transfers (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 the Fire Department transferred \$800 from the Christmas Bonus line item, \$781 from the Staff Physical Exams line item, and \$1,219 from the Other Insurance line item (total of \$2,800) into the Uniforms line item (\$1,000) and Vehicle Maintenance line item (\$1,800) for the purchase of uniforms for new staff members and for the summer season, and for the annual ladder testing for the fire trucks. The transfer was completed in April.

The second transfer was for Public Works (Streets) to transfer \$1,800 from the Maintenance and Repair Equipment line item to the Other Insurance line item (\$1,323) and the Workers' Comp line item (\$477) to cover liability and workers' compensation insurance deductibles. This transfer was also completed in April.

4. Ordinance No. 05-04-01, "An Ordinance to Repeal the Moratorium on Ground Signs Advertising Off-Premises Matters in the Town of Atlantic Beach, North Carolina"

The moratorium was no longer necessary because the ground sign ordinance had been rewritten and adopted by the Town Council.

5. Resolution No. 05-04-01, "Resolution Regarding Contributions to the State 401(k) Retirement System"

On March 22, 2005 the Town Council adopted Resolution No. 05-03-05 which amended the Town's personnel policy to provide for a percentage contribution of each full-time employee's salary to the State 401(k) supplemental retirement plan after length of employment exceeds one (1) year, and to provide that the percentage would be the same for all employees.

Under the terms of the Town's 401(k) retirement plan, the waiting period for the supplemental 401(k) retirement plan must match the waiting period for an employer's primary retirement plan. Unlike the Mutual of Omaha retirement plan, the Local Government Employees' Retirement System plan does not have a waiting period. Resolution No. 05-04-01 removes the language regarding a one (1) year waiting period.

The Consent Agenda was approved at the same time the Action Agenda was approved (*see* "Approval of Agenda" above).

Councilman Archer commended Tax Collector Laura Buda for the percentage of 2004 taxes collected through March 2005, which was 98.51%.

The Town Attorney said he understood that many people attending the meeting wanted to speak to the issue of staggered terms for the Town Council. He informed the assembly that tonight the Council was only going to adopt a resolution of intent to consider the possibility of staggered terms. If the Council adopts the resolution of intent, a public hearing on the charter amendment must be scheduled for the next Town Council meeting. The Mayor has requested that before the Council moves into the public hearing on the closing of Central Drive, if anyone wants to speak on staggered terms, he would entertain such comments in brevity under Citizens Requests/Comments.

CITIZEN REQUESTS/COMMENTS

ACTION AGENDA

1. Public Hearing – Closing of Central Drive – Town Attorney

Mr. Taylor reminded everyone that the Town Council had passed a Resolution of Intent to Close Central Drive which required the Council to call for a public hearing, and the public hearing was scheduled for this evening. The public hearing was properly advertised in the newspaper and was posted on the property in at least two places along the roadway. The purpose of the public hearing is for the Town Council to hear public comment regarding two statutory items that it must find: (1) that closing of the street (Central Drive) is not contrary to the public interest and (2) that no individual owning property in the vicinity of the street or alley, or in the subdivision in which it is located, would thereby be deprived of reasonable means of ingress and egress to his property.

Councilman Creech moved to enter the public hearing regarding the closing of Central Drive. Councilman Bailey seconded the motion, which carried unanimously, 5-0.

Mr. Taylor provided one more piece of information that the Council may not have heard about yet. Based on Councilman Doe's recommendation that the Town have some way to get Central Drive back in the case the Circle development does not proceed as planned, Fred Bunn's attorney, Neil Whitford, had presented Mr. Taylor with an option. The option essentially states that in the event that the development does not go through as planned, the Town will be able to get Central Drive back subject only to the condition that it be a street as it was before and not an amusement park.

David Joyce, 111 Atlantic Boulevard (Utopia Square), Atlantic Beach, NC: Mr. Joyce proposed an alternative to the closing of Central Drive. He and his business associates would like to build a 63-foot wide by 188-foot long 15-story high-rise to complement the FMB, Inc. project. Their building would have three stories of internal parking, retail shops, professional units, a hotel, timeshare condominiums, and penthouse permanent dwellings. This would maximize potential for year-round traffic to Atlantic Beach, raising revenues and the tax base tremendously. They would need additional land for their project, but have been unable to acquire land in the Circle Development District (CDD). They asked the Town Planning Director about possible expansion or changing of the CDD so that they could acquire the necessary land, and were told it was highly unlikely. After reading in the newspapers about the removal of parking meters on East Drive and Central Drive and the subsequent loss of revenue, he wondered if the Town would consider selling Central Drive to the highest bidder instead of closing it and giving the land away. He had with him at this meeting an offer to purchase Central Drive for \$1 million. With that proposal, he and his associates were not planning to disrupt Mr. Bunn's project. If they are able to purchase Central Drive, they would be willing to trade Mr. Bunn, square foot for square foot, Central Drive for land on East Drive, or Mr. Bunn could bid against them for Central Drive. If Mr. Bunn were to drop his option on the Town's land, Mr. Joyce and his associates are willing to pick it up and work diligently toward making the CDD a success.

The Town Attorney stated that the Town did not own Central Drive and therefore could not sell it. The Town only has a dedicated right-of-way which belongs to the public, with the Town being stewards of the public, for use as a roadway. Central Drive is actually a plotted street which is dedicated to the Town. It is not the Town's to give to anyone. The determination the Council has to make is whether the road is needed. If the road is still needed, the Council should not close it. If it is not needed, the Council may close it and North Carolina General Statute Section 160A-299 mandates that the street goes to the adjoining property owners. The Council has nothing to do with that; the process works by operation of statute only.

Neil Whitford, 710 Arendell Street, Morehead City, NC: Mr. Whitford represented FMB to request that the Council complete the process of closing Central Drive. Redevelopment of the Atlantic Beach Circle is moving forward and closing this street is an essential component of the redevelopment. Closing Central Drive has been part of the redevelopment plan from the beginning. The plan has been described in numerous presentations to the Town Council and to the public. It is referenced in the contract between FMB and the Town in the agreement of November 2003. It was considered during the process of adopting the Circle Development District ordinance. As Mr. Taylor stated, the legal standard for closing the street is set out in the General Statutes and in answer to the two questions: closing the street is not contrary to the public interest and no property owner will be deprived of reasonable means of ingress and egress to his property. With respect to the public interest, it is fair to say that the Circle has declined over the last 35 years or so to the point that it is blighted, has a questionable reputation, and has been consuming a disproportionate amount of tax dollars and municipal manpower. To some extent, all of Atlantic Beach is associated with the Circle. For decades, the Atlantic Beach community has longed for redevelopment, and that time is now. Circle redevelopment will infuse millions of dollars in new, good, solid development into the Circle area. The tax base will be dramatically increased and the burden of the Circle on Town resources dramatically decreased. Circle redevelopment will provide an attractive, safe neighborhood in the center of Town which everyone in Atlantic Beach can be proud of. To the extent that Atlantic Beach is associated with the Circle, a highly favorable image of Town will result. It is in the public interest to abandon Central Drive to help accomplish this goal. There may be questions about parking; redevelopment will comply with the CDD parking requirements. The parking spaces now on Central Drive will be replaced with other FMB properties. Parking has been examined and re-examined, and appropriate accommodations made.

The second requirement for abandoning a street is that no individual property owner is to be deprived of reasonable means of ingress and egress to his property. Traffic flow at the Circle is as follows: one way to the south toward the ocean on West Drive, one way to the east on Atlantic Boulevard, and one way to the north on East Drive. That basic traffic flow will remain. The traffic on Central Drive is one way to the north away from the businesses. No property owner will be deprived of a reasonable means of ingress and egress by the closing of Central Drive.

During the Council's discussion of the Resolution of Intent to close Central Drive a month ago, a Council member asked about returning the right-of-way to the Town if the development did not proceed. Fred Bunn and Cecil Bradley are certain that the project will progress as planned, but they thought the Council member's comment was fair. As a result, they have delivered an option that permits the Town to take back the street right-of-way in the extremely unlikely event that redevelopment does not commence.

Fred Bunn has already demonstrated the high-quality development he brings to Atlantic Beach. Sea Dreams has become a premier neighborhood at the beach. Mr. Bunn was and is instrumental in the build-out of Cottages at Bay Ridge, another premier Atlantic Beach community. He has already shown his good faith at the Circle. He has bought some of the unsightly Circle properties to redevelop and has bought and closed down a night club that had been quite a challenge to the Town. FMB's redevelopment will return the Circle to its great days of the past. It will be different, but it will be an area that everyone will be proud of. Closing Central Drive is an essential component of the redevelopment and FMB asks the Council's support in the endeavor.

At Councilman Archer's request, Mr. Whitford explained the option regarding the Town taking back the street right-of-way in the event that redevelopment does not occur. The contract between FMB and the Town to purchase properties has a closing date of November 24, 2005. Things must be well underway by then for FMB to exercise its option to purchase Town properties. There is the possibility that the closing date could be extended; that is written into the contract. FMB has set November 24, 2005 as the deadline for Circle redevelopment to begin. As described in the document, the beginning of redevelopment is the demolition of the structures that are on the Tziridas property on the west side of Central Drive and the Fun 'N' Wheels property on the east side. With respect to the unlikely chance that Central Drive will be coming back to the Town, there is a statement in the option that it needs to be returned to a street, with sidewalks, parking, etc. and not just a strip of land that would otherwise be developable. The Town would pay \$10.00 if it gets the street back. Councilman Archer asked what the Town's financial remuneration is for granting the option on the Atlantic Beach properties, and Mr. Whitford replied \$1.8 million.

Fred Bunn, 101 Sea Dreams, Atlantic Beach, NC and 116 Canterbury Road, Wilson, NC: Mr. Bunn said he was here to answer any questions anyone might have. There were no questions.

James N. Willis III, 104 Atlantic Beach Causeway, Atlantic Beach, NC: Mr. Willis said that on September 20, 1934 the Atlantic Beach and Bridge Company selling the bridge on the Causeway and these drives to the State of North Carolina. There was a deed for it, and he has a copy somewhere at home; he just could not find it this evening. He does not know if the State gave the Town a deed for Central Drive or just told the Town to take over the maintenance of the street, but the State would keep the street. Title may actually vest in the State of North Carolina. He then read a passage from the September 20, 1934 edition of the *Beaufort News*. The article, "Beach Colony to Have Additions," states: "All lots facing the driveway leading to the Casino (the Pavilion) have been reserved for commercial purposes while the center space between the parking streets will be used for carnival purposes." He pointed out on an old photo on the wall that the streets coming in – West Drive, Atlantic Boulevard and East Drive – all have a 25-foot center section paved with asphalt, but on either

side is the parking area paved in cement or concrete. Those were the “parking streets”; perhaps in those days they did not realize one could have a parking lot instead of a parking street. Central Drive is all white, all cement or concrete. In his opinion, Central Drive was not meant to be a street, it was meant to be a parking lot, a parking lot for the carnival areas (the triangles) on either side to provide parking for the carnival areas. If that is the case, what FMB is asking the Town to do is give up the parking lot to FMB and FMB will provide parking for its customers somewhere else. Mr. Willis asked that the Council not grant anything that has not been requested. This, however, has been requested.

Councilman Doe stated that there are two issues that bear on Mr. Willis’ comments. First is the State action that was taken after the stock market crash, which essentially put all public streets under State control and financing. Secondly, the Town went through two or three steps of accepting and re-accepting all streets in the Town, and it was spelled out what those streets were. He thinks both of those issues need to be addressed. Mr. Willis responded to the first issue, stating that the Town was not created until 1937 and the Depression was over by then. The maps being referred to were not drawn until 1934. Councilman Doe said that a lot of counties all over the country had gone into bankruptcy because they had bonded projects in place to put streets in. North Carolina was one of the rare states that had a good reputation for it years ago, that essentially took over all streets and was responsible. That is how the Powell Bill funding came about. He does not know when it was done, but it was done in reaction to all the receiverships that occurred as a result of the Depression on the part of counties that could not pay off their notes. Mr. Willis said these streets were private property until 1934. Atlantic Beach and Bridge Company, which owned Atlantic Beach, sold the bridge, the Causeway, East Drive, West Drive, Atlantic Boulevard and Central Drive to the State of North Carolina in 1934. He thinks the Fort Macon Boulevard right-of-way to Fort Macon was sold at that time as well, but he was not sure. These streets came directly from private ownership into State ownership and stayed under State supervision until the State turned them over to the Town.

The Mayor interrupted and asked if reviewing all this history was necessary. Councilman Doe said that Mr. Willis raises the question as to whether Central Drive is a street or not, and Councilman Doe feels that question needs to be answered. Mr. Willis said he believes it is a parking lot. Councilman Archer asked Mr. Taylor if a title search would be done before anything is done with Central Drive. Mr. Taylor said he has had discussions with Mr. Whitford about Central Drive and it was their consensus of opinion that it was a platted street which, either by direct acceptance by the ordinance or by process of paving, maintaining, etc., was an accepted street dedicated to the Town of Atlantic Beach by plats that were actually filed for Atlantic Beach. He has not performed title work other than that. That is based on the presumption that that was a dedication on a plat by standard means which the Town accepted.

Mr. Whitford explained the extent of their research. The street itself appears on at least two subdivision plats dating back to the 1930s. That is a dedication of the street to the public. When the Town was incorporated, it was in a position to accept the dedication of the streets to make them municipal streets. They did not actually find where that dedication was accepted until the 1980s. There were official resolutions adopted by the Town Council to accept the dedication, he thinks in 1987. Clearly, officially and on the record and recorded at the Register of Deeds, the dedication was finally accepted by the Town at that time. There is an indication that the Town was setting speed limits on Central Drive and all the Circle streets back in 1965. The Town's Powell Bill records only go back as far as the early 1990s, or around 1990, and they all show Central Drive as being a municipal street. Even if the State has a deed for it, Central Drive is still a platted street. No records have been found to show the area as a parking area. He and Mr. Taylor have no doubt that Central Drive is a municipal street of the Town of Atlantic Beach. Regardless of who owns it, the Town has the jurisdiction under NCGS Section 160A-299 to withdraw that dedication.

Mr. Taylor concurred with Mr. Whitford. It is on several plats and that is a method of dedication. The Town has accepted it in many ways, including by ordinance; it is a dedicated street which the Town has accepted and which it may now close. If there is an issue as to title vesting when the street is closed, the Town will leave that to the private parties to decide. If the State has an interest in the street, the Town must notify the State that it intends to close it and the State should have an opportunity to speak to this issue. It was his understanding that it is not a State road, so the State has not been notified at this point. If the Town closes the street, there is a 30-day period of time on appeal to the Superior Court. If it is appealed, a determination could be made by the Superior Court hearing it *de novo*. At that point, the Town's issue (closing the street) is over. The issue as to whether or not title vests to FMB on either side remains open. Mr. Taylor added that in spite of the fact that the Town has a contract with Mr. Bunn for these properties, the contract cannot be part of the Town's determination regarding closing the street.

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

Councilman Creech made a motion to close Central Drive. Councilman Bailey seconded the motion.

Councilwoman Roberson said that because of ongoing marketing affiliations with FMB and The Grove, she would recuse herself from the discussion of this topic and from the vote. Councilman Archer, seconded by Councilman Creech, moved to excuse Councilwoman Roberson from voting on this matter. Approval was unanimous, 4-0.

Councilman Doe said that Mr. Whitford had commented that Mr. Bunn would be adding parking on his own property. The Council has had discussions on parking at the Circle before, and he wondered if the Town was doing its part to provide public parking. The Town has considerable rights-of-way on the north and south sides of the water tower, on the south side of the old Hardee's property, and on the north side of what is now the putt-putt golf course. There are some other street ends that run into the Circle which do not abut private properties but do abut either public properties or project properties. For very little money, the Town could replace every lost parking space on Central Drive. He thinks the Town would be able to show its intent and desire to maintain a mix of public and private by aggressively taking steps to replace the parking. He hopes the Council will come to a decision within the next couple of months to replace that parking, and replacement of the parking does not need to be done until Mr. Bunn removes the parking from Central Drive.

Councilman Archer asked Mr. Bunn when FMB will need the street, if the Town closes it. Mr. Bunn replied that demolition is planned within the next 30 to 45 days. At this point, they are not sure when they would need that space, but if it is the Town's request to keep it open until they start construction, they will, because they want to do what is good for the community.

Mr. Taylor reminded the Council that the contract states the street will remain open until construction for the redevelopment project is initiated. When FMB starts working, there will be a safety issue for the public, and the Town would not want the street open any longer.

The Mayor called for the vote on Councilman Creech's motion to close central Drive, which carried by unanimous, 4-0, vote. The audience provided the Council with a loud round of applause.

Mayor Dawkins called for a recess at 6:55 p.m. The meeting was reconvened at 7:10 p.m.

2. Planning Board Report – Planning Board Chairman

Mr. Tarascio reported that the Planning Board continued working on the CAMA Land Use Plan Update. They have finished the background part of the plan and in about two months, will begin working on the main part of the plan itself. There are issues that the Town Council will need to consider at some point, and one of those is fishing piers. Fishing piers are starting to become a thing of the past and that will result in a loss of public parking and beach access. The Iron Steamer is gone, the Triple "S" pier has been sold, the three smaller piers are for sale, and there are rumors about the Oceanana Pier. The Council and Planning Board need to start thinking of options for the time when these properties are ready to be redeveloped. Councilman Doe pointed out that in some neighborhoods, Triple "S" being a good example,

the pier is the only access to the water for people who live in the neighborhood. Council agreed that this issue of parking and beach access should be investigated and addressed soon.

3. Resolution No. 05-04-02, “Resolution Electing the Death Benefit Option for All Employees for the Local Government Employees’ Retirement System” – Town Manager

On March 22, 2005 the Town Council adopted two resolutions to eliminate the disparity between the benefits offered by the Town to Police Department employees and the general employees. Council also agreed to elect the death benefit option for each eligible employee enrolled in the Local Government Employees’ Retirement System (LGERS), provided that the LGERS approves and accepts this election. The annual cost is minimal, said Mr. Cooper, about one-tenth of a percent, approximately \$1,700.

Councilman Archer moved to adopt Resolution No. 05-04-02, “Resolution Electing the Death Benefit Option for All Employees for the Local Government Employee’s Retirement System.” Councilman Creech seconded the motion.

Councilwoman Roberson had been excused from voting on the closing of Central Drive, so Councilman Archer made a motion to allow Councilwoman Roberson to vote again. Councilman Doe seconded, and the motion carried by unanimous vote of 5-0.

Mayor Dawkins then called for the vote on Councilman Archer’s motion to adopt Resolution No. 05-04-02. The motion carried unanimously, 5-0.

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

The Town Clerk reminded the Town Council that at its March 21, 2005 meeting, the Council appointed Trace Cooper to fill one of the two vacancies on the Planning Board and decided to postpone consideration of the three nominees for the second appointment to this evening’s meeting to allow one of the Council members to talk to two individuals that he had not spoken to yet. The three nominations that are still on the floor are Jim Womer, George Bailey and Norman Livengood. The vacant term expires on December 31, 2005.

There is also one vacancy on the Board of Adjustment for an alternate position due to the appointment of Vada Palma to the Planning Board, and that term would expire on June 30, 2007. Although the Council had remarked at the March 21 meeting that perhaps it was not necessary to fill the Board of Adjustment alternate position, the Town Clerk said that it would be desirable to have it on the record that the Council is not going to fill it at this time.

Councilman Archer withdrew his nomination of George Bailey, because Mr. Bailey is dealing with pressing matters beyond his control.

The first of the remaining two nominees to be voted on was Norman Livengood. The Mayor asked for a show of hands in favor of Mr. Livengood, and approval was unanimous, 5-0. It was not necessary after that to vote on Mr. Womer's nomination.

Councilman Archer moved not to fill the vacancy on the Board of Adjustment at this time. Councilman Doe seconded the motion, which carried by unanimous, 5-0, vote.

5. Proposed Budget Work Session Schedule – Town Manager

Mr. Cooper said that he planned to present the budget information as follows:

- a. Budget Overview, Changes and Impacts (by Fund)
- b. Revenue Review
- c. Departmental Reviews
 - (i) Public Works
 - (ii) Police
 - (iii) Fire
 - (iv) Inspections
 - (v) Planning
 - (vi) Administrative Services
- d. Personal Services Review
- e. Community Promotions
- f. Budget Finalization

He identified eight specific dates for the budget work sessions with a planned budget and budget message submission on May 16. The proposed work session dates are April 25, April 26, April 27, May 2, May 3, May 4, May 9 and May 10. Additional dates for work sessions can be added as needed and the budget submission can occur as late as May 23 if necessary. The proposed schedule will allow sufficient time for the required public hearing and budget approval prior to June 30 (the statutory deadline for approval of the budget).

Councilman Archer announced that has a conflict on May 9 (he has a County Planning Commission meeting that night), and Councilman Creech said that he would be out of town from May 13 through May 22, so he would not be present on May 16 when the budget is submitted to the Council.

Councilman Doe, seconded by Councilwoman Roberson, moved to adopt the budget schedule with the deletion of the May 9 work session. Motion carried unanimously, 5-0.

6. Sand Fences – Town Manager

On April 4, 2005 the Town Council discussed sand fencing to stabilize the newly-nourished beach. A private contractor will be contacting the oceanfront property owners to see if they are interested in purchasing sand fencing to help protect their properties. Sand fencing for public areas was discussed, but no decision was made. An estimate of \$5,600 was provided to the Council as an estimated cost to install sand fencing around public areas.

Under North Carolina purchasing and contracting law, contracts with a minimum threshold of \$5,000 are subject to the informal bidding procedures. Those procedures are fairly loose, he said, but the contract must be awarded to the “lowest responsible, responsive bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract.” If the Council decides that sand fencing is desirable in public areas, Staff will need to know what areas are to be included so that bids may be solicited.

The sand fencing contractor, George Brearey, and Councilman Doe provided the Council with a new estimate for fencing public areas. There are 677± a few feet of public accesses and 863 feet on the Circle, for a total of 1,540 feet. At \$2.50 per running foot, the cost would be \$3,850. Council briefly discussed fencing the public areas. All Council members offered positive comments about the idea of fencing the public areas, although Councilman Creech worried that sand fencing would take up too much space on the public beach (fences will be separated by 40 feet) and Councilman Archer thought the Pavilion property should be left alone.

Councilman Bailey, seconded by Councilman Doe, moved that the Town pay for and install sand fences in the public areas and at the Circle. The motion carried by a vote of 4-1, with Councilman Creech abstaining and Councilman Archer voting against it.

7. Resolution No. 05-04-03, “Resolution of Intent to Consider and Ordinance Amending the Town Charter to Provide for Staggered Council Member Terms” – Town Attorney

On April 4, 2005 the Town Council discussed the idea of staggered terms for Council members and decided to amend the Town Charter by ordinance as follows:

FIRST ELECTION

4-year terms for the two (2) candidates receiving the most votes

2-year terms for the three (3) candidates receiving the next highest number of votes

SECOND AND SUBSEQUENT ELECTIONS

- 4-year terms for the two (2) candidates receiving the most votes
- 2-year term for the one (1) candidate receiving the next highest number of votes

The Mayor will continue to be elected for a 2-year term

The Town Attorney reminded the Town Council that the only way to amend the Charter so that staggered terms would be effective with the upcoming 2005 election would be to pass the ordinance without taking it to the public for a referendum vote.

The first step in the process is for the Council to adopt a resolution of intent to amend the Town Charter and to schedule a public hearing to receive public comment regarding the proposed changes. The resolution of intent would define how Council intends to proceed with staggered terms and would be published in the newspaper. At the same time Council adopts the resolution of intent, it would schedule the public hearing required by the General Statutes.

Council was provided with two resolutions of intent. One declares Council's intent to amend the Charter by adoption of an ordinance with no public vote. That ordinance would be subject to a referendum petition, however. The other resolution contains language that would make the Charter amendment subject to the approval of the majority of the Town's voters voting by referendum. Both contain language to schedule the public hearing for 6:00 p.m. on May 2, 2005.

Mr. Taylor stressed again that if the proposed amendment to the Charter is subject to a referendum, whether by voter petition to move it to a referendum or by Council's choice to put the amendment to a public vote, the amendment would not be able to affect the 2005 election.

Councilmen Doe and Creech believe the citizens should be allowed to vote on the proposed Charter amendment. Councilman Creech added that he did not see why the process had to be rushed to take effect with the 2005 election. Councilman Bailey agreed with Councilman Creech, and suggested having a public hearing on a referendum to hear what people say about a referendum, and then decide what to do. Mr. Taylor advised that it would be better for the Town Council to decide tonight whether not to amend the Charter by referendum. If Council is going to do this by referendum, it should stick to that process. If Council is not sure, then do it without the referendum and add the referendum later. Councilwoman Roberson remarked that she is not comfortable voting on this issue at this time. Councilman Archer said that no matter what the Council's decision is, it should put to a referendum so the people can decide and that it become effective with the 2007 election.

No action was taken on this agenda item.

TOWN MANAGER'S REPORT

Mr. Cooper reported on the parking meter poles and suggested that the Town Council would not want them moved unless they plan never to use them again. The poles would not be easy to remove, and the Public Works Director received a minimum estimate of \$500 to remove them. It would cost much more than \$500 to put them back up, possibly \$1,000.

Mr. Cooper provided the Council with an update on the Durham Avenue beach access. Mr. Schulze has talked to several contractors, and they told him the process to build the ADA-compliant facility would take 90 to 120 days to complete. He asked about expediting the project, and responses were generally in the \$40,000 range in addition to the base price. One contractor said that for each 30-day reduction in completion time, the price would increase by an average of \$10,000. Another estimated an increase of 75% to 100% if the Town asked for the project to be completed in 30 days. Even Mr. Thorpe, the citizen who was anxious to have the facility built, said that because the summer season was imminent and also from a liability standpoint, it would make sense to wait until after Labor Day to construct it. Councilman Archer suggested bidding the Durham Avenue access for completion in 30 days and see what happens.

Councilman Doe asked about the project to extend the sidewalks to the west of Town. Mr. Cooper said the Town would be receiving a letter from the Governor saying that the State will reimburse the Town as per the grant that was awarded, but it might take up to three years to do so.

TOWN ATTORNEY'S REPORT

MAYOR/COUNCIL REQUESTS/COMMENTS

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 to protect the attorney-client privilege and to consider and give instructions concerning a

potential or actual claim, administrative procedure or judicial action. Councilman Doe seconded, and the motion carried unanimously, 5-0.

Mayor Dawkins called for a break in the proceedings at 8:32 p.m. The meeting was reconvened at 8:38 p.m. and the Council entered closed session immediately.

The Council reconvened to open session at 9:09 p.m.

ADJOURNMENT

There being no further business before the Town Council, Councilman Doe made a motion to adjourn the meeting. Councilman Creech seconded, and approval was unanimous, 5-0. It was 9:10 p.m.