

**Minutes**  
**Town of Atlantic Beach, North Carolina**  
**Town Council Work Session**  
**Monday, November 28 2005**

The regularly scheduled work session of the Atlantic Beach Town Council was held Monday, November 28, 2005 at 6:00 p.m. in the Council Meeting Room.

**Members Present:** Mayor Pro Tem Doug Creech; Council Members Harry Archer, Jim Bailey, and Tom Doe

**Members Absent:** Mayor Eddie Dawkins and Councilwoman Christie Roberson

**Others Present:** Chuck Cooper, Town Manager; Derek Taylor, Town Attorney; Lee Smith, Planning Director; Joe Tarascio, Chairman of the Planning Board; Kim Glover, Admin. Asst.

**CALL TO ORDER AND ROLL CALL**

Mayor Pro Tem Doug Creech called the meeting to order at 6:05 p.m. Mayor Pro Tem Doug Creech explained that Mayor Dawkins had been in the hospital and would be absent for a while.

Councilman Bailey asked if the Council had to excuse Councilwoman Roberson to void her vote casting in the affirmative. Derek Taylor, Town Attorney, stated if she does not come to the meeting she does not have to be excused from the meeting.

Councilman Doe made a motion to approve the agenda with adding a statement from himself and a closed session at the end. It was seconded by Councilman Bailey. The vote was 4-0, unanimous.

Mayor Pro Tem Creech asked the Council to move the order of Items of Discussion by changing #2 to #3 and #3 to #2.

Councilman Doe made a motion to move the Items of Discussion #2 to #3 and #3 to #2. Seconded by Councilman Bailey, vote was unanimous 4-0.

**ITEMS FOR DISCUSSION**

**1. Re-Zoning of 2800 W. Fort Macon Road**

Councilman Archer made a motion to recuse Councilman Bailey from the meeting while voting on Item #1 of the agenda. Seconded by Councilman Doe, the vote was unanimous 4-0.

Councilman Doe made a motion that the second vote be taken for the approval of the re-zoning at 2800 W. Fort Macon Road due to the fact that Councilman Bailey had to be recused from the first vote and another Councilmember was absent hence not having the four-fifths majority needed to pass the vote. Seconded by Councilman Archer, vote was unanimous, 3-0.

Councilman Archer made a motion to re-seat Councilman Bailey to the meeting. Seconded by Councilman Doe, vote was unanimous, 3-0.

## **2. Easement with Sportsman's Pier-Town Manager**

David Bradley, 500 Money Island Drive, requested that the Council approve the modification and easement between Atlantic Beach and Sportsman's Pier. It would allow for a change in use of the property for which it was originally intended. It involves no changes of the easement and involves minor modifications of the field and of the gathering facility at the end.

Councilman Doe was concerned with a change in use. Two issues come to his mind. One being, under the existing situation there are two lots that do not look residential and have received complaints from neighbors. Second, being the density situation. We know some of the citizens want the pier to stay, but we know we can not tell a person they have to do things that way. Everybody on the ocean front had to take care of their sewage needs. It requires extra land and you can not fill things up as much. Councilman Doe stated he had mixed feelings about this, but he would like to make it work. If he could hear how the neighborhood was going to be maintained in a manner that was pleasing to all then he could agree to the modification and easement.

David Bradley stated he was not aware of all the complaints Councilman Doe had mentioned. In referring to the drain field, he acknowledged that the fence needed to be replaced. He said he had met the ordinance that affects vacant lots and a mowing contract for a guy who comes and mows it. Mr. Bradley definitely wanted the property maintained nicely. He does not intend to let it be an eyesore.

Councilman Bailey asked if we had an ordinance that should be followed. Councilman Doe said we do not actually have an ordinance it was a policy. He requested that something be done so that the lots to be used as receiving lots were attractive to the neighborhood.

Councilman Archer asked if the lots in question were drain field lots. Mr. Bradley said yes. Councilman Archer asked Lee Smith, Planner to clarify the policy relative to off sight sewer.

Lee Smith, Planner explained how the Town had passed a Type A, Type B sewer system. Type B was when you were sending the effluent to a receiving lot that was not on your sight

anymore. In order to be able to do that now, you had to go through a special use process with the Board of Adjustments. Mr. Bradley's situation did not apply because it was already in existence.

Mayor Pro Tem Creech stated the easement was not the issue with Councilman Doe it was the upkeep of the property.

Ron Culiper from Stroud Engineering stated if the project as Mr. Bradley conceives was built then the Environmental Health would require a tri-party agreement that would connect Mr. Bradley, the Health Department and the Owner's Association to this septic system. Part of the permit with Environmental Health would include covering over the drain field area and mowing height. If the easement was approved, that would be part of the approval criteria. Even after Mr. Bradley leaves, the Health Department and the Owner's Association would still have that responsibly.

Derek Taylor, Town Attorney asked if this would be a common area of the Owner's Association under the control of the ownership of the Owner's Association or where would the fee lie with this situation. Mr. Culiper said he was not sure how the fee would be set up.

Councilman Doe stated we needed to put something in the agreement that if we have to we can go and hire someone quickly. The Homeowner's Association president lives somewhere up state and doesn't know what's going on down here. He would really like to be able to solve any problems fast if they arise. He stated if we only had one headache in Town that would be okay, but we have a lot of headaches all over Town and a lot of taxpayer money was being spent.

Councilman Archer made a motion to approve the modification and easement agreement between Town of Atlantic Beach and Sportsman's Pier Inc. and that the stipulation show that the granting of this easement would include making sure the lots were esthetically pleasing to the neighbors. Also, the lots used for drain fields would be properly maintained by the owner, owners, or Homeowner's Association if such becomes a part of the problem. Seconded by Councilman Bailey, the vote was 3-1 with Councilman Tom Doe voting in the negative.

Councilman Archer made a motion to withdraw his previous motion. Seconded by Councilman Bailey, vote was 4-0.

Councilman Archer made a motion as to the verbiage that was used in the previous motion with the exception of removing the sentence referring to "esthetically pleasing to the neighbors" and replace with it "acceptable under the ordinances of the Town of Atlantic Beach relative to the maintenance of the lots and properties." Seconded by Councilman Bailey, the vote was 3-1 with Councilman Doe voting in the negative.

### **3. Revised Density Standards-Planner**

Lee Smith, Planning Director stated there had not been a lot of changes made but based on some comments from the Public Hearing, they would like to address three items in the text itself. First being, staying with the minimum lot size which is 5,000 square feet, rather than making it multiples of 5,000 for the additional units, make it multiples of 3600. The duplex would go to 8,600 square feet, the triplex would go to 12,200 square feet, and the quadriplex would go to 15,800 square feet. Anything over four units would require 20,000 square feet of land. Second, drop the maximum impervious surface coverage requirement from 30% to 25% without a storm water management plan. With a storm water management plan you could go back up to 40%. Third, remove from multi-family housing development standards reference to additional land required for multiple buildings. Any multi-family housing project could erect any number of buildings on the lot equal to the total number units allowed, but would still be limited to the impervious surface requirements.

Councilman Bailey suggested two additional features. First being, delaying the implementation of the ordinance for six months after the act of passage. It would give people that were in the planning stages but had not started the construction stages yet to still go ahead and complete their work.

Planner, Lee Smith said under the current standards you have six months to begin your project under an active permit. There had to be continual work on the project for up to one year to be considered active.

Joe Tarascio, Planning Board Chairman asked Attorney Taylor how vested rights plays into this. Attorney Taylor suggested the Town address the vested rights as part of their ordinances.

The second feature would be that upon adoption of the ordinance an individual or developer wanting to utilize the multi-family provisions could do either or. They could develop under the old group housing ordinance or utilize the new adoption. You can't pick and choose. You have to use one or the other.

Councilman Bailey stressed the term "engineered storm water plan". He said if it was engineered, the engineer needed to certify at the end of the project that it was installed according to his plans. Another thing he had mentioned was changing the height restrictions to sixty feet. If someone puts parking under a unit, they could go higher. It would create more green area and help the storm water.

Joe Tarascio stated we need to have a combination of habitable floors so that you do not get more density than there is parking. You just have to put a cap on how many living floors

there are within sixty feet. If we have over five parking spaces, we would have to amend our parking ordinance.

Councilman Doe said we should encourage parking underneath the buildings. If we could trade out a floor for impervious surface the Town comes out ahead.

Mayor Pro Tem Creech suggested the individual must use parking underneath in order to gain an extra five feet.

Councilman Archer stated that the Building Inspector should be stressing elevated housing to everyone who comes in.

Mr. Smith asked if the Council definitely wanted to change going to three plus units only or do them all. Mayor Pro Tem Creech stated to do them all. The point Mr. Smith was making was that every time someone builds a house to the maximum 45 feet, his telephone rings. There are a lot of people in Atlantic Beach that think they live in a single family district and they probably do not. He would suggest that the Town go with one and two family units in the RC stay at 55 feet and the RC and GB stay at 60 feet.

Mayor Pro Tem Creech stressed if we keep waiting and playing with the ideas the longer it would take to pass something. He would like to see this Council take action.

Councilman Doe liked the idea of being able to do work on this project on a piece by piece basis.

Joe Tarascio said the Council needed to lock the density parts of the plan in place. Any improvement and we are heading in the right direction. He said we can not sustain 16 units an acre without a storm water plan.

Councilman Doe asked Mr. Smith if he had heard enough from the Council to get the process going. Mr. Smith said yes.

Councilman Bailey asked if everyone was in agreement with the six months and the extra six. Mayor Pro Tem Creech said he would like to see it go to one year with an extra six months. Let's give a person eighteen months to get something finished.

Lee Smith, Planner explained the term "grandfathering" as a use that would no longer be allowed, but was continued to be allowed. What we would be doing is making all these structures that have been previously constructed legal uses-not grandfathering them. There was a huge distinction between the two.

Mr. Smith explained if someone built a duplex on a 6,000 square foot lot and they met all our development requirements, if we pass the ordinance and made no provision then that would become a non-conforming structure. If we pass something that says it's legal then it is a legal structure. The feeling he had gotten from the Planning Board was they are comfortable with absolving the small multi-family units from the new ordinance. If the building got torn or blown down they could re-construct it. Grandfathering was not necessarily what we are talking about doing here. Grandfathering simply said it was a non-conforming use and if something happens to it then it can't go back.

Councilman Doe stated the key was anything that was nonconforming before the ordinance can not be cured by this ordinance.

Councilman Bailey asked how we could know what was on that property that we made a legal use.

Attorney Taylor said we should be able to check with the building permit that was issued at the time it was built.

Councilman Doe asked Mr. Smith if we have a good history of what was built in the Town. Mr. Smith answered no.

Mayor Pro Tem Creech suggested we put the burden of proof on the realtors and owners and not the Town. The Planning Department staff can not do all the work.

Councilman Archer stated the Tax Assessor's office would show everything about the property. Laura Buda should have the right to find out all that information. This should be a definite resource.

Attorney Taylor said we should set a reasonable standard to go by and then publish it in the paper. We can not use tax records in court.

Mayor Pro Tem Creech reiterated that the burden of proof should be put on the individual and their tax records.

Lee Smith stated he would prefer having them condominimize their property and we could keep better track of it that way.

Attorney Taylor stated we should take Mr. Smith's advice because he would be the man we would have to deal with when the time comes.

Councilman Bailey made a motion for a Public Hearing to be held on December 19, 2005 under old business. Councilman Archer seconded the motion. The vote was unanimous 4-0.

#### **5. Board Appointments-Town Manager**

Chuck Cooper, Town Manager informed the Council of vacancies on the Planning Board and Board of Adjustments. Four appointees on the Planning Board expire on December 31, 2005. One vacancy created by the election of Tootsie Vinson as Mayor as of December 19, 2005 and two vacancies for Alternates on the Board of Adjustments.

Councilman Bailey asked that the Town advertise for appointments.

#### **6. Resolution Accepting Roadways-Town Attorney**

Attorney Taylor informed the Council that a long time ago, the Town drafted a broad based acceptance of everything that had ever been dedicated to the Town of Atlantic Beach. Attorney Taylor drafted a Resolution accepting those dedications. He said it would remedy those problems associated with things that were not specifically listed. There was a down side, it can cause surprises. There may be dedications out there such as roadways under water.

The Council decided to leave this issue alone and not take any action.

#### **7. Discussion by Councilman Tom Doe**

Councilman Doe referred to a newspaper article that was written by Brad Rich last Friday and was concerned about Fred Bunn's comments.

**(Clerks' Note: A copy of the letter that Councilman Doe read to Council is attached and here-by made a part of these minutes.)**

Brad Rich made the comment that the article did not say public parking but said public access. Mr. Bunn was talking about alleys and ways for the public to get to the beach.

Councilman Bailey asked the Council about the situation regarding Councilwoman Roberson's position on the Council. He asked if there was anything as a Council that should be done about this situation. Councilman Bailey said she had called him and told him she intended to resign. He asked Attorney Taylor if there are any legal obligations of the Council.

Attorney Taylor stated he had informed Councilwoman Roberson that she was a current member on this Council and an elected member of this Council to take seat at the ceremonies and meeting in December. If she were to resign, she would need to resign twice. Once from her current position and again from her newly appointed position. Attorney Taylor had suggested to her that resigning twice seemed redundant due to the short amount of time left on the Council this year. He recommended her to resign from the current position by giving the current Mayor a resignation letter or wait and give a resignation to the Mayor Elect, sealed for her to open at the December 19, 2005 meeting. When she is seated as Mayor, she would bring the resignation letter out and have the Council act on the resignation. He doesn't know what she has decided to do. She was an elected official and there was no impeachment capability. The seat would become vacant if and only if she changes her residency. If she fails to come to meetings there is a constitutional process, but it would take the full two year term to do so.

Councilman Bailey said he thought it would be best to have some kind of public record of this situation.

Mayor Pro Tem Creech stated he had been called by people asking why any action was not taking place by the Council. The simple answer was we needed a legal way of letting everyone know what was going on.

Councilman Doe stated the folks of Atlantic Beach have been embarrassed. It needs to be over and it needs to be over now. He asked if we make a finding of fact, what do we do, go to court?

Attorney Taylor stated if they make a finding of fact that her residency has changed the vacancy would happen automatically.

Councilman Doe asked how do you stand in the street on Tuesday and say vote for me and receive 234 votes and then say I am out of here.

## **8. Closed Session**

**Consult with Town Attorney regarding Matters Pursuant NCGS 143-318.11(a) (5) to establish or instruct the staff or agent concerning the negotiation of the price and terms of a contract concerning the acquisition of real property located at 915 W. Fort Macon Road and Pursuant NCGS 143-318.11(a) (6) to consider the qualifications, competence, performance, condition of appointment of a public officer or employee or prospective public officer or employee.**

Councilman Bailey moved that the Council enter closed session. He also asked that Mayor Elect Tootsie Vinson be allowed to stay. Seconded by Councilman Archer. The vote was unanimous 4-0. It was 8:30 p.m.

Councilman Bailey made a motion to go out of closed session. Seconded by Councilman Archer, the vote was unanimous, 4-0. It was 9:40 p.m.

### **8. Adjournment**

There being no further business before the Town Council, a motion was made by Mayor Pro Tem Creech to adjourn the meeting. It was seconded by Councilman Archer. The vote was unanimous, 4-0. It was 9:41 p.m.