

MINUTES
OAK ISLAND TOWN COUNCIL
PUBLIC HEARINGS & REGULAR MEETING
April 18, 2017 – 6 P.M.
COUNCIL CHAMBERS - OAK ISLAND TOWN HALL

Present: Mayor Cin Brochure, Mayor Pro Tempore Loman Scott, Council members Sheila M. Bell, Charlie K. Blalock, Jim Medlin and Jeff Winecoff, Town Manager David Kelly, Town Attorney Brian Edes and Assistant Manager/Town Clerk Lisa P. Stites, CMC.

Mayor Cin Brochure called the meeting to order at 6 p.m. Mayor Pro Tempore Loman Scott gave the invocation and led the Pledge of Allegiance to the flag.

Mayor Brochure said that Council would take one thing out of order, and allow Johnny Martin with Moffatt & Nichol, to give a presentation on the status of the FEMA Post-Hurricane Matthew Dune Restoration Project. A copy of the presentation is attached and is hereby made a part of these Minutes. Mr. Martin reminded everyone that the FEMA project would cover 6 cubic feet of sand per linear foot; FEMA accepted the engineer's estimates for sand quantities needed. He gave specific examples of areas that were or were not eligible for sand. Mr. Martin spoke about the environmental concerns, specifically working around turtle nesting season. He also noted other FEMA and CAMA restrictions, such as putting the dune back where it was pre-storm, not covering existing vegetation, the sand had to come from an existing upland borrow source that had already been approved, and to get easements for the construction areas. Mr. Martin said the contractor was making good progress, and that efforts were being made to keep the public out of the work area as much as possible. Mr. Martin referred to aerial photos from 2014 and from just after Hurricane Matthew, showing the difference in the vegetation. He said they hope to get to 35th Place East by the end of April (about one-third of the project); they will ask for an extension to be able to go farther.

PUBLIC HEARING 1: The purpose of the Public Hearing was to receive citizens' comments on a request for a Conditional Use Permit to grant vested rights for a phased development plan for a Planned Unit Development known as Pine Forest, Parcel 20300017.

Ms. Stites administered the oath to Town Planning and Zoning Administrator Jake Vares and applicant representative Dan Weeks.

Mr. Vares asked Council if any of them had a conflict of interest with this project, if they had seen anything at the site that would make them unable to be impartial or if they had any ex parte communication about the application; none indicated they had.

Mr. Vares explained that Equity Investments is applying for a Conditional Use Permit for vested rights for a phase of the Pine Forest Plantation development.

Mr. Weeks spoke about the project. This site is 564 acres. There will be access points on N.C. 211 and Midway Road. There are 2,100 total acres in the project. They will likely put the entire tract into a Planned Unit Development, but this is the just initial phase of the project. This site is indicated as mixed use on the Town's future land use map. There are 2,850 residential units planned. There will not be much development on the main thoroughfares so they can be used for pedestrians, etc. There will be a health care campus on 11 acres, but what will be seen from the road is the Novant building. There will be an assisted living/independent living area on 14 acres near the health care section. Wetlands will be preserved, but there will be pocket parks and common green space areas.

Councilor Winecoff made a motion to close the Public Hearing at 6:31 p.m. Councilor Bell seconded the motion and it passed unanimously.

PUBLIC HEARING 1 ACTION: Councilor Bell made motion to approve the Pine Forest Planned Unit Permit – Phased Development CUP application, and the associated Finding of Facts document. Councilor Medlin seconded the motion and it passed unanimously.

PUBLIC HEARING 3: (taken out of order): The purpose of the Public Hearing was to receive citizens' comments on a request for a Conditional Use Permit to allow a dwelling in a principal business at an established business, Parcel 250CJ025. Mr. Edes asked if anyone had talked to the applicant or staff about the subject of this hearing or had a site visit that would make them unable to be impartial or if they had any other reason they were unable to be impartial; none indicated they had.

Ms. Stites administered the oath to all who wished to speak during the hearing.

Mr. Vares spoke about the application, saying the applicant had a business at 8517 E. Oak Island Drive. Mr. Vares also noted the parking available at the business. He explained the standards staff must consider, which are included in the staff report. He also said all the proper notifications had been issued. He said the Planning Board had recommended a condition that the residential area would have to be inhabited by the business manager, staff or owner and not be rented. Mr. Vares also spoke about case law regarding a similar case in Wilmington and the Court of Appeals ruled that would not be allowed. Mr. Edes said that while he was not telling Council such a condition would be illegal, he would recommend following staff's recommendation. Mr. Edes said Council could always ask the applicant to agree to such a condition.

Justin Stiffler said that what is proposed is an apartment in the business building. He said that he would be the person occupying the residence.

Mark Gulledge said that the utilities were together for the whole building and he didn't even know how part of it could be rented out. There was no separation between the business and the living space other than a door. He said they did not intend to rent the space out.

Mr. Edes asked Mr. Gulledge if he would have a problem with a condition that the space would only be used by an employee of the business. Mr. Gulledge asked how that would be worded. Mr. Vares read the Planning Board's recommendation; both applicants consented to that condition. Councilor Medlin noted a correction in the Finding of Facts sheet to remove the word "not" under Number 2.

Councilor Bell made a motion to close the Public Hearing at 6:43 p.m. Councilor Blalock seconded the motion and it passed unanimously.

Councilor Medlin made a motion to approve the Conditional Use Permit with the condition as recommended by the Planning Board and the Findings of Fact as corrected. Councilor Blalock seconded the motion and it passed unanimously.

PUBLIC HEARING 2: Mayor Brochure said the purpose of the Public Hearing was to receive citizens' comments on a proposed amendment to the land development codes, Sec. 14-130. – Decks, walkways and stairs; construction standards and development; to allow for shared elevated beach access walkways between contiguous properties along a shared property line.

Liz Bianchini, 532 Pinehurst Circle, Hampstead: Ms. Bianchini said they would like to build one walkway for two lots. There would one walkway between two homes for four lots.

Councilor Medlin made a motion to close the Public Hearing at 6:45 p.m. Councilor Winecoff seconded and the motion passed unanimously.

PUBLIC HEARING 2 ACTION: Councilor Medlin asked Mr. Vares if this would actually lessen the environmental impact as homeowners are allowed to have individual walkways now. Mr. Vares said that was correct. Answering a question from Councilor Bell, Mr. Vares said that these walkways do require CAMA permits. Property owners would not be able to have a shared walkway and their own walkway.

Councilor Medlin made a motion to approve the text amendment (Sec. 14-130. – Decks, walkways and stairs; construction standards and development; to allow for shared elevated beach access walkways between contiguous properties along a shared property line) as presented. Mayor Pro Tempore Scott seconded the motion and it passed unanimously.

PRESENTATIONS, PROCLAMATIONS AND RECOGNITIONS

1. Update on FEMA Emergency Dune Restoration Project – Johnny Martin, Moffatt & Nichol (heard prior to the Public Hearings).

ADJUSTMENT/APPROVAL OF THE AGENDA: Mayor Pro Tempore Scott made a motion to approve the agenda. Councilor Bell seconded the motion and it passed unanimously.

PUBLIC COMMENTS - GENERAL TOPICS & AGENDA ITEMS

Rosanne Fortner, 113 Paula Circle: Ms. Fortner spoke about Earth Day on Saturday, saying it was a time to rally around the quality of the earth's environment and to reflect on our role to protect the quality of the environment. On Friday, there will be events for school children. The Beach Preservation Society's annual Wine Tasting Fundraiser is Saturday. Ms. Fortner read from "The Lorax," by Dr. Seuss. She said that everyone had a role in beach preservation.

Betty Hupp, 7916 E. Yacht Drive: Ms. Hupp said that the mutilation of wetlands on East Yacht Drive by developer David Purer was unconscionable. She said that there was nothing that the three of them who voted for it to make up for what they had done to the citizens. She said they were asking citizens to pay for beach nourishment when they do nothing to preserve the beach. They allow pools to be built in the dunes and Hurricane Matthew destroyed the dunes. She asked Council not to approve any 5,000 square-foot houses to be built on these small lots.

Barry Golub, 6615 W. Beach Drive: Mr. Golub said he did not see a discussion of beach nourishment on the agenda. He asked if there would be any such discussions at other meetings.

Mary Anne Brewer, 3524 E. Pelican Drive: Ms. Brewer said that she understands we have no choice but to rebuild the Pier so she won't argue about that. But as a taxpayer, she does not expect to pay to walk on the Pier. She said when the current lease runs out, it needs to be put out for bid. If we can't get rid of it, let's at least get a good lease.

COUNCIL REPORTS (MAYOR AND COUNCIL)

Councilor Winecoff complimented the Parks and Recreation Department for the Easter Egg Hunt held Saturday; the Park was packed with families and children.

Councilor Blalock complimented the Police Department for its Facebook page.

Mayor Brochure said the Resort Towns and Convention Cities Association is hosting a Mayors/Town Managers Day on May 3 in Raleigh; we would be represented and are working to target mid and western North Carolina in supporting beach nourishment funding.

REGULAR MEETING:

I. CONSENT AGENDA

1. Approval of Minutes
 - a. March 14, 2017 (Public Hearings & Regular Meeting)
 - b. March 27, 2017 (Special Meeting)
2. Approval of Capital Improvement Plan for Parks and Recreation
3. Approval of Budget Ordinance Amendments
 - a. Appropriate funds received from US Bank to pay for the professional fees incurred to complete the 2017 Bond Refunding
 - b. Appropriate funds received from the North Carolina Forestry Service as a Grant to offset the expense of the Oak Island Tree Protection Ordinance
4. Approval of Connect NC grant contract
5. Approval of Job Descriptions and Assigning Pay Grades (Public Works Superintendent and Wastewater Superintendent)
6. Adoption of a Resolution Supporting Dedicated State Revenue Source for Beach Nourishment
Councilor Medlin made a motion to adopt the Consent Agenda. Mayor Pro Tempore Scott seconded the motion and it passed unanimously.

II. COMMITTEE APPOINTMENTS

1. Board of Adjustment (two terms ending March 2020)
 - a. Eddie Grooms: **With votes from Mayor Pro Tempore Scott and Councilor Winecoff, Mr. Grooms was not appointed.**
 - b. Jack Moore: **Mr. Moore was unanimously re-appointed to the Board.**
 - c. Steve Yuhasz: **With votes from Councilors Bell, Blalock and Medlin, Mr. Yuhasz was appointed to the Board.**

III. ADMINISTRATIVE REPORTS

1. Town Manager: Mr. Kelly said that so far, the Town received notice from FEMA that the Town would be receiving approximately \$400,000 in reimbursement (not including the dune project or the Pier). There is a budget workshop scheduled for tomorrow morning at 9 a.m. Councilor Medlin asked if beach nourishment funding could be discussed as well; Ms. Stites confirmed that it could.
 - a. Department Reports: The reports are attached and are hereby made a part of these Minutes.
2. Town Attorney: no report

IV. OLD BUSINESS

1. Report on Phragmites Issue at 64th Street Pond: Stormwater Administrator Gene Kudgus said Phragmites was an invasive weed. He said they do not impact the stormwater flow at the pond, however. That area is part of a large system that runs from the mid-70s to 58th Street. By keeping those culverts open, that does support flow. The plants do not affect that flow since it is so flat. Mr. Kelly said the Town had put in the culvert pipe and that the Town had matched the elevations. He said that in researching this, Mr. Kudgus had found another pipe, which indicates that the Town did not change the elevation of the pond. A previous Public Works Director had hired someone to eradicate the Phragmites; some property owners complained about work being done on their properties. Mr. Kelly said that under a previous Manager, the Town did get a permit to install dams on the pipe, but staff was

concerned that would exacerbate the flooding issues farther east. Answering a question from Mayor Pro Tempore Scott, Mr. Kudgus said that years ago, beaver dams were affecting the culvert on SE 64th. The water would back up into the 70s streets because it is so flat. There were several attempts to remove the beavers. A box culvert was put in at the same elevation but there were grates so the beavers' debris could be removed. He said there is documentation showing that the culvert was put in at the same elevation. He said that elevation was surveyed, but residents said that they had water marks on their decks that showed higher water levels. Mr. Kudgus said that those water marks on the decks were caused by the beavers' dams causing a higher water level. He said that in researching the stormwater issues, he found plans from more than 30 years ago that showed a pipe on SE 64th Street at the same level of what is there now. He said that it's important to the people in the 70s streets that the water level of this pond remain the same; even one foot higher pond level will make stormwater issues worse to the east. Mayor Pro Tempore Scott asked if the Town had acquired a CAMA permit before doing the work in the 2000s; Mr. Kudgus said that it did not. He was told that it was not necessary as it was highway work; there was not anything impacting wetlands and the culvert was being installed at the same elevation. Mr. Kelly said that the Town had a permit from the Corps of Engineers, not CAMA. Councilor Medlin said he believed Council had voted to install those plates. Mr. Kudgus said that the Town did not alter the water level of that pond. Councilor Medlin said that for whatever the reason, the water level has dropped and that the Town has dodged this for long enough and that something needed to be done. Mr. Kudgus said that increased development and that more deposits of pesticides, fertilizer, etc. also affected the pond. Councilor Bell asked if the ponds are on private property. Mr. Kelly said they were. Councilor Blalock said that when grass grows in his back yard, he has to mow it and he wondered why the Town was being asked to do this. Mr. Kudgus said that Phragmites were in other parts of town as well. Mayor Pro Tempore Scott said that private property or not, it was an environmentally-sensitive area and should be taken care of and anything that can be done to help these people should be done. **Councilor Bell made a motion to maintain the Town right-of-way as required and not do any work on private property. Councilor Blalock seconded. The motion passed 3-2 with Councilors Bell and Blalock voting in favor. Mayor Pro Tempore Scott and Councilor Medlin voted in opposition. Councilor Winecoff abstained, which counts as an affirmative vote.**

2. Approval of Engineering Contract for the Pier: Mr. Edes said the changes have not been reduced to writing, but the engineers have agreed to the following: page 3 – a clause will be inserted that says if there is any work to be done outside the contract, it will not be done unless the Town approves it and the costs associated with it; page 4 – the limitation of liability is not something Mr. Edes would recommend and it will be increased to \$1 million; page 4 – the unilateral indemnification clause will be reciprocal. **Councilor Medlin made a motion to take action when they have the official document in their hands. The motion died for a lack of second. Councilor Blalock made a motion to approve the contract with the changes the Town Attorney suggested. Mayor Pro Tempore Scott seconded the motion and it passed 4-1 with Mayor Pro Tempore Scott and Councilors Bell, Blalock and Winecoff in favor and Councilor Medlin opposed.**

V. NEW BUSINESS

1. Consideration of Proposed Amendments to Secs. 14-61, 14-63, 14-65 and 14-66 (Noise ordinances): **Mayor Pro Tempore Scott made a motion to adopt the amendments to Secs. 14-61, 14-63, 14-65 and 14-66 (Noise ordinances) as presented. Councilor Winecoff seconded the motion and it passed unanimously.**
2. Consideration of a Resolution Approving the Brunswick County Greenway, Bike Routes and Paddle Trail Plan: **Councilor Medlin made a motion to approve the Resolution. Councilor Bell seconded and the motion carried unanimously.**

VI. **CLOSED SESSION: Councilor Bell made a motion at 7:34 to go into Closed Session to Consult with the Town Attorney on Pending and Potential Litigation and Potential Land Acquisition pursuant to N.C.G.S. 143-318.11(a)(3) and (5). Mayor Pro Tempore seconded the motion and it passed unanimously.**

Council returned to open session at 8:11 p.m. **Mayor Brochure noted that no action had been taken in closed session. Councilor Bell made a motion to adjourn. Councilor Blalock seconded the motion and it passed unanimously.**

Cin Brochure, Mayor

ATTESTED: _____
Lisa P. Stites, CMC
Assistant Manager/Town Clerk

Clerk's Statement: Minutes are in compliance with the open meetings laws. The purpose of minutes per the open meetings laws is to provide a record of the actions taken by a Council or a Board and evidence that the actions were taken according to proper procedures. All actions of the Council are recorded in the official minutes. Not all portions of Town of Oak Island meetings are recorded verbatim in the official minutes, with general discussion items, reports, presentations, and public comments being paraphrased or summarized in many instances. Public comments in writing should be submitted to the clerk via hard copy, electronic mail, or other means so as to ensure an exact verbatim account. The Town of Oak Island provides full coverage of meetings on Government Channel 8 so that the Citizens and the Public may view and listen to the meetings in their entirety.