



Minutes
Town of Atlantic Beach, North Carolina
Town Council Meeting
Monday, August 24, 2015



The regularly scheduled meeting of the Atlantic Beach Town Council was held Monday, August 24, 2015 at 6:00 p.m. in the Council Meeting Room, 125 West Fort Macon Road, Atlantic Beach, North Carolina.

Members Present: Mayor A. B. Cooper, III; Mayor Pro Tem Danny Navey; Councilmembers: Harry Archer, Ann Batt, Eddie Briley and John Rivers

Members Absent: None

Others Present: David Walker, Town Manager; Derek Taylor, Town Attorney; Katrina Tyer, Town Clerk; Jeff Harvey, Police Chief; Adam Snyder, Fire Chief (left at 6:25); Shawn Reaume, Police Major (left at 8:04, after recess); Jessica Fiester, Planning Director; Marc Schulze, Public Works Director; Donna Turner, Inspections Director; Sabrina Simpson, Administrative Services Director

CALL TO ORDER

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

PLEDGE OF ALLEGIANCE

Mayor Cooper led the assembly in the Pledge of Allegiance.

APPROVAL OF AGENDAS

Councilmember Archer made a motion *to approve* the agenda. Seconded by Councilmember Batt. Vote was unanimous, 5-0. Motion carried.

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 Collection Report
2. Tax Releases
3. Financial Report
4. **Resolution 15-08-01:** FY15 Flood Mitigation Assistance Program Designation of Applicant's Agent
5. Approval of Crystal Coast Photo Spot Signage Locations in Atlantic Beach
6. Surplus Sales – Police Vehicle and Public Works Street Sweeper
7. Town Council Meeting Minutes: 7/27/2015

Councilmember Rivers made a motion *to approve* the Consent Agenda. Seconded by Councilmember Briley. Vote was unanimous, 5-0. Motion carried.

(Clerk's Note: a copy of Consent Agenda items are hereby attached and therefore made a part of these minutes.)

APPROVAL OF RESOLUTIONS

5. Approval of Resolutions:

a) **Resolution 15-08-02:** Resolution of Appreciation to Claude "Tweety Bird" Andrews
Mr. Andrews noted the invocation has been removed from the agenda. Mayor Cooper read the Resolution aloud for the audience.

Councilmember Archer made a motion *to approve* Resolution 15-08-02: Resolution of Appreciation to Claude "Tweety Bird" Andrews. Seconded by Councilmember Rivers. Vote was 5-0. Motion carried.

b) **Resolution 15-08-03:** Resolution Supporting Current North Carolina Sales Tax Distribution Formula
Mayor Cooper reviewed the current NC sales tax proposal and the plan to distribute the sales tax to other counties.

Mayor Pro Tem Navey made a motion *to approve* Resolution 15-08-03: Resolution Supporting Current North Carolina Sales Tax Distribution Formula. Seconded by Councilmember Rivers. Vote was 5-0. Motion carried.

CITIZEN REQUESTS/COMMENTS

Zulene Wooten, 320 Fairview St.

Concerned with the high density of 71 units in the area with the Seaside development. Why allow three entrance/exit drives on Fairview Street; it is already congested on her street. She understands the development is going to be allowed to connect to the sewer system across the street. She doesn't think Island Beach and Racquet Club can handle the capacity of the new homes. A sewer line busted a few years ago and she is concerned with safety. Also concerned with the setbacks.

Roddy Seymour, 108-H Coastal Dr.

Concerned with the current flooding and water drainage issues at his home. He has been told issues are with the west end drainage ditch and the town is currently working on it. He doesn't see how we can consider more development when we aren't taking care of what we have now.

Pace Winstead, 510 Kinston Ave.

Reading from a prewritten statement, she understands change is needed and is good. She has no problem with growth and development as long as a master plan is in place to protect citizens. She doesn't agree with changing the UDO to allow more density, more impervious pavement and more growth. She is concerned that Council wasn't even aware of the Land Use Plan until Mr. French brought it to their attention at the last meeting.

Suzanne Hassel, 528 N Kinston Ave.

She referenced an email from David Walker to David York regarding the prohibition of townhouses in the UDO. The illegality of the project all began when Council amended the UDO to allow townhouses for the purpose of easier financing. She discussed the changed plans do not meet setbacks.

Claude Andrews, 147 Hoop Pole Creek

Amen to what has already been said, he understands the issues even though they will not affect him in his neighborhood. He is also concerned with the issue of fracking and how it will affect our area. Other towns have already gone on record to fight this. He thanked Council for allowing him to serve as Chaplain all these years, it has been an honor.

Angela George, 104 Pelican Drive

Reading from a prewritten statement, she referenced an email from Derek Taylor to SOG staff stating we do not meet either the UDO or LUP. She encouraged Council to vote based on the majority of public opinion and asked the audience for a show of hands if they opposed the project.

Kathy Harrington, 120 E Atlantic Blvd.

Lack of attendance at meetings means they trust Council with good judgment, they are elected with good judgment. Asks them to do tonight what they feel is good judgment, remembering this is a cottage town.

Liv Sheppard, 102 Oak Forrest Dr.

She has been pleased with Council and voted for each of them. Agrees with the other speakers, this does not need to be approved.

Lori Tatem, 109 Dogwood St.

She applauds Council for the changes made to notify people of projects, but doesn't feel that enough is being done. There are a lot of people that do not understand the full extent of what is going on. Maybe this information should be published in the paper. Make a decision tonight based on the best interests of Atlantic Beach and don't take away from the cottage appearance. Polled the audience again to show hands if they opposed the project and asked Council to listen to the people.

Mike Burton, 116 Pond Dr.

As one of the developers on this project, feels they have played by and have met the rules. They have heard many of the complaints in the room and understand some of the issues. What is being proposed is a 71-unit development with a pool and bathhouse. It will be tasteful. It will help the property and sales tax base. This will be much better than what is there now.

Rickey McCollum, 227 D Mobile Drive

He understands rules and ordinances and knows he has to follow rules to fix his property. If the developers don't have to meet the rules, why does he?

Nathan George, 104 Pelican Drive

He showed a PowerPoint highlighting changes made to the ordinance in June. The ordinance is arbitrary and capricious in how the setbacks are defined. The staff that approved the project is the same one that rewrote the ordinance.

Phillip French, 509 W. Boardwalk

He referenced contradictions with the UDO and the project, specifically a section of the UDO forbidding non-front facing buildings and the appendix definitions. Feels the LUP should be the starting point for development and densities should be lowered, but Council wants to dismiss the LUP and ignore it.

Judy French, 509 W. Boardwalk

She would like to give her four minutes of speaking to her husband and allow him to speak for her. As he already spoke for twice the permitted time, this was not allowed.

Mr. French asked if anyone else in the audience would give him their four minutes. A man stated he could speak for him, so Mr. French continued. If allowed and approved, this stupid project will likely ruin this cottage community by allowing developments like this all over town, including property owned by the Cooper family. There is an election in six weeks.

Doug Brady, 805 Front St, Beaufort

They have been working on this project for over two years and feel it is a great project for that location. It was permitted for over 300 units of condotels and until they wanted townhouses, this wasn't an issue. Now there are only 71 units, much lower in density. The plan was developed based on direction from the town that meets the ordinances. It is nowhere near as dense as Dunescape or Island Beach and Racquet Club. Existing stormwater issues in the area will be improved.

ACTION AGENDA

7. Public Hearing on Amending Article 14 to require additional notification on major site plan reviews

- 1) Approval of **Resolution 15-08-04**: Resolution of Plan Consistency in Accordance with G.S. 160A-383
- 2) Approval of **Ordinance 15-08-01**: Ordinance Amending Article 14, Providing Public Notice/ Development Review Process, Section 14.6, Planning Board Review and Town Council Approval

Councilmember Archer made a motion *to enter into* the Public Hearing. Seconded by Councilmember Batt. Vote was unanimous, 5-0. Motion carried.

Claude Andrews, 147 Hoop Pole Creek

Feels this is a good idea and will help provide information to the public.

Zulene Wooten, Roddy Seymour and Mike Burton signed up, but waived speaking as they spoke during public comments.

Phillip French, 509 W. Boardwalk

Feels this doesn't go far enough to give people information. What kind of notification will be given? Will there be site plans or anything useful? Thinks more newspaper ads should be ran so the needed feedback can be given.

Nathan George, 104 Pelican Drive

Wants to make sure he gets credit for the signage recommendation. He initially spoke to Mayor Cooper about this. Other towns send a post card to residents within 500ft and have neighborhood meetings. Feels the developer should go door to door before they submit plans and discuss the project with neighbors getting feedback and then provide the town proof they met with neighbors.

Councilmember Archer made a motion *to exit and close* the Public Hearing. Seconded by Councilmember Briley. Vote was unanimous, 5-0. Motion carried.

Councilmember Archer asks that this not be voted on tonight and instead just be considered during the overall UDO review that will occur later.

Councilmember Archer made a motion *to table* for further discussion approval of Resolution 15-08-04; Resolution of Plan Consistency in Accordance with G.S. 160A-383 and Ordinance 15-08-01; Ordinance Amending Article 14, Providing Public Notice/ Development Review Process, Section 14.6, Planning Board Review and Town Council Approval. Seconded by Councilmember Briley. Vote was unanimous, 5-0. Motion carried.

8. Review/Action: June 30, 2015 Seaside Villas Site Plan, 71-unit townhouse development: 2800 W. Fort Macon Road.

Mayor Pro Tem Navey made a motion *to untable* approval of the June 30, 2015 Seaside Villas Site Plan from the July 27, 2015 Council meeting. Seconded by Councilmember Archer. Vote was unanimous, 5-0. Motion carried.

Jessica Fiester explained to the audience that the proposed Seaside Villas Townhouse project has been in the review process since March. A second public hearing was held on July 27, due to several modifications made to the previous version of the plan. She acknowledged the setbacks were increased and more recreation areas have been added based on TRC and public requests. The UDO governs and the LUP guides. She reviewed over the density requirements in Table 40 of the LUP and Map 20. She reviewed the same facts Mr. Walker reviewed at the July public hearing. Staff opinion is this plan is in compliance with all codes and this opinion has not changed since July 7.

Mayor Cooper explained the Town has contracted with a third party law firm with expertise in this field, Attorney David York from Smith, Moore, Leatherwood, to review the issue.

Attorney Taylor has looked at the legalities regarding discrepancies with the UDO and LUP. He could not find any court cases with precedent on this issue so he turned to the SOG and David Owens. Since it is not a quasi-judicial issue, the UDO controls. In short he feels the TRC did what they were supposed to do, feels the developer followed the rules and this is a legally defensible plan. It is legal to approve the plan if Council so chooses. Attorney Taylor introduced Attorney York to Council and the audience.

Attorney York agrees with the SOG determination also. He feels the LUP is used for guidance.

Councilmember Archer asked his opinion on if the setbacks proposed are compliant with the current UDO, specifically the northern corner. Mr. York feels after reviewing the multifamily ordinance, they are in compliance. Councilmember Archer asked, regarding open or recreational space, if he feels this project meets the requirement in the current UDO. Attorney York feels they exceed the minimum requirements based on his interpretation of open space or recreation space. Attorney York stated, Courts agree that if there is an ambiguity, then it is to be resolved in the favor of the free use of land.

Mayor Cooper asked his thoughts on the building orientation. Attorney York stated this project should be governed by Chapter 6 and this meets it. The orientations under Article 7 are not applicable in multi-family.

Councilmember Archer asked if his review of the LUP (adopted in 2008 and amended in 2010) and our ordinances showed any conflicts that need attention. Attorney York said he didn't do an exhaustive review, but specifically reviewed for this project. The intent is apparent in comparing the UDO to the LUP. In reviewing the totality and intent, he feels it meant 10.1 units per acre, not 6.2 units per acre. He feels the Courts will look at the totality in the UDO and decide if this is a true error or a script error. He feels they will find this to be a scripted error.

Mayor Pro Tem Navey stated he was on the TRC when this project was recommended. He has since had a lot of contact with people in the area. This project will do great things for stormwater problems currently there. Regarding impact of the entire town, he feels 71 units at that location, on a 2-lane road, is pushing the envelope. He doesn't want to overload the community. He might have been more comfortable at 50 units.

Councilmember Briley fully intended to vote for this plan tonight. Somehow or another, you can be influenced by many things. He is surprised by the number of people in that area that are opposed to the number of units, prior to tonight he didn't know so many opposed. He doesn't know if the number of units is too high, but feels less units is reasonable.

Councilmember Batt said the density seems to be the question. She understands the stormwater concerns and feels they are trying to fix the problems with this project with a lower density. She doesn't understand why people have waited so long to come in. She feels not all the facts are being provided to have stirred up this much negative attention. We cannot deny the developers to use their land if it meets the regulations.

Councilmember Rivers feels in essence if they have met all requirements and we turn it down, could we be breaking the law?

Mayor Pro Tem Navey asked if we could approve the plan with conditions. Attorney Taylor advised if the density is lessened, the plan is changed and the process will have to start over.

Councilmember Briley believes it meets the legal requirements, but will it meet the best interest of the people in the area? He asked the audience to not wait until the last minute when they feel the way they do about a project.

Proposed June 30, 2015 Seaside Villas Site Plan fails for lack of a motion.

Mayor Cooper called a recess at 7:57pm.

Meeting reconvened at 8:04pm.

TOWN MANAGER'S REPORT

Review of Capital Projects

a) Demolition of the Food Lion Complex

Mr. Walker met with the contractor AK Grading and they are prepared to begin demo after Labor Day. Demo could take between two weeks and two months, though slotted for two months. AK Grading also owns a recycling center and intends to recycle all of the items removed. The splashpad will close after Labor Day and access to the park will be limited.

b) New Well Project / SCADA Project Bids

Bids will be received and construction to commence after the demolition of the Food Lion complex finishes. Bids for the well and SCADA system are both due Sept 30.

c) Acceptance of low bid: Sunland Builders, Newport, NC, \$137, 528: Phase One - Bridge Abutment improvements; installation of pervious parking

On August 5, 2015, bids were received for the installation of pervious parking at the old bridge abutment. The project can begin in about four weeks.

Councilmember Rivers made a motion *to accept* the Sunland Builders bid for \$137,528. Seconded by Councilmember Batt. Vote was 5-0. Motion carried.

d) Review of Future Storm Water Projects

- Charlotte, Durham, Cedar, and West Bogue drainage improvement project. This is about a twenty acre drainage basin. This project is estimated at approx. \$300,000 with bids going out in September.
- Pond Drive/Old Causeway drainage improvement project. This project is estimated at approx. \$300,000 with hopes to begin next fiscal year.
- After these two, we will have some spot projects remaining, including W. Boardwalk, Raleigh Ave., Henderson Blvd., and more.

Review of previous projects totals:

2010-11:	2011-12:	2012-13: \$75,330.31	2013-14:	2014-15: \$136,309.80
\$116,341.35	\$29,113.09	Dunes/Robin: \$35,710.11	\$381,466.41	Hoop Pole: 40,342.49
Greenville/Terminal:	S Charlotte: \$10,133.50	Hoop Pole: \$19,325.40	Dunes Robin \$195,575.73	2 auxiliary mobile pumps:
\$95,605.87	Dunes/Robin: \$7,106.10	S Charlotte: \$10,000	Hoop Pole \$87,544.85	\$48,652.16
Club Colony Raingarden:	Hoop Pole: \$5,539.14	E Boardwalk: \$6,653.25	N Kinston \$74,975.13	Mobile Dr.: \$14,990
\$7,900	E Boardwalk: \$4,038.90	N Kinston: \$2,641.55	Club Colony/Freeman:	Dunes/Robin: \$10,000
Durham/Davis: \$6,267.50	108 Pond: \$2,295.45	108 Pond: \$1,000	\$23,370.70	Moonlight: \$12,067.05
Bogue Blvd: \$2,750				Miscellaneous: \$5,250
Miscellaneous: \$1,777.98				W Bogue/Cedar: \$3,008.10
Bayview Driveway: \$1,450				Old Causeway: \$2,000
Old Causeway Grate: \$590				

MAYOR/COUNCIL COMMENTS

None.

There being no further action taken or business before Council the meeting stood adjourned. The time was 8:25 p.m.

These minutes were approved at the September 28, 2015 meeting of the Atlantic Beach Town Council.

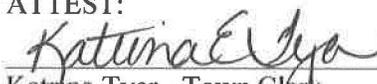
TOWN OF ATLANTIC BEACH

(seal)




A. B. Cooper, III - Mayor

ATTEST:


Katrina Tyer - Town Clerk