

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,



TOWN OF ATLANTIC BEACH

MEMORANDUM

TO: Mayor and Town Council

DATE: April 18, 2005

FROM: Chuck Cooper
Town Manager

RE: Closing of Central Drive

On March 21, 2005 the Town Council adopted Resolution No. 05-03-03, "Resolution of Intent to Close Central Drive" and scheduled the requisite public hearing for this evening. The resolution of intent was published in the *Carteret County News-Times* once each week for four (4) consecutive weeks, a copy of the resolution of intent and notice of public hearing were mailed to the property owner adjoining the street (FMB of Atlantic Beach, LLC), and a notice of the proposed closing and public hearing was prominently posted in two locations along the street as required by the General Statutes.

This matter is before the Council as a byproduct of an application from FMB to close the street. FMB has requested this closing as part of FMB's development plans for the Circle and the matter should be addressed by the Council at this meeting in order for the development plan to proceed. North Carolina law requires the Council to hold a public hearing on this matter and to make a determination that closing Central Drive is not contrary to the public interest nor would any individual owning property adjoining the street be deprived of a reasonable means of access to his or her property.

If, after the public hearing, the Town Council has determined that closing Central Drive is not contrary to the public interest and Council decides to move forward with the street closing, a **MOTION** would be in order **TO ISSUE** a "**TOWN OF ATLANTIC BEACH ORDER CLOSING CENTRAL DRIVE.**"

Return: Taylor

NORTH CAROLINA, CARTERET COUNTY
The foregoing certificate(s) of Notary Public(s) is/are
certified to be correct. This instrument and this certifi-
cate are duly registered at the date and time and in
the Book and Page shown on the first page hereof.

Melanie Arthur Register of Deeds
By Paula Lewis
Asst. Deputy, Registrar of Deeds

**TOWN OF ATLANTIC BEACH
ORDER CLOSING CENTRAL DRIVE**

WHEREAS, on March 21, 2005 the Atlantic Beach Town Council adopted Resolution No. 05-03-03, "Resolution of Intent to Close Central Drive," and scheduled a public hearing on the matter for April 18, 2005 at 6:00 p.m. in the Town Hall Meeting Room; and

WHEREAS, Resolution No. 05-03-03 was published in the *Carteret County News-Times* once each week for four (4) consecutive weeks, a copy of the resolution of intent and notice of public hearing were mailed by certified mail, return receipt requested, to the property owner adjoining Central Drive (FMB of Atlantic Beach, LLC), and a notice of the proposed closing and public hearing was prominently posted in two locations along Central Drive as required by the General Statutes; and

WHEREAS, on April 18, 2005 the Town Council held the properly notified public hearing in the Town Hall Meeting Room to receive public comment on the proposed closing of Central Drive; and

WHEREAS, after having heard, considered and discussed such comments and after full and complete consideration of the matter it appears to the satisfaction of the Town Council that the closing of Central Drive is not contrary to the public interest and that no individual owning property adjoining the street will, as a result of said closing, be thereby deprived of a reasonable means of ingress and egress to his property; and

WHEREAS, it appears to the satisfaction of the Town Council that the closing of said street will be in the public interest.

NOW, THEREFORE, BE IT ORDERED by the Council of the Town of Atlantic Beach that:

1. Central Drive as shown on the plat of Atlantic Beach recorded in Map Book 1, Page 111 and Map Book 1, Page 131 both of the Carteret County Registry and as may be shown on other plats of said subdivision or portions thereof is hereby closed.
2. The Town of Atlantic Beach reserves its right, title and interest in any utility and drainage improvements and/or easements within said closed street. Such reservation also extends to utility and drainage improvements and/or easements owned by private utilities that at the time of this street closing have a utility or drainage agreement or franchise with the Town.
3. A certified copy of this order shall be filed in the office of the Register of Deeds of Carteret County.
4. This order is effective upon adoption.

**SCHEDULE OF PARKING FEES
TOWN OF ATLANTIC BEACH
ADOPTED MARCH 21, 2005**

Rate for all metered parking: \$1.00 per hour (\$.25 per 15 minutes)

Hours for metered parking: 9:00 a.m. – 6:00 p.m.
(except New Bern Street) 6:00 p.m. – 9:00 a.m. NO CHARGE

Hours for New Bern Street: 6:00 a.m. – 6:00 p.m. NO CHARGE
 6:00 p.m. – 9:00 p.m. NO CHARGE
 9:00 p.m. – 6:00 a.m. NO PARKING

<u>Street or Lot</u>	<u>Total Spaces</u>	<u>Metered Spaces</u>	<u>30-Minute Spaces</u>	<u>Handicapped Spaces</u>
Atlantic Blvd.	56	55	N/A	1
Central Drive	55	(Petition for Closing Pending)		
East Drive	51	FREE	N/A	1
New Bern Street	50	48	N/A	2
West Drive	60	FREE	N/A	1
Dirt Lot	23	23	N/A	N/A
Main Lot	64	61	N/A	3
Pavilion Lot	30*	26	N/A	3

* Includes one blank "space" currently striped as no-parking area.