

**1a. Planning Board Recommendations-T & H Atlantic Beach, Inc. and zoning request changes for 1105 & 1107 W. Fort Macon Road.**

Councilman Bailey made a motion to approve the request for group housing project T & H Atlantic Beach, Inc. Seconded by Mayor Pro Tem Creech, vote was 4-0, unanimous.

Councilman Bailey made a motion to call for a public hearing on February 21, 2006 for a change of rezoning requests of 1105 and 1107 W. Fort Macon Road. Seconded by Councilman Doe, vote was 4-0, unanimous.

**2. Public Hearing-Purchase and Financing of Property at 915 West Fort Macon Road-Town Manager**

Town Manager, Chuck Cooper said it would be best for him and Town Attorney, Derek Taylor to introduce the topic and then the Council could go into public hearing. He stated the Town Council had called for a Public Hearing on the purchase and installment financing of the acquisition property at 915 W. Fort Macon Road. This property has the potential to be used by the Town for public purposes to include: (1) development of a Town sewer treatment system, (2) development of storm water impoundment and treatment areas, and/or (3) development of Town facilities to address overcrowded and aging infrastructure. The town is following the requirements of G.S. 159-148, G.S. 160A-20 and the N.C. Administrative Code in pursuing this property acquisition.

Chuck Cooper stated that the Council directed him and the Town Attorney at the November 21, 2005 meeting to move forward with the negotiations on the purchase of this property. The Town has worked very closely with the Local Government Commission to assure this purchase follows their policies and procedures. The Town is now prepared to execute this purchase and seek Local Government Commission approval for the installment debt financing at their February 7, 2006 meeting.

Mr. Cooper said the Town's current debt is approximately \$757,000.00 while the statutory Town of Atlantic Beach debt limit is \$69,000,000.00. We have a very low debt in this Town. The purchase of this property is for \$4,000,000.00 and would be executed through an installment note over a term of fifteen years at an interest rate of 3.91%. The Council has been provided an amortization schedule for the installment note from the successful bidder BB&T. The Town followed the requirements of G.S. 160A-20(g) that requires giving proper notice for this public hearing. This installment financing could result in a tax increase necessary to meet the sums to fall due under the proposed contract of up to \$.05 / \$100.00 of property valuation.

At the conclusion of the public hearing and upon favorable consideration, the Council will be asked to approve two resolutions related to this purchase. Resolution # 06-01-01 is a

“Resolution Approving Financing Terms” and approves the financing contract with BB&T for the installment note. Resolution # 06-01-02 is a “Resolution Authorizing the Filing of an Application for Approval of a Financing Agreement Authorized by North Carolina General Statute 160A-20” and approves the financing contract for the Local Government Commission and moves the formal application to the Local Government Commission forward for the February 7, 2006 Local Government Commission meeting.

Town Attorney, Derek Taylor informed the Council that there are three components to these issues. There are two resolutions which have been identified and the purchase contract. The Council would be asked to approve both resolutions and the purchase contract. He stated this is what the situation is: the Town of Atlantic Beach found out through the grapevine that the Food Lion property was possibly available for purchase. We found out that there was a private entity that had already begun negotiations with the seller to purchase the property. Since there are so few large tracts of the land left in Atlantic Beach, we felt the Council and public should know about it as soon as possible. We called the sellers and their attorney and told them the Town had an interest in the property as well. We intended to use the property without need for re-zoning the seller felt like the cycle we would be on to purchase the property was a much shorter cycle than the other private entity that was interested. The seller would not accept less than the same price but they were willing to talk to us about other things associated with the sale. We did not have a large amount of time to work with. The reason the seller would rather sell to us is we can shorten the cycle. The contract is for \$4,000,000.00. As of today, the appraised value of the property is \$3,625,000.00, not the full \$4,000,000.00. The appraisal is based on us taking the property, taking the building off the property, or land only. The appraiser had deducted from the value of the property the demolition costs. We had not been able to reach him to find out what the resale value would be, which comes the basis for the \$3,625,000.00 value from the appraisal. There are four tenants on the property. Food Lion has moved across the street but they still have a lease on the building. Food Lion would be delighted to step away from their lease if we would allow them. We don't have it in writing but they said they would remove their sub-leaser sign if we would let them out of the contract. This is not true of Eckerd's. They have actually exercised their right to one of two five year extension periods, which would take them through 2010. We have been unable to get the right individual on the phone to discuss with Eckerd's whether or not that's something they intend to move all the way to 2010 or if they are just holding their position until they can find a better location. The third lease is Wicker Beach. The owner is on a month to month lease so there's no long term issue concerned with them. The fourth lease is the automatic teller. Nobody seems to know who is in control of the teller machine. We have made several phone calls but still no leads. We would be willing to bet if we could work out everything else in the building that the teller's value would be less and less as we go along. Right now, we just do not know about the automatic teller situation. As to the contract, the selling price is \$4,000,000.00, \$100,000.00 down, \$900,000.00 at closing which is currently scheduled on February 10, 2006. We have done everything we can do. The survey, title work and appraisal are completed. Everything we could do to get this passed

by the Local Government Commission has been pretty much completed. We cannot negotiate the price down, it's \$4,000,000.00 or we are out. Attorney Taylor asked if anyone had any questions.

Councilman Doe asked what was going to be the response from the Local Government Commission to the difference between the pricing and the appraisal. Attorney Taylor stated he thought the Local Government Commission would let us have \$3,625,000.00 and no more. It would be up to the Town to come up with the balance. Councilman Doe mentioned tearing down the old building for around \$75,000.00 and Councilman Bailey stated you could not touch it for that. It would probably cost around \$200,000.00. Councilman Doe stated the evaluation had been done absent the value of the building. What would the value of the building be? Attorney Taylor stated he has not been able to get an answer to that question yet.

Councilman Bailey said he would not vote to terminate any leases until we decide what else we are going to do. So that would be \$200,000.00 a year in lease payments the Town could receive. Attorney Taylor stated he would like to let the public know that on the current Food Lion lease there is annual rent of \$133,805.00 per year. The Eckerd lease rent is \$69,120.00 per year. On top of that we would get 2% of sales out of Eckerd's in excess of their base rent. It could be a revenue stream; however, they won't let that property stand idle. Councilman Doe asked if we were to terminate the leases, would we just have to pay them the lease money back. Attorney Taylor said we would allow them to not have to pay us. Doe asked if it is possible to tell Eckerd's we are going to have to break their lease. Attorney Taylor said there is nothing in the lease that would allow us to do that. We are going to be encumbered by the lease agreement by Eckerd's.

Attorney Taylor suggested the Council open the public hearing. Councilman Doe asked if it would be possible to destruct around Eckerd's and leave enough parking to support them and do what we want to do around them. Attorney Taylor said there are parking requirements in the lease. He believed there are 166 spaces required in the Eckerd's lease. Councilman Bailey stated that was not exclusive parking, it was common parking. Attorney Taylor told the Council he invited the people from Eckerd's to come tonight but it looked like no one had showed up. He reminded the Council that until we get rid of the leases that the Town would be in the landlord business. The Town will have expenses.

Councilman Doe made a motion to go into public hearing. Seconded by Councilman Creech, the vote was 4-0, unanimous.

**A. James Newman Willis, III, 104 Atlantic Beach Causeway, NC, 28512**

Captain Jim stated he presumed the Town received some compensation from the sale from FMB that we should have on hand if we needed some funds to help with the Food Lion Property. He reminded the Council they do have the power of eminent domain. If need be,

the leases could be taken with just compensation being paid to the lease. He stated he would like to see the Town buy the site and put in a sewer plant to cover the Circle property. He said he could just see the plant that Fred Bunn is going to put in on West Bogue Blvd. and West Drive breaking down during summer. If we have the plant down at Food Lion the stench would go into the natural area instead. You would not get the sewage running down the main road. In addition, Fred Bunn would not have to invest all that money in a package plant down there and could use that site for a higher use which would bring in additional tax funds. Captain Jim asked that he be left out of sewer treatment. He is not in the market of selling. The only thing sewer could do for him would be to allow the crowd at the County to raise his valuation. If you are going to sewer the Causeway just design it so he would be left out

Councilman Doe said they all know that the Food Lion property would not be big enough to sewer the Causeway or the Town. This is just one piece of the puzzle. The Town is already looking at some other properties as possibilities for sewer. There will not be a sewer in Town until the people of Atlantic Beach have voted a bond referendum to approve the money for that sewer project.

**B. Donna Ballantine, 220 Old Causeway Rd., Atlantic Beach, NC**

Ms. Ballantine stated she is in favor of a sewage plant for Atlantic Beach. She asked the Council if the people without the sewer would have to pay the taxes, too. She was assured if she wasn't on sewer she wouldn't have to pay for it. Councilman Doe said he hopes the Council would one day be able to come to the voters and say for this amount of money we can provide sewer for Atlantic Beach. He told her he did not have the answers to any of those questions now. Councilman Creech disagreed with Councilman Doe and said if they can't sewer the whole Town then it would be nothing. He said he would not vote to just sewer the Circle.

**C. Llewellyn Ramsey, 118 Bowen St., Atlantic Beach, NC**

Mrs. Ramsey stated she felt like this is a historic event we were discussing tonight. The question is does the Town need this land. She said it was a public hearing and the citizens are the ones who should say if the Town should spend \$4,000,000.00 to buy some land for possibly sewer, Town Hall or an Amusement Park. She stated she wholeheartedly endorses this project.

Town Attorney, Derek Taylor, read aloud verbatim, Resolution #06-01-02, to the Council and citizens.

Attorney Taylor then asked the public to continue with their comments and questions. There were none.

Councilman Dawkins made a motion to go out of public hearing. Seconded by Mayor Pro Tem Creech, vote was 4-0, unanimous.

Attorney Taylor requested the Council give consideration to Resolution #06-01-02 first.

Councilman Bailey made a motion to approve Resolution #06-01-02 with changing the 2005 to 2006 on page one and page two, and also changing under #1, page one the word "or" to "and" in that sentence. Seconded by Councilman Doe, the vote was 4-0, unanimous.

**(Clerk's note: Copy of Resolution #06-01-02 is attached and hereby made a part of these minutes.)**

Attorney Taylor requested the Council address Resolution #06-01-01. This is the Resolution required by the lender.

Councilman Doe made a motion to approve Resolution #06-01-01 Approving Financing Terms of the land purchase of the Food Lion properties. Seconded by Councilman Bailey, vote was unanimous 4-0.

**(Clerk's note: Copy of Resolution #06-01-01 is attached and hereby made a part of these minutes.)**

Attorney Taylor requested the Council approve the Contract for Purchase between the Fourm Meshekoff Family Limited Partnership, seller and the Town of Atlantic Beach, purchaser as presented to the Council.

Councilman Doe asked Attorney Taylor if he was satisfied with the terms and the Council's approval of the contract. Attorney Taylor said yes.

Councilman Doe made a motion to approve the contract. Seconded by Councilman Bailey, vote was 4-0, unanimous.

Councilman Bailey thanked Town Attorney, Derek Taylor for negotiating a good contract under difficult time constraints. Mayor Vinson concurred.

Attorney Taylor stated that the February 10th time frame that we have has been built in for a \$50,000.00 cost for a thirty day extension if we need it. Attorney Taylor said he and Mr. Cooper are doing everything they can to keep from having to spend that \$50,000.00. There is that contingency plan. There could be expenditure for the Town of \$50,000.00 non-refundable amount of money to be able to extend for another thirty days. The \$50,000.00 can be applied to the purchase price.

Councilman Bailey stated for the record that he hated that the appraisal came in where it did, but he is in this business and he is very comfortable it is worth what we are paying for it.

### **3. Crystal Coast Banners-Emerald Isle Mayor, Art Schools**

Mayor Schools discussed the placement of "Welcome Banners" to promote the Crystal Coast. He explained that a survey had been done to see how many people had actually heard of the Crystal Coast and where our visitors are coming from. The name "Crystal Coast" was well known in the state of N.C. but out-of-state it was hardly known at all. He passed around posters for the Council and citizens in the audience to look at. The idea was that they wanted to get the names Crystal Coast, Southern Outer Banks and the names of the major cities out there so when someone thinks of one, they would think of the other. Our contact person would be Lisa Williams at Mosca Designs. Mayor Schools stated the price would be one to five banners at \$235.00 each, ten or more would be \$110.00 each. He stated that Emerald Isle would be ordering ten.

A motion was made by Councilman Doe to authorize Town Manager; Chuck Cooper to purchase ten "Duke Blue" colored banners. Seconded by Councilman Bailey, vote was unanimous, 4-0.

The Council took a break from proceedings at 7:40 p.m.

The Council resumed the meeting at 8:00 p.m.

### **4. Zoning Amendments-Planning Director-Lee Smith**

Mr. Smith informed the Council that what they had before them tonight were copies of the proposed Zoning Amendments as revised and frequently asked questions. This particular draft had left out the grandfather clause. The ordinance on the Town's webpage is the correct one. Mr. Smith stated that the numbers in this draft are what everyone had discussed which was 5,000 square feet for the base for a minimum lot size for a single family and then multiples of 3,600 for each additional unit, which kept it at 12 units per acre. Councilman Bailey and Mayor Pro Tem Creech stated they thought they had decided on going to 8,000. Councilman Dawkins asked if the Planning Board had addressed the 8,000. Mr. Smith said the 8,000 had come up at the last meeting but he had not been told to do anything with it. Councilman Bailey stated he thought we needed to be clear we had agreed on 8,000 for a duplex, 10,000 for a triplex and 12,000 for a quadriplex. Mr. Smith apologized if he had misunderstood the Council.

Councilman Bailey stated he wanted to mention something that had been on his mind that he had discussed with Mayor Pro Tem Creech. He said if 3,600 square feet per unit is 12 units per acre, and we're comfortable with 12 per acre, let's hold at 5,000 square feet for a single

**Resolution Approving Financing Terms**

**WHEREAS:** The Town of Atlantic Beach, North Carolina (the "Town") has previously determined to undertake a project for the purchase of land (the "Project"), and the Finance Officer has now presented a proposal for the financing of such Project.

**BE IT THEREFORE RESOLVED, as follows:**

1. The Town hereby determines to finance the Project through Branch Banking and Trust Company ("BB&T"), in accordance with the proposal dated December 19, 2005. The amount financed shall not exceed \$4,000,000.00, the annual interest rate (in the absence of default or change in tax status) shall not exceed 3.91%, and the financing term shall not exceed fifteen (15) years from closing.

2. All financing contracts and all related documents for the closing of the financing (the "Financing Documents") shall be consistent with the foregoing terms. All officers and employees of the Town are hereby authorized and directed to execute and deliver any Financing Documents, and to take all such further action as they may consider necessary or desirable, to carry out the financing of the Project as contemplated by the proposal and this resolution. The Financing Documents shall include a Financing Agreement and Deed of Trust and a Project Fund Agreement as BB&T may request.

3. The Finance Officer is hereby authorized and directed to hold executed copies of the Financing Documents until the conditions for the delivery of the Financing Documents have been completed to such officer's satisfaction. The Finance Officer is authorized to approve changes to any Financing Documents previously signed by Town officers or employees, provided that such changes shall not substantially alter the intent of such documents or certificates from the intent expressed in the forms executed by such officers. The Financing Documents shall be in such final forms as the Finance Officer shall approve, with the Finance Officer's release of any Financing Document for delivery constituting conclusive evidence of such officer's final approval of the Document's final form.

4. The Town shall not take or omit to take any action the taking or omission of which shall cause its interest payments on this financing to be includable in the gross income for federal income tax purposes of the registered owners of the interest payment obligations. The Town hereby designates its obligations to make principal and interest payments under the Financing Documents as "qualified tax-exempt obligations" for the purpose of Internal Revenue Code Section 265(b)(3).

5. All prior actions of Town officers in furtherance of the purposes of this resolution are hereby ratified, approved and confirmed. All other resolutions (or parts thereof) in conflict with this resolution are hereby repealed, to the extent of the conflict. This resolution shall take effect immediately.

**RESOLUTION # 06-01-01**

Adopted this the 19th day of December, 2005, by the votes of Council Member(s) \_\_\_\_\_

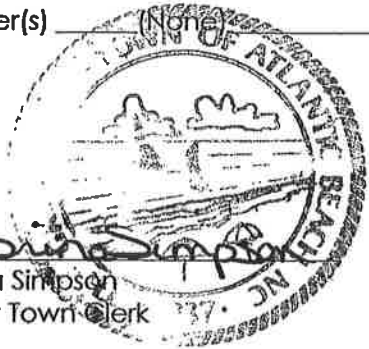
\_\_\_\_\_ Bailey, Creech, Dawkins and Doe \_\_\_\_\_

\_\_\_\_\_ voting for, Council Member(s) \_\_\_\_\_

\_\_\_\_\_ (None) \_\_\_\_\_ voting against and Council

Member(s) \_\_\_\_\_ (None) \_\_\_\_\_ absent.

ATTEST:



Sabrina Simpson  
Deputy Town Clerk

TOWN OF ATLANTIC BEACH

By: Joyce Vinson  
Joyce Vinson  
Mayor



**RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION FOR APPROVAL OF A FINANCING AGREEMENT AUTHORIZED BY NORTH CAROLINA GENERAL STATUTE 160A-20**

**WHEREAS**, the Town of Atlantic Beach, North Carolina desires to purchase approximately 7.4 acres of land with improvements thereon, located at 915 West Fort Macon Road, currently known as the Coral Bay Shopping Center, for the price of FOUR MILLION DOLARS (\$4,000,000.00) used by the Town as a municipal service facility and/or to provide for a component part of a municipal wastewater and stormwater treatment facility plan [the "Project"] to better serve the citizens of Atlantic Beach; and

**WHEREAS**, The Town of Atlantic Beach desires to finance the Project by the use of an installment contract authorized under North Carolina General Statute 160A, Article 3, Section 20; and

**WHEREAS**, findings of fact by this governing body must be presented to enable the North Carolina Local Government Commission to make its findings of fact set forth in North Carolina General Statute 159, Article 8, Section 151 prior to approval of the proposed contract;

**NOW, THEREFORE, BE IT RESOLVED** that the Town Council of the Town of Atlantic Beach, meeting in regular session on the 17<sup>th</sup> day of January 2006, make the following findings of fact:

1. The proposed contract is necessary and expedient because:
  - A) The Town is in immediate need of additional municipal service facilities due to damages their current facilities sustained in recent storms, deterioration due to age of current facilities, and the need for additional space to properly serve the Town's citizens; and
  - B) The Town is developing a plan for the construction and implementation of a municipal wastewater and stormwater processing and disposal facility which will require a large tract of contiguous land and this property has been identified by the Town and its consultants as being an important component of such a facility, this property being one of the few large, elevated, and available lots remaining within the Town's municipal limits.
2. Under the circumstances, the proposed contract is preferable to a general obligation or revenue bond issue for the same purposes because:
  - A) The FOUR MILLION DOLLAR (\$4,000,000.00) cost of the proposed undertaking exceeds the amount that can be prudently raised from currently available appropriations, unappropriated fund balances, and non-voted bonds that could be issued by the Town of Atlantic Beach in the current fiscal year pursuant to Article V, Section 4, of the North Carolina Constitution (the "two-thirds limitation"); and

RESOLUTION # 06-01-02

- B) The value of the land and improvements to be purchased provide sufficient security for a reasonable interest rate by installment financing; and
  - C) The Town has determined that installment financing rates are competitive with or superior to current bond financing rates; and
  - D) The Town has determined that the acquisition cost of obtaining installment financing is much less than the cost of Bond financing; and
  - E) The availability of the land and improvements to be purchased with the proposed financing for the above stated purposes is limited, requiring the Town to act within a timeframe that would not lend itself to the procedures required for Bond financing.
3. The sums to fall due under the contract are adequate and not excessive for the proposed purpose because the Town has sufficient General Fund fund balances, a very low existing municipal tax rate, and a sufficient tax base to support this debt.
  4. The Town of Atlantic Beach's debt management procedures and policies exhibit good practices demonstrated by the Town's very low current debt balances and its history of compliance with all State laws and debt payment schedules.
  5. The increase in taxes necessary to meet the sums to fall due under the proposed contract, at the current tax base valuations, and considering existing resources would be up to .05 cents per \$100 valuation and is not deemed to be excessive. New valuations expected to result from a 2007 revaluation offer the potential for an even greater tax base from which the debt payments can be supported.
  6. The Town of Atlantic Beach is not in default in any of its debt service obligations.
  7. The attorney for the Town of Atlantic Beach has rendered an opinion that the proposed Project is authorized by law and is a purpose for which public funds may be expended pursuant to the Constitution and laws of North Carolina.

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that the Town Manager is hereby authorized to act on behalf of the Town of Atlantic Beach in filing and pursuing an application with the North Carolina Local Government Commission for approval of the Project and the proposed financing contract and other actions not inconsistent with this resolution.

This resolution is effective upon its adoption this 17<sup>th</sup> day of January, 2005.

Adopted this the 17th day of January, 2006, by the votes of Council Member(s)

BAILEY, CREECH, DAWKINS AND DOE

\_\_\_\_\_ voting for, Council Member(s) \_\_\_\_\_

NONE

\_\_\_\_\_ voting

against and Council Member(s) NONE absent.

ATTEST:

TOWN OF ATLANTIC BEACH

Sabrina Simpson  
Sabrina Simpson  
Deputy Town Clerk

By: Joyce Vinson  
Joyce Vinson  
Mayor





