



Minutes
Town Council Meeting Agenda
Town Boardroom
1010 West Fort Macon Road, Unit 17 and
Electronically Via Zoom
Thursday, June 10, 2021 – 2:00 p.m.



A regularly scheduled work session of the Atlantic Beach Town Council was held Thursday, June 10, 2021 at 2:00 p.m. in the Council Meeting Room, 1010 West Fort Macon Road, Unit 17, Atlantic Beach, North Carolina and electronically via Zoom.

Members Present: Mayor A. B. Cooper, III; Mayor Pro Tem Richard Johnson; Councilmembers: Harry Archer, M.J. Forrest, Danny Navey and Austin Waters

Members Absent: None

Others Present: David Walker, Town Manager; Katrina Tyer, Town Clerk; Marc Schulze, Public Works Director; Leghe Gerald, Water Department Supervisor; Michelle Shreve, Planning Director; Morgan Gilbert, Parks and Rec Director; Jeff Harvey, Police Chief; Julian Griffie, Planner; Mike Shutak, Carteret News Times

CALL TO ORDER

Mayor Cooper called the meeting to order at 2:00 p.m.

APPROVAL OF AGENDA

Councilman Archer made a motion *to approve* the agenda. Seconded by Councilman Waters. Approved unanimously, 5-0. Motion carried.

PRESENTATION FROM BIRD SCOOTERS (VIA ZOOM)

Chris Stockwell, Territory Manager, introduced the plan to bring Bird Scooters to Atlantic Beach. He spent some time at Cherry Point while in the USMC and has vacationed on Bogue Banks since then. The purpose is to provide an additional mode of transportation for tourist and visitors. The scooters are rented using a smartphone app. Bird Scooters works with a local entrepreneur to manage the fleet on the ground, picking them up, returning them, charging them etc. There is not cost to the Town, but the Town will receive a portion of revenue. A discount for elderly and veterans or a monthly package can be offered. Renters are required to scan their driver's license before they rent, therefore preventing underage users. With GeoFence programing, boundaries can be entered to keep the scooters off of Ft. Macon Road, beach accesses, sidewalks, the skatepark bowl, and any other areas of concern. They would like to start with 10-30 scooters to test the market and add as needed, so not to saturate the town with scooters.

Mayor Cooper thinks this is an interesting idea that ties into our goal of making the Town more walkable/bikeable. It was the consensus of Council for Chief Harvey to reach out to other towns that already have a scooter program and discuss their pros and cons. Council was instructed to submit any questions or concerns for Chief Harvey to ask other towns or the company.

REVIEW OF PROPOSED AMENDMENTS TO THE NOISE ORDINANCE

Chief Harvey modeled this ordinance from other nearby towns. He contacted businesses in the Circle area, providing them a copy of the proposed amendment. His main goal is to establish a time for music at night. Idle Hour inquired and understands the time frame, the verbiage and loudness. Crabs Claw inquired about holidays and the time limits. He feels it is acceptable to give holidays longer hours.

It was the consensus of Council to change the proposed ordinance to include all businesses, rather than specifically bars and restaurants, allowing all businesses that hold a business license with the town to have music without a permit. Also, change to time to include holidays, "Fridays, Saturdays and state and federal recognized holidays from 10:00am – 11:00pm."

Councilman Forrest left the room at 2:43pm for a phone call. Returned at 2:46pm.

REVIEW OF UDO AMENDMENTS FOR NCGS 160D COMPLIANCE

The new Chapter 160D of the North Carolina General Statutes consolidates current city and county enabling statutes for development regulations (now in Chapters 153A and 160A) into a single, unified chapter. Michelle noted we do some of these 'musts' already as a practice, but they are not included in the ordinances. She reviewed the checklist of changes provided by the School of Government:

TERMINOLOGY & CITATIONS

- Must update any references to provisions in G.S. Chapter 160A to indicate relevant provisions in Chapter 160D.
- Must align ordinance terminology with Chapter 160D terminology for conditional zoning and special use permits; must delete use of the terms conditional use permit, special exception, conditional use district zoning, and special use district zoning. (See G.S. 160D-102.)
- Must ensure that ordinance definitions for the following terms are not inconsistent with definitions provided in state law and regulation: building, dwelling, dwelling unit, bedroom, and sleeping unit. (G.S. 160D-706; S.L. 2019-111, § 1.17.)

ETJ & 2 JURISDICTIONS

- For extension of extraterritorial jurisdiction (ETJ), a municipality must provide mailed notice thirty days prior to ETJ hearing; municipality may hold one hearing (with single mailed notice) regarding ETJ and initial zoning amendment. (G.S. 160D-202(d).)

BOARDS

- Must adopt broadened conflict-of-interest standards for governing and advisory boards. (G.S. 160D109.)
- Must keep minutes of proceedings of each board. (G.S. 160D-308.)
- Must have each board member take an oath of office before starting his or her duties. (G.S. 160D-309.)
- Must update ETJ population estimate, at least with each decennial census (also calculation for proportional representation is simplified and process for appointment is clarified). (G.S. 160D-307.)
- Must provide proportional representation for ETJ on preservation commission if any districts or landmarks are designated in the ETJ. (G.S. 160D-307.)
- May have detailed rules of procedure for each board; may be adopted by governing board; if not, then may be adopted by individual board; if adopted, must maintain board rules of procedure (by clerk or other officer as set by ordinance) and must post board rules of procedure to website, if the jurisdiction has a website. (G.S. 160D-308.)

LAND USE ADMINISTRATION

- Must incorporate new staff conflict-of-interest standards into ordinance or policy. (G.S. 160D-109.)
- Must maintain in paper or digital format current and prior zoning maps for public inspection. (G.S. 160D105.)
- Must maintain in paper or digital format any state or federal agency maps incorporated by reference into the zoning map. (G.S. 160D-105.)
- May charge reasonable fees for support, administration, and implementation of development regulation; must use any such fees for that purpose, not for other purposes. (G.S. 160D-402(d).)

ENFORCEMENT

- Must issue notices of violation (NOVs) in conformance with statutory procedures (must deliver to permittee and landowner if different; may deliver to occupant or person undertaking the activity; delivery by hand, email, or first-class mail; may be posted onsite; administrator to certify NOV for the file.) (G.S. 160D-404(a).)
- If inspecting, must enter the premises during reasonable hours and upon presenting credentials; must have consent of premises owner or an administrative search warrant to inspect areas not open to the public. (G.S. 160D-403(e).)
- For revocation of development approval, must follow the same process as was used for the approval. (G.S. 160D-403(f).)
- May perform inspections for other development approvals to ensure compliance with state law, local law, and the terms of the approval; must perform (or contract for) inspections for building permits. (G.S. 160D-1113; -403(e).)
- May require a certificate of compliance or occupancy to confirm that permitted work complies with applicable laws and terms of the permit; still must require certificate of occupancy for work requiring a building permit. (G.S. 160D-403(g).)

ZONING MAPS & ORDINANCE

- Must maintain current and prior zoning maps for public inspection (local government clerk or other office may be the responsible office); may adopt and maintain in paper or digital format. (G.S. 160D-105.)
- Must eliminate conditional-use-district zoning; existing conditional-use-district zoning converts to conditional district on January 1, 2021. (G.S. 160D-703; S.L. 2019-111, § 2.9(b).)
- Must not set a minimum square footage for structures subject to the One- and Two-Family Residential Building Code. (G.S. 160D-703; S.L. 2019-174.)

OTHER DEVELOPMENT ORDINANCES

- Must conform subdivision performance guarantee requirements with statutory standards. (G.S. 160D804.1; S.L. 2020-25; S.L. 2019-79 (S.B. 313))
- Must conform subdivision procedures for expedited review of certain minor subdivisions. (G.S. 160D802, established prior to G.S. Chapter 160D.)
- Must not require a developer, as a condition to subdivision approval, to bury a power line existing above ground and outside of property to be subdivided. (G.S. 160D-804; S.L. 2019-174.)
- Must exempt farm use on bona fide farm in ETJ from city zoning to the same extent it would be exempt from county zoning; Chapter 160D clarifies that other municipal development regulations may still apply. (G.S. 160D-903(c).)
- Must not exclude manufactured homes based on the age of the home. (G.S. 160D-910.)
- Must follow standardized process for housing code enforcement to determine owner's abandonment of intent to repair and need for demolition. (G.S. 160D-1203(6).)

HISTORIC PRESERVATION

- Must follow standard quasi-judicial procedures for preservation certificates of appropriateness. (G.S. 160D-947(c).)
- Must frame preservation district provisions as "standards" rather than "guidelines." (G.S.160D-947(c).)

DEVELOPMENT AGREEMENTS

- Must process a development agreement as a legislative decision. (G.S. 160D-105.)
- Must have a local government as a party to a development agreement (a water and sewer authority may enter an agreement as a party, but not independently). (G.S. 160D-1001(b).)

COMPREHENSIVE PLAN

- Must adopt a comprehensive plan by July 1, 2022, to maintain zoning (no need to re-adopt a reasonably recent plan). (G.S. 160D-501(a).)
- Must adopt a plan or a plan update following the procedures used for a legislative decision. (G.S. 160D-501(c).)
- Must reasonably maintain a plan. (G.S. 160D-501(a).)

LEGISLATIVE DECISIONS

Notice

- Must follow applicable procedures for legislative decisions under any development regulation authorized under Chapter 160D, not just zoning; must adopt any development regulation by ordinance, not by resolution. (G.S. 160D-601.)
- For zoning map amendments, must provide notice not only to immediate neighbors but also to properties separated from the subject property by street, railroad, or other transportation corridor. (G.S. 160D-602.)
- For zoning map amendments, must provide posted notice during the time period running from twenty-five days prior to the hearing until ten days prior to the hearing. (G.S. 160D-602(c).)

Planning Board Comment

- Must refer zoning amendments to the planning board for review and comment; must not have governing board handle planning board duty to review and comment on zoning amendments. (G.S. 160D-604(c), (e).)
- Must have planning board consider any plan adopted according to G.S. 160D-501 when making a comment on plan consistency. (G.S. 160D-604(d).)

LEGISLATIVE DECISIONS

Plan Consistency

- When adopting an amendment to the zoning ordinance, must adopt a brief statement describing whether the action is consistent or inconsistent with approved plans. (G.S. 160D-605(a).) (This eliminates the 2017 requirement that statements take one of three particular forms.)
- Must note on the applicable future land use map when a zoning map amendment is approved that is not consistent with the map; the future land use map is deemed amended when an inconsistent rezoning is approved. (G.S. 160D-605(a).) (This clarifies that a rezoning inconsistent with a plan does not amend the text of the plan, but it does amend the future land use map.)
- For a future land use map that is deemed amended, if it is a CAMA plan, then such amendment is not effective until it goes through the CAMA plan-amendment process. (G.S. 160D-501.)
- Must adopt a statement of reasonableness for zoning map amendments; for such statements, may consider factors noted in the statutes; may adopt a statement of reasonableness for zoning text amendments. (G.S. 160D-605(b).)

Voting

- Must permit adoption of a legislative decision for development regulation on first reading by simple majority; no need for two-thirds majority on first reading, as was required for cities under prior law. (G.S. 160A-75; S.L. 2019-111, § 2.5(n).)

LEGISLATIVE DECISIONS

Certain Legislative Decisions

- Must prohibit third-party down-zonings; may process down-zonings initiated by the local government or landowner (G.S. 160D-601; S.L. 2019-111, Pt. I.)
- Must obtain applicant's/landowner's written consent to conditions related to a conditional zoning approval to ensure enforceability. (G.S. 160D-703(b); S.L. 2019-111, Pt. I.)

QUASI-JUDICIAL DECISIONS

Procedures

- Must follow statutory procedures for all quasi-judicial development decisions, including variances, special use permits, certificates of appropriateness, and appeals of administrative determinations. (G.S. 160D-102(28).)
- Must hold an evidentiary hearing to gather competent, material, and substantial evidence to establish the facts of the case; the evidentiary hearing must have testimony under oath; must establish written findings of fact and conclusions of law. (G.S. 160D-406.)
- Board chair must rule at the evidentiary hearing on objections to inclusion or exclusion of administrative material; such ruling may be appealed to the full board. (G.S. 160D-406(d).)
- Must allow parties with standing to participate fully in the evidentiary hearing, including presenting evidence, cross-examining witnesses, objecting to evidence, and making legal arguments; may allow non-parties to present competent, material, and substantial evidence that is not repetitive. (G.S. 160D-406(d).)
- Be aware that the definition of *close family relationship* as used for conflicts of interest includes spouse, parent, child, brother, sister, grandparent, or grandchild (including step, half, and in-law relationships). (G.S. 160D-109(f).)
- Must not impose conditions on special use permits that the local government does not otherwise have statutory authority to impose. (S.L. 2019-111, Pt. I.)
- Must obtain applicant's/landowner's written consent to conditions related to a special use permit to ensure enforceability. (S.L. 2019-111, Pt. I.)
- Must set a thirty-day period to file an appeal of any administrative determination under a development regulation; must presume that if notice of determination is sent by mail, it is received on the third business day after it is sent. (G.S. 160D-405(c).)

ADMINISTRATIVE DECISIONS

Development Approvals

- Must provide development approvals in writing; may provide in print or electronic form; if electronic form is used, then it must be protected from further editing. (G.S. 160D-403(a).)
- Must provide that applications for development approvals must be made by a person with a property interest in the property or a contract to purchase the property. (G.S. 160D-403(a).)
- Must provide that development approvals run with the land. (G.S. 160D-104.)
- For revocation of development approval, must follow the same process as was used for the approval. (G.S. 160D-403(f).)

Determinations

- Must provide written notice of determination by personal delivery, electronic mail, or first-class mail to the property owner and party seeking determination, if different from the owner. (G.S. 160D-403(b).)

Appeals of Administrative Decisions

- Must allow administrative decisions of any development regulations (not just zoning) to be appealed to the board of adjustment, unless provided otherwise by statute or ordinance.
- (Appeals relating to erosion and sedimentation control, stormwater control, -or building-code and housing-code violations are not made to the board of adjustment unless specified by local ordinance.) (G.S. 160D-405.)
- Must set a thirty-day period to file an appeal of any administrative determination under a development regulation; must presume that if notice of determination is sent by mail, it is received on the third business day after it is sent. (G.S. 160D-405(c).)
- Must require the official who made the decision (or his or her successor if the official is no longer employed) to appear as a witness in the appeal. (G.S. 160D-406.)
- Must pause enforcement actions, including fines, during the appeal. (G.S. 160D-405.)

VESTED RIGHTS AND PERMIT CHOICE

Vested Rights

- Must recognize that building permits are valid for six months, as under prior law. (G.S.160D-1111)
- Must recognize the default rule that development approvals/permits are valid for twelve months, unless altered by statute or local rule. (G.S. 160D-108(d))
- Must identify site-specific vesting plans (formerly site-specific development plans) with vesting for two to five years, as under prior law, except for specified exceptions. (G.S. 160D-108.1)

- Must recognize multi-phase developments—long-term projects of at least 25 acres—with vesting up to seven years, except for specified exceptions (160D-108(c); -108(f).) (The previously authorized phased-development plan is obsolete and should be deleted from ordinance.)

Permit Choice

- Must not make an applicant wait for final action on the proposed change before proceeding if the applicant elected determination under prior rules. (G.S. 143-755; G.S. 160D-108(b).)

Appeals of Quasi-Judicial Decisions

- Must update ordinance to address appeals of certificates of appropriateness for historic landmarks and historic districts; default rule is that such appeals go straight to court; local government may opt for such appeals to go to the board of adjustment, as under prior statutes. (G.S. 160D-947.)
- Must provide that appeals of certificates of appropriateness must be filed within thirty days after the decision is effective or written notice is provided, the same as for appeals of other quasi-judicial decisions. (G.S. 160D-947; -1405.)

Councilman Navey left the meeting at 3:02pm for a doctor appointment.

REVIEW OF PLANS AND COST ESTIMATE FROM GMA ENGINEERS CONCERNING THE CHLORAMINE CONVERSION AT THE WATER PLANT

Leghe Gerald advised we received the cost estimate from GMA for the construction of the ammonia injection facility at the water treatment plant. GMA estimates the cost will be \$162,730. We are able to construct a room inside of the high service building to house the equipment rather than constructing a new building, which should save us money. We will submit our plans to Public Water Supply Section for their review and approval. We expect approval to take around 30 days then we can submit this item for bid. Mr. Walker noted we intend to fund these items from the new ARP Grant Project Fund.

COUNCIL COMMENTS

None.

ADJOURN


There being no further action taken or business before Council the meeting stood adjourned. The time was 3:06 pm.

These minutes were approved at the July 26, 2021 meeting of the Atlantic Beach Town Council.

ATTEST:

(seal)

TOWN OF ATLANTIC BEACH


A. B. Cooper, III - Mayor


Katrina Tyer - Town Clerk

