

**MINUTES**  
**TOWN OF SUNSET BEACH**  
**SPECIAL CALLED MEETING**  
**SEPTEMBER 14, 2009**  
**6:45 p.m.**

**Members Present**

Mayor Ron Klein  
Mayor Pro-Tem Len Steiner  
Councilman Lou DeVita  
Councilman Bob Bobinski  
Councilman Wilson Sherrill

**Members Absent**

Ron Watts

**Others Present**

Mike Isenberg, Town Attorney  
Gary Parker, Town Administrator  
Kim Cochran, Town Clerk

**TOWN COUNCIL MEETING 6:45 pm**

DeVita spoke on the proposed recycling program and the fact that he and Larry Crim had been working together on the regulations and requirements of each community. He provided a color-coded chart that showed the areas that needed smaller bins/roll carts such as Sandpiper; they had a big problem storing these. They were moving along with the operation requirements before they got to the contractual requirements which he hoped they would reach by next month.

Sherrill asked about the status on the hardcopies of the new Project Newsletter that had been mailed. Parker explained that according to the USPS, apparently it was standard procedure for it to be 9-10 days for delivery. They had to remember the holiday had thrown them off also. He had called Florence to find out why it was taking so long and this was the explanation given to him. The Town Clerk had emailed the project newsletter and was handing out copies tonight.

Mayor Klein explained he had been to a meeting Saturday in Shallotte regarding the protection of senior citizens. Starting October 1<sup>st</sup>, you could place a free security freeze on the reporting agencies (those under 62 are charged \$10 dollars). They could go to [www.noscamnc.gov](http://www.noscamnc.gov) for more information. They gave pointers such as the fact that everyone was allowed to get a free credit report from each agency, Equifax, Experian and TransUnion. He suggested going each quarter to a different agency to check their reports. They can also call 1-800-OPTOUT to have the credit card companies stop sending pre-approved credit cards. This was very easy to steal and have someone open up a card in your name.

**6:58 p.m Meeting called to order.**

**1 & 2. CALL TO ORDER AND PLEDGE.**

Mayor Klein called the meeting to order and led the Council in the pledge of allegiance.

**2. APPROVE OR AMEND AGENDA-No changes**

**3. PUBLIC COMMENTS ON AGENDA ITEMS ONLY:**

**Carol Scott: Proposed purchase of 5 acre site**

Mrs. Scott, 1214 E. Main St. read from a written statement against purchasing the 5 acre site. Please see statement hereby incorporated by reference and made a part of these minutes.

Richard Cerrato, 517 Twisted Oak Lane, also read a written statement against all the proposed Capital Improvement Projects because of the economy. Please see written statement hereby incorporated by reference and made part of these minutes.

Brian Blane, 726 Sandpiper Bay, spoke to Council about their being elected by a class of upper-middle class people. It was very easy to see all the tax dollars coming in, but again reminded Council that the people that elected them were upper-middle class and he felt they shouldn't make decisions with the affluent way of thinking.

Don Mischer, 942 Wyndfall Dr, asked where the grant money would come from and who owned the property now? Mayor Klein replied federal and state monies, and the owners were a partnership of Sammy Varnum and Greg Gore.

**4. a. MINUTES OF REGULAR CALLED MEETING AUGUST 3, 2009**

**b. EXECUTIVE SESSION AUGUST 3, 2009**

**c. EXECUTIVE SESSION JUNE 1, 2009**

**d. SPECIAL CALLED MEETING/WORKSHOP JULY 29**

Motion by Steiner to adopt all sets of minutes, Seconded by Sherrill. Motion Carried.

**5. PUBLIC HEARING:**

**Mayor opened the public hearing for comments.**

**a Proposed New Open Space 1 District**

Parker gave a brief background on the creation of the Open Space District. The Planning Board felt this would better define the areas instead of "Agricultural and Forestry". This was to preserve green space. Isenberg explained that tonight we were just *creating* the district, nothing had been zoned yet.

**b. Amendment to Section #151.243 A-1 (e)**

Parker described the amendment to this chapter also. DeVita asked if the property on corners were grandfathered. Isenberg replied yes, they would be legally non-conforming properties.

Cliff Ericksen, 205 Rice Mill Cr., spoke on behalf of himself and Marc Kaplan, owners of Island Market. He explained in detail that 18 months ago they were asked to move a trailer they were using as storage space since it was not a permitted use. There were eight other non-conforming buildings that had no complaints but were in non-compliance. Council and Planning Board crafted this ordinance and they built by it. They were told the fire code didn't comply so they had to build a 70' x 14' building. This was done to comply with the town's ordinance. They had \$70,000 tied up in this building and it was a legitimate need. If it was destroyed they could not rebuild it. Mr. Ericksen felt this came about by punitive complaints by Carol Scott. They built according to code, in good faith and felt that changing the ordinance

was neither right nor fair. He then asked how Council could vote on “through-lots” when there was no definition. He asked Council to table this amendment or reject it.

Carol Scott, 1214 E. Main St. stated the request to amend the ordinance to prohibit 5’ setbacks on a through-lot was not because of Island Market. It was just drawn attention to *because* of the building at Island Market. She felt the Planning Board failed to include this when it was crafted. One like this appears in almost every town’s ordinances. It was a very common practice to protect people on streets with a 25 ft. setback. This was not done for punitive reasons. Ordinances should be created as part of good government and felt the 25 ft. setback should be done for all districts and requested the planning board take a look at it. This was just an example of good government doing good business and zoning work. Grandfathering was up to Council.

Marc Kaplan, 8907 Bonaparte Dr., stated that with all due respect to Ms. Scott, this came about by the complaints about Island Market’s building after it was built. The ordinance has been in effect since 1972 and worked quite fine. Mr. Kaplan showed a color coded plat with the current businesses, and stated that there were 64 parcels in the business district, but only three were affected by this. His and Mr. Ericksen’s, Councilman Watts, and the Continental Motel. The end result would be that it will make their building non-conforming. He stated he was told that they wouldn’t have to worry about it unless a storm destroyed it. He stressed that we lived in a hurricane prone area and it WOULD ultimately happen, and when it did, they could only build back at 50% of the current size. That was unpalatable and simply impossible for them to run their business with this.....they needed a larger space.

Evelyn Madison stated she lived at 4675 Bluff Dr. Shallotte, but was here tonight representing the Continental Motel. Ms. Madison apologized, as she felt she was not fully prepared with questions she knew she needed to ask as she is also on the Shallotte Planning Board, but she had just found out about the hearing. The Continental was built in 1968 and most of the units were co-ops. If it were destroyed, they simply could not build back to replace the number of units people had purchased as investments. She was not in favor of this amendment. It would be disastrous to the Continental.

Charlie Nern, 647 Oyster Bay Dr, stated that while he was pleased with Mr. Kaplan’s building, everything had to be brought into today’s standards. He asked Council to please pass this ordinance.

**Public Hearing closed.**

## **6. REPORTS:**

a Administrator- Parker reported that Mr. Don Safrit was resigning from the ABC Board after 17 years and asked that Betty Oakes be made Chair. Though it was not required, did Council wish to advertise and interview. Council agreed they could interview in October and have someone ready to appoint in November. ***Motion*** by Steiner to advertise for the ABC vacancy, Seconded by DeVita. Motion carried.

b. Police- see report attached. Chief Massey reported that the Beach Sweep was set for October 3rd at the gazebo at 9: a.m. All supplies would be provided and refreshments would be served.

c. Public Works -see reported.

d. Building Inspections- report attached

e. Fire- see report.

## 7. OLD BUSINESS:

### a. Proposed New Open Space 1 District

Isenberg stated that Council had to make the finding that the motion is consistent with the land use plan, and their motion include the correct wording to comply. They had been doing this for the final ordinance, but now it's required by statute they make the findings in their motion during an open meeting. Council had to make these findings with a motion as set forth in the ordinance.

Motion by DeVita to adopt Proposed Open Space Amendment, that it has been found to be consistent and in accordance with the Land Use Plan and the other officially adopted plans, and is reasonable and in the public interest for the following reasons: The general uses in the proposed newly created Open Space District would encourage the preservation of, and continued use of, the land for conservation purposes. The proposed new district is in keeping with the Town's LUP goals of having less concentration of population and overcrowding of land, preserving the current uses of land with existing golf courses and discouraging future residential infill development of those areas, and ensuring that adequate open space and /or recreational areas are provided for the Town's growing population. Seconded by Steiner, Motion carried.

### b. Amendment to Section #151.243 A-1 (e)

Sherrill stated he had a serious problem with this amendment. He pointed out that the only definition of a through-lot was on this ordinance. He disagreed with the whole thing.

Motion by Sherrill to deny proposed amendment at this time. Steiner said he would second the Motion if he could add that they return it to the Planning Board and extend the time period for non-conforming uses to a 10, 15, or 20 year period, so at some point in time it will all come together with the current proposed ordinance. Sherrill agreed it was fair because he felt both the town and businessmen acted in good faith so he could concur but he disagreed with the way the second was stated.

Isenberg stressed that all this was doing was establishing the 25 'setbacks which made the lots legal non-conforming. He stated that what Councilman Steiner was talking about was a period from building anew at the time they were destroyed.

What the Planning Board had to do was come up with a time period in which they are allowed to rebuild if it were destroyed, maybe using the time frame that a building has been in place. DeVita stated maybe they wished to take the newest non-conforming building and set parameters for when it was fully depreciated.

Motion by Sherrill to deny Amendment #151.243A-1(e) and send back to the Planning Board and instruct them to consider amending the provisions of the zoning ordinance dealing with rebuilding non-conforming buildings after damage exceeding 50% of the value to provide for a sufficient period of time, after the building is constructed for the property owner to recover his investment before requiring that the building come into compliance. Seconded by Steiner. Motion carried.

## 8. NEW BUSINESS:

### a. Renewal of Mutual Aid Agreement between Ocean Isle Beach and Sunset Beach Police Departments.

Motion by Steiner to adopt this yearly Mutual Aid Agreement, Seconded by DeVita. Motion Carried.

### b. Sunset at Sunset Update

Karen Joseph, 915 Sandpiper Bay Dr., introduced the members of the Sunset at Sunset Celebration Committee and gave Council an update on where they stood. She said they had 80 vendors signed on, which was phenomenal. Every available space was taken. They have the West Brunswick High school groups "Musically inclined" Accapella choir and a Show Choir performing this year. They had free maps for the first 1500 people and had more food and craft vendors than last year. They Marine Band would be here at 1:00 and the Brunswick Big Band at 1:30.

On display at the planetarium were the photographs for the photo contest, and they were currently selling for \$5.00

SAS Calendars that featured the winning and placing photos from last year's event. The calendars were also being sold at SilverCoast Winery and Town Hall. The event was October 3 and she encouraged everyone to attend. Council applauded Ms. Joseph and the Committee members for their amazing contribution and hard work putting this together.

**c. Proclamation of Constitution Week**

**Motion** by Sherrill to adopt the Proclamation of Constitution Week, Seconded by Bobinski. Motion carried.

**d. Resolution Stating the Town's Intent to Annex Property owned by the town which is not Contiguous to Municipal Boundaries**

**Motion** by Steiner to adopt this resolution of the Town's Intent to Annex Town Property and call for a Public Hearing on October 5<sup>th</sup>, Seconded by DeVita. Motion carried.

**e. Consideration of Proposed Purchase of 5 acre site**

Steiner said he felt he had to set straight misinformation about this property straight. He talked about its beauty and felt this was a once in a lifetime opportunity. It conformed to the Land Use Plan as a desirable purchase. Things had changed so in the Town and we needed a central focal point. He understood where the opposers were coming from, but there were also many people who *did* want this property purchased by the town. There *was* a way to do this without increasing the tax rate, which he explained. If we received a grant for the second Fire station, we only had to match a very small portion. The stipulation in the application was we had to start building now. But, staffing did not have to be done immediately. We would not need to hire any other than the scheduled three new members at the beginning of the 2010 year. They could take two from each shift and move them to fire station #2, along with the volunteers and two trucks. If NO grant was received, the station would be put off to begin construction in FY 2014/2015. At that time the debt service payment would be off of us and there would be no impact to us in either scenario. The next step was to use the grant for the park. The difference could be paid from our Undesignated Fund or financed. The payments would be small. If we got no grant for the park we could still do it without increasing tax dollars. The Undesignated Reserve Fund had earmarked 3 to 4 million dollars for CIP projects (this did not include the 3-4 million they mandated for catastrophic events) available. They could pay for half the cost with cash from these CIP funds and finance the other. The \$300,000 they had been putting into the second fire station would not be needed and it could be applied to the \$2 million debt service. We would benefit because of the property values. It was only going to increase in value.

Sherrill totally disagreed and felt they had more pressing issues. The \$300,000 unused portion could go towards the unknown cost of repaving after sewer or towards recycling. What amazed him was the appraisal was 2.5 times above the tax value. In the past 12-18 months he had not seen an appraisal as high as that one. The greater need was additional parking. They had to address those issues first. If the Town had that much available in resources then maybe we should help citizens with their sewer fees. He stated he could just not support this purchase when there were other pressing issues.

DeVita agreed and stressed they could not bankrupt their reserves. There were too many other projects that needed their attention.

Bobinski felt that if we didn't purchase it, all they would hear were people saying "why didn't you buy it?" Yes, we had Shallotte's park available but it was not a prize package in his estimation. They needed to find some way to purchase it. The future would appreciate it. He stated he liked it and wanted the town to purchase it. Parker added that right now, it appeared that the town would be receiving the grant for the second fire station. If so, that freed up the \$300,000 that was going toward the station. If it was necessary and they borrowed four million dollars for the purchase, the debt service payment would be \$600,000 per year.

Steiner stated the current site was purchased because the five acres was not available. If it had been, they would have purchased it then. He stressed that tourism was our tax money. There remained a question of dredging for the watercraft launch areas on the site we own now. Wildlife would build it, design and maintain

this property. He thought it was more desirable, could support dual boat ramps and had lower silting....all good reasons.

After more debate and discussion, **Motion** by Sherrill to halt all consideration of purchasing the five acre tract at 206 Sunset Blvd. N.

Steiner and Mayor Klein agreed it would be better if we got grant assistance.

Steiner then asked to attach a contingency to Sherrill's motion that they would have to receive a grant of three million dollars or more. If everyone (Federal, State and local governments) were saying they wanted it, then let them help pay for it.

**Motion died for lack of second.**

**Motion** then made by DeVita to purchase only if funds from other sources were required matching at least three quarters of the price.

**No Second.**

**Motion** by Steiner to agree to purchase the property with at least 50% matching grant monies, Seconded by Bobinski.

The Mayor had to vote due to the absence of Councilman Watts, and the fact that there was a two –two tie of the remaining Council members.

In Favor- Steiner, Bobinski, Mayor Klein

Against- Sherrill and DeVita

**Motion carried.**

Mayor Klein informed all that they had received a nice letter from CIS thanking them and what they do with the monies donated.

**9. PUBLIC COMMENTS:** *(This is an opportunity for citizens to make comments on a matter on the agenda, or on any matter of concern, but there is no dialogue with Council at this time, nor is it an opportunity to engage in questions and answers. If you wish to have an item placed on the agenda for discussion, please contact the Town Clerk)*

**Carol Santavicca**, 9109 Forest Dr. SW; She stated her first comment was regarding the Open Space Amendment recommended by the Planning Board and which Council passed, that when golf course use was converted, the maximum use space per house would be one unit per acre. She didn't know if it was still in the code, but they should make sure the two were in concert. Regarding the through lots; there were a lot of owners in the Continental Hotel that were co-op.... make sure that if did have a hurricane, this change in zoning did not resulting in a "defacto" taking. That was a big class action suit. If they were not allowed to put back enough spaces that they had, it could end up in court and cost the town a lot of money. The second thing was the park. She was for it....It was the cheapest they'd ever see it again. She asked Council to negotiate hard and do good by us.

**Dan and Joan Hargett**, 37<sup>th</sup> St.; spoke on the new ordinance banning *all* motorized vehicles on the strand, and their son's disability resulting from a terrible accident when he was in college. The ordinance now prohibited him from being on the beach with a golf cart, which was the only way he could move around. He was paralyzed from the chest down and ; he could not walk out to the beach nor push surf chair.

Linda Fluegel had given him permission by way of a written letter allowing him to use the golf cart on the strand. They stated that the ocean was one of the most important things in his life and to please do not take that away from him. Mrs. Hargett stated she was not above "begging" Council to let their son use the golf cart on the beach. Simple access to the beach and a surf chair was not sufficient. They spoke highly of their son, who is now a teacher, and the many good things he had done even *with* his disability. See written comments by Mr. and Mrs. Hargett which are hereby incorporated by reference and made part of these minutes.

**Bill Ehling**, 610 Triangle Trail; asked Council not to take it too personally but he was very upset with them for not helping to keep the ponds clean. It was costing homeowners \$2000 yearly to do it themselves. This

pond was available to everyone. People were constantly out fishing in the little ponds with their children, grandchildren, etc...He asked for monies to help defray the cost the way they had done with Twin Lakes and the next thing he knew, the town had placed seven signs around the tiny lake. No swimming, No boating, No trespassing ....etc. It looked awful and he was sick of fighting with Council. All he and the other owners asked for was a little help from Council since everyone used it.

**Edward Gore**, 435 Shoreline Dr. W., requested in the future they consider all areas of Sunset Beach when constructing ordinances. He had not completely read this one about setbacks, but as an example, if the Maples Clubhouse were to burn down, they could not rebuild it. The Planning Board must “try it on for size” before adopting to prevent potential problems and the Council must consider these things before they adopt it. Hopefully it wouldn’t, but should it ever become the case of doing something with the golf courses, you could not put a 60 ft right of way with a house on each golf course they way it reads now. The other issue he had was the approved storm water plan that was filled out with the other regulatory agencies. The golf course is figured in that. You could not allow the people that live around these courses (remembering their storm water spaces were already figured in the plan) to build out.....when it was all built out around the courses..... there was no more space.

**10. Executive Session to Consult with Town Attorney regarding giving the Town Administrator parameters for negotiating the 5 acres at 206 Sunset Blvd. owned by Tidal Ventures, LLC.**

**Motion** by Steiner to go into closed session for the purpose of instructing the Town Administrator as to the position to be taken on behalf of Council negotiating the price and other material terms of a proposed contract to purchase the five (5) acre site located at 206 Sunset Blvd. S, Seconded by DeVita. Motion Carried.

**Motion** by DeVita to return to open Session, Seconded by Steiner. Motion carried.

Council gave the Town administrator authority to negotiate a contract to purchase property at 206 Sunset Blvd. N up to a certain price upon other terms and conditions discussed in the closed session.

No further action taken.

**11. ADJOURN**

**Motion** to adjourn by Steiner, Seconded by Sherrill. Motion carried.

Adopted this 5th day October, 2009.

**TOWN OF SUNSET BEACH**

*Mayor Ron Klein*

Attest

***Kim Cochran***, Town Clerk

