

Donald Martin, Mayor
Larry Hardison, Mayor Pro Tem
Aldermen:
Richard Farley
Richard Peters
Robert Swantek
Daniel Tuman

Town of North Topsail Beach



Lara N. Burleson, MPA
Town Manager

Carin Z. Faulkner, MPA
Town Clerk

North Topsail Beach
Planning Board
Agenda
May 14, 2009, 6:30 P.M.

- I. Call to Order, Announcements and Petitions
 - A. Welcome new members
- II. Adoption of Agenda
- III. Approval of Minutes, March 12, 2009
- IV. Public Comment
- V. Planning Board and Staff Discussion
- VI. Public Comment
- VII. Adjournment

Notice to citizens who wish to speak: As a courtesy to others, a citizen speaking on an agenda item or making a petition is normally limited to three minutes. Persons who are organizing a group presentation and who wish to speak beyond the three minute limit are requested to make prior arrangements through the Mayor's Office by calling 328-1349. If you wish to address the Board this evening, please go to the front right corner of the conference room and sign up with the Town Clerk. The Board may also change the order in which agenda items are presented.

Attorneys: If you are representing a person with an interest in a quasi-judicial proceeding on this agenda and believe you may wish to cross examine a witness, please identify yourself as such to the Town Clerk. For the sake of maintaining an accurate public record all speakers must be prepared to speak into an amplified microphone and must provide their name to the Town Clerk.

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PLANNING BOARD MEETING MARCH 12, 2009 6:30 P.M.

PRESENT: SUE TUMAN-CHAIRMAN, PAUL DORAZIO-VICE CHAIRMAN, MIKE YAWN, CAROL EVANS, LARA BURLESON- TOWN MANAGER, DEBORAH HILL- PLANNING & ZONING ADMINISTRATOR, RANDALL MOUDY- BUILDING INSPECTOR, TERRIE WOODLE- PERMIT TECH/RECORDING SECRETARY

NOT PRESENT: GERALD RIGGLEMAN, GARY ROWLAND

1. CALL TO ORDER: Mrs. Tuman called the meeting to order at 6:30 p.m. in the North Topsail Beach conference room.

2. ADOPTION OF AGENDA: Mrs. Evans made a motion to approve the Agenda. Mr. Yawn seconded the motion, motion passed unanimously

3. APPROVAL OF MINUTES: Mr. Yawn made a motion to approve the minutes. Mr. Dorazio seconded the motion, motion passed unanimously.

4. PUBLIC COMMENT: No one from the Public came forward to speak.

5. OLD BUSINESS:

A. Public Hearing: Sec. 4.1 Selling Goods on Public Property:

Ms. Hill read her staff report as follows:

On February 5, 2009, the Board of Aldermen directed Brian Edes, Town Attorney to 1) review issues associated with vendor licensing and operations; 2) to research similar jurisdictions; and 3) to provide some guidance on how the Town might better regulate or permit those operations.

On February 12, 2009, the Planning Board discussed the Town's possible desire to amend Town Code Article I, Sec.4-1 Selling Goods on Public Property to allow vendors to operate on public property. Mr. Yawn made a motion that Town Staff draft Ordinance changes for the purpose of itinerant vendors and peddlers on the beach and hold a Public Hearing on that topic at the Planning Board's regular March meeting. Mr. Rowland seconded the motion, motion passed unanimously.

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On March 5, 2009, Town Attorney, Brian Edes provided regional samples of codes addressing vendors.

RECOMMENDATION: 1. Conduct a public hearing as advertised to consider public comments on the issue of vendors and Town Code Article I, Sec. 4-1 Selling Goods on Public Property.

2. That the Planning Board and Town Attorney consider input from public hearing comments and regional samples to develop a proposed ordinance to regulate peddlers and itinerant merchants for the Board of Aldermen's consideration. 3. That the Planning Board recommends that the Board of Aldermen adopt the proposed amendment to Town Code Article I, Sec. 4-1 Selling Goods on Public Property to allow vendors to operate on Public Property, not in right of way.

Ms. Hill stated that the last sentence in paragraph (a) has been taken out which states: or on the ocean beaches of the town, or on parking lots (and other areas open to the public) which are contiguous to the state highway and town street rights of way.

1. Proposed amendment to Town Code Article I, Sec. 4-1. Selling Goods on Public Property to allow vendors to operate on public property:
 - (a) It shall be unlawful for any person to expose for sale, offer to sell, barter or exchange, or sell, barter or exchange any goods, wares or merchandise within the street and highway rights-of-way of the Town.
 - (b) No license issued pursuant to ordinance shall authorize or allow a commercial business activity prohibited by this section.
 - (c) Anyone violating this section shall be subject to a civil penalty of five hundred dollars (\$500.00). No such civil penalty shall be assessed until the person alleged to be in violation has been notified of the violation. Each day of the continuing violation shall constitute a separate violation.
 - (d) This section shall not apply to the activities of any employee of the Town within the scope of his employment or any department of the Town acting within the scope of its responsibility, and this section shall not apply to any organization providing services pursuant to a written contract with the Town for public purposes that the Town is authorized by law to provide.

Mr. Yawn made a motion to open the Public Hearing for Public comment. Mrs. Evans seconded the motion, motion passed unanimously.

Mr. Denittis stated that there was a lot said last month on this issue and asked if the Planning Board needed more direction. Ms. Hill stated that the Board of Aldermen gave two different directions, they directed the Planning Board to research it and also directed the Town Attorney to research the issue of vendors and gather some samples so the Board of Aldermen can "cherry pick" from other local ordinances what is acceptable and what is not acceptable. She stated what the Town is proposing immediately as this draft becomes more developed is to

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strike out the article now that prohibits vendors from operating in public spaces like the beach, Town park.

Mr. Williams came forward to speak. He stated one of the reasons why he and his wife thought about the operation of selling Italian ice on the beach is because they have been coming down here for years before they moved here and thought that the beach was very family-oriented but you had to go so far to get something as far as icy and cold unless you brought it from home. They thought it would be very beneficial for the beach goers to have this on the beach. He stated everyone has really enjoyed what they were doing and thought it was a great idea. It's not intrusive, it's mobile, and they are not in one area for more than 10-15 minutes. He reiterated that it has been very well received; he is hoping that the Town will see the benefit of this for the vacationers. Even the property owners that don't live here full time and have their property on the rental program say it is a wonderful benefit to the renters coming in and they support them 100%. He thanked the Planning Board for the opportunity to speak to them and is hoping for a good outcome.

Mr. Yawn asked Mr. Williams if he carried liability insurance. Mr. Williams stated yes he does.

There was much discussion on other activities requiring a privilege license. Mrs. Tuman stated that the Planning Board just wanted to work on the one issue of selling goods on public property with the beach in mind first then they would work on the larger issues.

Mr. Jason Connelly came forward to speak. He is interested in having a hot dog stand on an unbuildable lot at the corner of Topsail Rd. with the permission of the property owner. He stated this is a mobile cart that would be moved every day and cleaned every day. He is sponsored by a local restaurant through their health inspections. Mrs. Evans asked why he wanted to put it on a residential lot. He stated that he knows the owner of the lot and their plan was to clean the lot up and make it nice. There is also a slab on the lot and he was going to put the cart there. He thought given the location being unbuildable it would be nice to clean the lot up and make it more of a useable area. He would love to use a public area but it was not an option at the time. He stated it would not be a permanent location and there is definitely a need for it, there is nothing else here.

Mrs. Evans stated that this is a similar situation as Mr. Williams. Mrs. Tuman stated except that it stays in one spot where the Mr. Williams is walking on the beach. Mr. Yawn stated there are a number of "past enforcement issues" where things have occurred that are probably not legal.

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Mr. James Andrews came forward to speak. He owns and operates the vegetable stand on Island Dr. He has been there for over 20 years and he would like to continue. He stated a lot of the citizens look forward to him being there. Mr. Yawn asked if he had a privilege license from the Town. He state yes he does. Mr. Yawn asked if he carries liability insurance. He said yes sir he does. Mrs. Tuman stated that the Town does not want to create a problem for the vendors who have been here but we need to legalize it and keep it out of the right of way.

Mr. Yawn made a motion to close the Public Hearing. Mr. Matthews seconded the motion, motion passed unanimously.

Mrs. Evans would like to see the vendors that have been here before the Town was incorporated to be grandfathered. Mr. Yawn would like to limit the number of certain privilege license and would like to raise the price of certain privilege license.

It was the consensus of the Planning Board to submit input to the Town Manager by March 19, 2009 on what they would like to see in the Ordinances on this issue so the Town Manager and the Town Attorney can develop a proposed amendment.

Mr. Yawn made a motion to move New Business A. Comprehensive Transportation Plan (Draft) up in the agenda. Mr. Dorazio seconded the motion, motion passed unanimously.

NEW BUSINESS:

A. Comprehensive Transportation Plan (Draft): Tyler Bray, the RPO Coordinator for the Triangle Area of NCDOT- Transportation Planning Branch gave his (Draft) presentation to the Planning Board. He stated that he met with the Holly Ridge Town Council and the Pender and Onslow County Commissioners and presented the preferred alternative of US17 through Holly Ridge. They all have no issues with this alternative.

At the Topsail Area CTP Team meeting on February 24th, the team conducted a final review of the Highway and Bicycle CTP Maps and made final comments before presenting the Comprehensive Transportation Plan (Draft) to the towns and counties.

After much discussion about the Highways and Bicycle paths Mr. Bray stated that he will be at the Board of Aldermen meeting April 2, 2009. He stated basically all he is

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doing is getting comments on the drafts. Mr. Dorazio asked when is the actual deadline to have this ready to submit. Mr. Bray said it will be in May if everything goes according to plan. He stated that every Town council would adopt what is in their planning jurisdiction and endorse everything else. Once that is done it is recommended by them and goes to the planning direction of DOT, the Board adopts it and hopefully in July it will be completed.

RECOMMENDATIONS: After review of Comprehensive Transportation Plan (Draft) and presentation by Tyler Bray, provide any comments or concerns.

Cont. OLD BUSINESS:

B. Sec. 6-130 Building Operations: Ms. Hill read her staff report as follows: On February 5, 2009, the Board of Aldermen suspended the limits on construction work on weekends for sixty (60) days. The Town Attorney was directed to research similar jurisdictions and develop an alternate for the Board's consideration.

The following Thursday, February 12, 2009, the Planning Board discussed issues with allowable hours of construction on weekends. Randall Moudy suggested using the State definition of building operations. The Planning Board unanimously recommends citing the State definition of building operations and setting Saturday hours from 9:00 a.m. to 5:00 p.m. and Sunday 10:00 a.m. to 5:00 p.m. First offenses will result in a written warning. Second offenses will result in a \$100.00 fine, third time \$250.00, and fourth time \$500.00.

On Thursday, March 5, 2009, Staff requested that the Board of Alderman call for Public Hearing to be held in April to amend Section 6-130. Building Operations. Alderman Farley wanted to pull the request from the consent agenda out for discussion. Town Attorney, Brian Edes provided the Board with several regional ordinances for the Board to "cherry pick" for what is best for the Town and he will make a formal ordinance. The Board should agree to provide input to the Town Manager and compile them and give to Town Attorney. Mr. Tuman questioned whether the Planning Board should decide and suggested rather than giving it to the Planning Board that individual Aldermen give input to Town Manager and have Planning Board give overall input to the Town Manager.

RECOMMENDATIONS: That the Planning Board and Town Attorney consider input regional samples to develop a proposed amendment to the Town Manager for the Board of Aldermen's consideration.

Mr. Moudy, Building Codes Administrator suggested changing the phrase "State definition of building operations" to NCGS 160A-417 Permits. Ms. Hill asked where Mr. Moudy wanted that reference to be placed. Mr. Moudy stated it should read:

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The erection, including the excavation, demolition, alteration or repair of any building on a residential or business district in accordance with NCGS 160A-417 Permits. Ms. Hill suggested it to read: The erection, including the excavation, demolition, alteration or otherwise defined in NCGS 160A-417 Permits as amended.

Mr. Moudy asked about the fines and if the Police Department was going to enforce the fines because in the fee schedule as it is now there are fines for working without a permit that is handled through the building inspections dept. Mr. Dorazio stated it would have to fall under the Police Department because the building inspector is not here on Saturday and Sunday.

The Planning Board is in consensus to forward the previous recommendation with clarification of Code and definition to the Town Manager and Town Attorney to be presented to the Board of Aldermen.

- C. Sec. 7-132 Accessory uses. Bridges, private:** Ms. Hill read her staff report as follows: On January 8, 2009, the Planning Board held a public hearing on a proposed amendment to Town Code Section 7-132 Accessory uses. G. Bridges, private. The Planning Board recommended that the Board of Aldermen approve the amendment to Sec. to cover private bridges as it was presented to the Planning Board with the changes in item 7 (the owner of each bridge shall submit a certification by a licensed professional engineer to the NTB Building Inspector and have a yearly inspection on the anniversary date of the final inspection) and reword 2d to read that plans to be reviewed by NTB Building Inspections Dept. and that the Fire Marshal signs off on each bridge.

On February 13, 2009, Randall Moudy, Building Codes Administrator sent Thomas Best a copy of the amendment with additional comments, requesting his review.

The public hearing scheduled for the Board of Aldermen's meeting on March 5, 2009, was deferred until April to allow the Planning Board to review comments by Randall Moudy and consolidate any changes to the proposed amendment.

RECOMMENDATION: That the Planning Board review the subsequent comments by Randall Moudy and revise their recommendation, if desired, for the Board of Aldermen's public hearing on April 2, 2009.

Mr. Moudy stated that the 2009 fire code is out and will be effective June 1, 2009 and it is very important for the Town to stay current with State Law. Bridges private should read as follows:
Sec. 7-132. Accessory uses.

G. *Bridge, private:*

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1. **Information required.**

a. Each applicant requesting a Permit under this chapter shall submit Bridge Plan and Profile Sheet signed and sealed by appropriate licensed professionals with a complete application. The Planning Department may require other information to be necessary to assess compliance with this chapter.

b. **General requirements:** In addition to the design standards established herein, all plans shall comply with the following laws, ordinances, rules and regulations:

i. **Federal requirements.** All bridges must meet or exceed current standards and regulations of the USACE and any other agency of the federal government with the authority to regulate development.

ii. **State requirements.** The rules and regulations of the North Carolina Department of Transportation relating to safety of access and the preservation of the public interest and investment in the streets if the subdivision or any lot contained therein abuts a State trunk highway or connecting street. North Carolina Division of Coastal Management shall review the application to determine the need for any State authorization.

iii. The applicable policies of the Onslow Water and Sewer Authority (ONWASA).

iv. **Building Codes.** A building permit is required when constructing a private bridge. To ensure the structural integrity of bridges, the owner of a bridge shall ensure that it is maintained in compliance with standards contained in applicable federal, state and local building codes and regulations. Where a bridge or elevated surface is part of a fire apparatus road, the bridge shall be constructed and maintained in accordance with AASHTO-HB-17. Bridges and elevated surfaces shall be designed for a live load sufficient to carry the imposed loads of fire apparatus. Vehicle load limits shall be posted in both entrances to bridges when required by the fire code official. Where elevated surfaces designed for emergency vehicle use are adjacent to surfaces which are not designed for such use, approved barriers, approved signs or both shall be installed and maintained when required by the fire code official.

v. Any other law presently applicable or subsequently to be enacted.

c. The applicant shall provide an engineer's written certification of compliance;

d. The applicant shall provide copies of its maintenance agreement.

2. **Review.** Plans shall be reviewed by:

a. North Carolina Division of Coastal Management to determine the need for any State authorization. Soil disturbances shall be avoided or minimized in the wetlands. At no time will wetlands be filled or excavated during construction;

b. United States Army Corps of Engineers;

c. Onslow Water and Sewer Authority (ONWASA) for approval of all taps from main water supply;

d. Town Fire Marshal to determine compliance with the following fire safety requirements:

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Mr. Yawn made a motion to accept the changes Mr. Moudy has incorporated and require all private bridges have a State storm water run off plan and no run off will be allowed to run directly into the wetlands. Mrs. Evans seconded the motion, motion failed 4-1.

Mr. Dorazio made a motion to leave the Ordinance as written with the changes from Mr. Moudy. Mr. Matthews seconded the motion, motion passed 4-1.

6. PLANNING BOARD AND STAFF DISCUSSION:

A. Training: There will be a training session on "Making a Decision" on March 19, 2009 at 6:30 p.m. in the Town Hall Conference room.

B. Town Code

- 1. Chapter 7 Planning and Zoning:** Ms. Hill stated that Chapter 7 has now been updated and sent to Municode, she will also give all members a copy of it on Monday March 16, 2009
- 2. Chapter 8 Flood Damage Prevention:** Ms. Hill stated that Chapter 8 Flood Damage Prevention Ordinance which was adopted in 2000 and again in 2005 and is a requirement by FEMA, NFIP as well as participating in the CRS Program, has never been codified or sent to Municode and it never replaced the existing 1990 version. She stated the flood ordinance that was adopted in September 2005 has been sent to Municode for codification. Municode is going to develop an Ordinance; their Attorney will work with NTB's Attorney to write an Ordinance readopting the Town Code.
- 3. Chapter 9 Environmental Control:** Ms. Hill stated the first Article in Chapter 9 is Dune protection. The Second Article is a repeat of the CAMA program which is already included in Chapter 7. She stated at some point and time this needs to be corrected.

C. CAMA Land Use Plan: Ms. Hill spoke to Mr. Holland with Holland and Associates and he stated he will have the information to Ms. Hill on Monday March 16, 2009.

D. Hazard Mitigation Plan: Ms. Hill stated the next meeting will be in April and she will continue working with Onslow County on this.

Mrs. Tuman wanted to thank Staff for the extensive amount of time that has been invested above and beyond working hours to save our Town from being caught in a mess with lawsuits

Mr. Yawn made a motion to thank All Town Staff for all of their hard work. Mrs. Evans seconded the motion, motion passed unanimously.

7. PUBLIC COMMENT: Mr. Yawn reminded those in the public to consider joining the Planning Board.

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- 8. ADJOURNMENT: Mr. Dorazio made a motion to adjourn. Mr. Yawn seconded the motion, motion passed unanimously.**

The Planning Board meeting adjourned at 9:08 p.m. March 12, 2009. Minutes prepared by Terrie Woodle- Permit tech/Recording Secretary.

Sue Tuman- Chairman

Date_____

Terrie Woodle
Permit Tech/Recording Secretary

Date_____