

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
July 9, 2009, 6:30 P.M.

- I. Call to Order, Announcements and Petitions
 - A. Welcome new members: Suzanne Gray
- II. Adoption of Agenda
- III. Approval of Minutes, March 12, 2009
- IV. Public Comment
- V. Planning Board and Staff Discussion
 - A. *Wireless Telecommunications Ordinance*
 - B. *NTB Town Code Chapter 7 Planning & Zoning*
- 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.

**NORTH TOPSAIL BEACH
PLANNING BOARD MEETING
JUNE 11, 2009
6:30 P.M.**

PRESENT: SUE TUMAN- CHAIRMAN, PAUL DORAZIO-VICE CHAIRMAN, GARY ROWLAND, DEBORAH LANCI, GUNNAR MATTHEWS, HANNA McCLOUD, LARA BURLESON- TOWN MANAGER, DEBORAH HILL-PLANNING & ZONING ADMINISTRATOR, TERRIE WOODLE- PERMIT TECH/RECORDING SECRETARY

NOT PRESENT: Gerald Riggleman

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

A. WELCOME NEW MEMBERS: The Planning Board members welcomed Hanna McCloud.

2. **ADOPTION OF AGENDA:** Mr. Rowland suggested adding vendor permits to the agenda. Ms. Hill suggested making it item 6 on the agenda. Mrs. Tuman suggested adding Planning Board Workshop discussion to the agenda. Ms. Hill suggested making that item 7.

Mr. Rowland made a motion to approve the agenda as amended. Mr. Matthews seconded the motion, motion passed unanimously.

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

4. **PUBLIC COMMENT:** Lenny Denittis came forward to speak. He asked the Planning Board if they could put some pressure on the Town to hire a Building Inspector and to work on the Town's recovery plan. He asked what the Town's disaster plan is if we have a hurricane. Ms. Burleson stated that Town Staff met this week to update the hurricane preparedness plan. She stated on the Building Inspections side she has been talking with Onslow County as to what they will be doing for the Town if the situation occurs. She does not have an answer for that as of yet.

She said in the next 2-3 weeks each of the jurisdictions is going to have focus groups with developers. The Town will be the one that makes the decision to go with the County or not to go in with the County.

Members of the committee encouraged Ms. Burleson to try to take action sooner as we are already in hurricane season.

5. **PUBLIC HEARING:** Ms. Hill read her staff report as follows: Although Congress passed, and the President signed, the Telecommunications Act of 1996 for the purpose of ensuring a national telecommunications infrastructure, some states believe that further guidance for municipalities is needed and/or that statewide uniformity is desired. While the federal Act does not preempt local zoning control, it does set certain parameters on how local governments may review applications from wireless providers for towers and antennae. Due to a number of issues across the State, North Carolina has enacted a cell tower law, consistent with the federal law, but designed to address more specific issues and concerns that have arisen in the State.

Ch. SL 2007-526 of the Laws of North Carolina took effect on December 1, 2007, providing a statewide statutory scheme for the siting of cell towers. The law was enacted for the purpose of establishing consistent, statewide standards that both preserves local zoning authority but curbs practices that have apparently prevented wireless coverage expansion in the State. Codified in the N.C.G.S. Sections 160A-400.50 to -400.53 (for cities) and N.C.G.S. Sections 153A-349.50 to -349.53 (for counties), the new law makes clear that cities and counties may enact ordinances regulating the siting of cell tower, and while not preempting local control, the new law clearly sets parameters local governments must now follow.

Highlights of the new law include:

*Local governments are required to review co-location applications and respond to deficiencies within 45 days of receipt of the application, and to render a final determination on complete applications within 45 days.

*Consultant fees must now be set in advance and incorporated into the permit application fee, and such fees must be reasonable and not exceed what is usual and customary for such services.

*Review of applications may not include an evaluation of the applicant's business decision about its design services, customer demand for its services or quality of its service in a particular area – local governments may only address public safety, land development or zoning issues.

*A streamlined process for co-locations meaning that so long as applications for co-location are in accordance with site plan and building permit requirements, they are not otherwise subject to zoning or public hearings if they meet five statutory criteria (the collocation does not increase the overall height or width of the tower; the ground space for the fenced compound does not increase; the tower itself is in compliance with the requirements and conditions originally placed on the structure; the antennas comply with all safety requirements; and the collocation does not exceed the structural loading limits of the tower.)

RECOMMENDATION: That the Planning Board:

1) Request that the Town Attorney review proposed amendments for compliance with the Telecommunications Act of 1996 and N.C.G.S. Sections 160A-400.50 to -400.53;

2) Recommend that on July 2, 2009, the Board of Aldermen call for a public hearing to be held on August 6, 2009, to consider proposed amendments to NTB Town Code Chapter 7 regarding Telecommunications *Towers, Wireless*.

A. SEC. 7-60 DEFINITIONS: TELECOMMUNICATIONS TOWERS, WIRELESS: Ms. Hill read the definitions for telecommunications towers as follows:

- (1) Antenna- Communications equipment that transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.
- (2) Application- A formal request submitted to the city to construct or modify a wireless support structure or a wireless facility.
- (3) Building permit- An official administrative authorization issued by the city prior to beginning construction consistent with the provisions of G. S. 160A-417.
- (4) Collocation+ The installation of new wireless facilities on previously-approved structures, including towers, buildings, utility poles, and water tanks.
- (5) Equipment enclosure- An enclosed structure, cabinet, or shelter used to contain radio or other equipment necessary for the transmission or reception of wireless communication signals.
- (5a) Fall zone- The area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.
- (6) Land development regulation- Any ordinance enacted pursuant to this Part.
- (7) Search ring- The area within which a wireless facility must be located in order to meet service objectives of the wireless service provider using the wireless facility or wireless support structure.
- (8) Utility pole- A structure that is designed for and used to carry lines, cables, or wires for telephone, cable television, or electricity, or to provide lighting.
- (9) Wireless facility- The set of equipment and network components, exclusive of the underlying support structure or tower, including antennas, transmitters, receivers base stations, power supplies, cabling, and associated equipment necessary to provide wireless data and telecommunications services to a discrete geographic area.
- (10) Wireless support structure- A new or existing structure, such as a monopole, lattice tower, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole is not a wireless support structure.

B. SEC. 7-128 PERMITTED AND CONDITIONAL USES: TELECOMMUNICATIONS TOWERS, WIRELESS: Ms. Hill stated that it is recommended restricting to one district and that would be B-1.

C. SEC.7-208 DEVELOPMENT PLAN REQUIREMENTS AND PROCEDURE: TELECOMMUNICATIONS TOWERS, WIRELESS: Ms. Hill read the procedure as follows: a. Collocation of wireless facilities

- i. Applications for collocation entitled to streamline processing under this section shall be reviewed for conformance with applicable site plan and building permit requirements but shall not otherwise be subject to zoning requirements, including design or placement requirements, or public hearing review.
- ii. Applications for collocation of wireless facilities are entitled to streamline processing if the addition of the additional wireless facility does not exceed the number of wireless facilities previously approved for the wireless support structure on which the collocation is proposed and meets all the requirements and conditions of the original approval. This provision applies to wireless support structures which are approved on or after December 1, 2007.

- iii. The streamlined process set forth in subsection (a) of this section shall apply to all collocations, in addition to collocations qualified for streamlined processing under subsection (b) of this section, that meet the following requirements:
 1. The collocation does not increase the overall height and width of the tower or wireless support structure to which the wireless facilities are to be attached.
 2. The collocation does not increase the ground space area approved in the site plan for equipment enclosures and ancillary facilities.
 3. The wireless facilities in the proposed collocation comply with applicable regulations, restrictions, or conditions, if any, applied to the initial wireless facilities placed on the tower or other wireless support structure.
 4. The additional wireless facilities comply with all federal, State and local safety requirements.
 5. The collocation does not exceed the applicable weight limits for the wireless support structure. (NCGS §160A-400.53, as amended)

b. New Towers

- i. The applicant for a conditional use permit to construct a new tower shall present documentation to the Board of Aldermen that no suitable existing facilities within the coverage area are available for co-location. Evidence may be in the form of maps, letters from adjacent tower owners, or calculations.
- ii. Plans for a new tower shall include the intent to allow shared use of the tower, the number of shared users allowed, and how other users are to be accommodated. In addition, a professional engineer shall present documentation that the tower has sufficient structural integrity to accommodate more than one user.
- iii. Setbacks and fall zones – A telecommunications tower may be permitted on a site only if the minimum distance from the base of the tower to the nearest property line is equal to or greater than the height of the tower. The Board of Aldermen shall have the option to waive this provision upon receiving documentation from the petitioner that the tower is engineered such that in the event of collapse, the tower will fall upon itself within the property boundaries upon which it is located. In any event, the minimum setback for a tower and all appurtenant structures shall be 50 feet from the nearest property line.
- iv. Fencing and screening - The base of tower, including but not limited to equipment and/or storage structures, along with guy wires shall be enclosed by a commercial grade chain link fence (or fence of equal or greater quality) a minimum of eight (8) feet in height.
- v. Such towers shall be engineered and certified to withstand sustained winds of a minimum of 150 miles per hour.
- vi. An annual engineering certification is required.

Mr. Rowland made a motion to open the Public Hearing. Mr. Dorazio seconded the motion, motion passed unanimously.

No one from the Public came forward to speak.

Mr. Dorazio made a motion to close the Public Hearing. Mr. Rowland seconded the motion, motion passed unanimously.

Discussion on Telecommunications Towers, Wireless: Mrs. Lanci asked since the Planning Board has been reviewing the Ordinances, everything they are allowing in B-1 they are allowing in B-2 with the exception of fish houses and piers. She asked wouldn't it stand the reason they allow the towers in B-2 as well. Mr. Dorazio stated then you are giving more options where to put the towers, if you restrict it to just B-1 then that's the only place they can go. Mr. Rowland suggested the towers go in Con-d. If there were a storm and the tower collapses there would be plenty of room around it. Mr. Rowland suggested that the Planning Board members take a look at all of the information between this meeting and Friday June 19, 2009 and highlight the information and get it back to Ms. Hill so she can review and incorporate the information.

Mr. Rowland made a motion to go back individually and highlight the comments and get the information to Ms. Hill no later than next Friday June 19, 2009 on issues the Planning Board feels should be incorporated into the Town's Ordinance from the samples Ms. Hill has supplied and Ms. Hill will collate them and bring it back to the Planning Board for discussion for their meeting on July 9, 2009. Mrs. Lanci seconded the motion, motion passed unanimously.

6. **VENDORS:** Ms. Burleson stated that the Board of Aldermen has given comments to the Town Attorney, he is complying the information and he will come back at the July meeting for a decision. Mr. Rowland was concerned about the liability insurance for the vendors and if they carry enough. His other concern is they should have a written agreement that is signed by the

vendor that indemnifies the Town. The Town Attorney should develop the form and that should be included with the application. Ms. Bureson stated that she would get that information to the Town Attorney.

- 7. **WORKSHOP DISCUSSION:** The Planning Board set the date for their next workshop on Development Standards for Monday June 22, 2009 at 5:00 p.m.

- 8. **PLANNING BOARD AND STAFF DISCUSSION:** Ms. Hill suggested that the Planning Board consider renaming MHR. She stated there are two properties being auctioned on June 19, 2009 and it being advertised as Manufactured Home Residential as if they can put a mobile home on the site. She stated one location is on Topsail Rd. and they are not allowed to put a mobile home in a high hazard area. She stated another issue is the Town adopted the flood ordinance and asked does the Town want to make an exemption for mobile homes in the coastal AE flood zone. Ms. Hill stated that it should be rezoned as R-5. She said you can replace a mobile home if it is in an existing mobile home park. She stated that the Town has allowed MHR if in a previously approved mobile home subdivision. Mr. Rowland stated that if mobile homes are on stilts he doesn't have a problem with it. Ms. Hill stated prior to the Planning Board's next Planning Board meeting she will bring forth the references from State Building Code and the CAMA requirements and the flood side. She stated she does not have a problem with some one replacing a mobile home in the coastal VE zone. She doesn't really have a problem with some one replacing a mobile home in the flood zone because it may be an affordability question where they have had a mobile home there and it is dilapidated, she would rather see a newer mobile home than a dilapidated one but at some point the Town has to draw the line.

She stated when there is a non conforming use which is what this is; there are two paths that you can go down. You can say that the replacement would be grandfathered or by today's standard the Town can no longer allow that non conforming use to continue, when it expires i.e. by use that it is so dilapidated they have to replace it, they will have to put a modular home on the site or a stick built home. If the Planning Board wants to change this they would have a Public Hearing and any recommendations the Planning Board has would be put forth to the Board of Aldermen.

Mr. Dorazio stated this is exactly what Surf City did and after Hurricane Fran, the Town decided this was the opportunity to no longer allow mobile homes, but because the majority of the Town was mobile homes the Town said ok but you have to have them above flood elevation on pilings. Now they have the mobile homes ten feet in the air.

- 9. **PUBLIC COMMENT:** Ms. Tuman asked the Planning Board members to please go out and find citizens to fill the alternates slot on the Planning Board.

- 10. **ADJOURNMENT:** Mr. Rowland made a motion to adjourn. Mr. Matthews seconded the motion, motion passed unanimously.

The Planning Board meeting adjourned at 7:40 p.m. June 11, 2009. Minutes prepared by Terrie Woodle- Permit tech/Recording Secretary.

_____ Date _____
Sue Tuman- Chairman

_____ Date _____
Terrie Woodle, Permit Tech/ Recording Secretary