

## CAROLINA BEACH

### Town Council Regular Meeting

Tuesday, December 08, 2020 - 6:30 PM

Council Chambers, 1121 N. Lake Park Boulevard, Carolina Beach, NC



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## MINUTES

### **CALL TO ORDER WITH INVOCATION BY GABRIEL WATERS WITH FIRST BAPTIST CHURCH, FOLLOWED BY THE PLEDGE OF ALLEGIANCE**

Mayor Pierce called the meeting to order at 6:30 PM, followed by the invocation and Pledge of Allegiance.

#### PRESENT

Mayor LeAnn Pierce

Mayor Pro Tem Jay Healy

Council Member Lynn Barbee

Council Member JoDan Garza

Council Member Steve Shuttleworth

#### ALSO PRESENT

Town Manager Bruce Oakley

Assistant Manager Ed Parvin

Finance Director Debbie Hall

Town Clerk Kim Ward

Town Attorney Noel Fox

#### **ADOPT THE AGENDA**

**ACTION:** Motion to adopt the agenda

**Motion made by Mayor Pierce**

**Voting Yea:** Mayor Pierce, Mayor Pro Tem Healy, Council Member Barbee, Council Member Garza, Council Member Shuttleworth

**Motion passed unanimously**

#### **CONSENT AGENDA**

1. Set Public Hearing Date for January 12<sup>th</sup> to Consider a Conditional Use Permit for the Boardwalk Amusement Rides to be located on multiple properties (PIN - 3130-54-2980, 3130-54-4836, 3130-55-4065, 3130-55-5014, 3130-54-5992, 3130-54-5877, 3130-54-5778, 3130-54-5870, and 3130-54-6839)  
Applicant: Carolina Beach Land Holdings LLC
2. Budget Amendments/Transfers
3. Committee Appointment – Appointing Linda Bottoms to the Beautification Committee
4. Approval of Meeting Minutes from November 10<sup>th</sup> and 17<sup>th</sup>

**ACTION:** Motion to adopt the consent agenda

**Motion made by Mayor Pierce**

**Voting Yea:** Mayor Pierce, Mayor Pro Tem Healy, Council Member Barbee, Council Member Garza, Council Member Shuttleworth

**Motion passed unanimously**

## **SPECIAL PRESENTATIONS**

### 5. Introduction of Police Chief Vic Ward

Town Manager Bruce Oakley introduced new Police Chief Vic Ward, who was hired from a pool of 70 applicants to replace retired Police Chief Chris Spivey. Police Chief Ward, who is from Whiteville and is a graduate of the University of North Carolina Wilmington, is a retired State Highway Patrol Officer. Police Chief Ward said he was looking forward to getting to know everyone. Mayor Pierce said Council was excited to welcome him.

### 6. Manager's Update

Council thanked Mr. Oakley for a year of service and presented him with a gift. Each Council Member individually praised Mr. Oakley's accomplishments as Town Manager.

Mr. Oakley gave a brief update on the latest state regulations regarding COVID-19, including the modified stay-at-home order that calls for a curfew from 10:00 PM to 5:00 AM and alcohol sales to stop at 9:00 PM.

Mr. Oakley also mentioned topics for the January 26 Council workshop, including an update from Ken Richardson of the Coastal Resources Commission about oceanfront setback rule changes and a Zoom presentation from Bird scooters about possibly doing a test market here. He said the 2021 budget retreat will immediately follow the workshop. Council Member Garza said he doesn't see the scooters fitting in well with the traffic here and doesn't think it will be beneficial.

Mr. Oakley announced that the Town received an extra \$215,000 in ABC revenue.

Assistant Town Manager Ed Parvin gave updates regarding Military Ocean Terminal Sunny Point (MOTSU), including a new approval process (January/August) and quarterly testing. Council Member Barbee thanked Mr. Parvin and all others involved.

Mr. Parvin also presented the following information:

Resolution: Designation of Applicant's Agent

- N.C. Division of Emergency Management requires adoption of this resolution in order to be considered for funds to raze structures in Carolina Beach that have faced repetitive losses.
- This has been an ongoing program with great benefits for the community.
- Change for this year: The Town will not be floating the costs. We will still administer the grant. However, all funds will be paid directly from the state to the contractor.

**ACTION:** Motion to approve the resolution designation of applicant's agent

**Motion made by Council Member Shuttleworth**

**Voting Yea:** Mayor Pierce, Mayor Pro Tem Healy, Council Member Barbee, Council Member Garza, Council Member Shuttleworth

**Motion passed unanimously**

7. Events Update

Mr. Oakley highlighted the following upcoming events:

- Holiday-themed sandcastle building contest - December 12
- Saturday Santa sleigh rides - December 12 and 19
- Holiday-decorated coves, parking meters on parade, letters to Santa - ongoing
- Carolina Beach Trail Half Marathon - January 2

Mayor Pro Tem Healy said Parks & Recreation did a fantastic job thinking outside of the box and hoped to see some of the events continue in the future. Council Member Barbee and Mayor Pierce thanked Parks & Recreation for creating alternatives to the regular events that had to be canceled due to COVID-19.

**PUBLIC COMMENT**

None

**PUBLIC HEARINGS**

8. Consider a Conditional Use Permit for a 5-Unit Residential Planned Unit Development to be located at 216 Spartanburg Avenue (PIN - 3130-32-7671)  
Applicant: Laurel Companies LLC

**ACTION:** Motion to open the public hearing

**Motion made by Mayor Pierce**

**Voting Yea:** Mayor Pierce, Mayor Pro Tem Healy, Council Member Barbee, Council Member Garza, Council Member Shuttleworth

**Motion passed unanimously**

**ACTION:** Motion to open the evidentiary hearing

**Motion made by Mayor Pierce**

**Voting Yea:** Mayor Pierce, Mayor Pro Tem Healy, Council Member Barbee, Council Member Garza, Council Member Shuttleworth

**Motion passed unanimously**

Ms. Fox gave an overview of the proceedings and rules for Council in a quasi-judicial hearing. She asked if any member of Council had conflict partiality or recusal to offer or any ex parte communications to disclose. There were none.

Senior Planner Miles Murphy gave a presentation of the details, including an aerial image of the R-1 district and the background and history of the property.

Laurel Companies proposes to construct a Planned Unit Development (PUD) of five units, two 2-unit townhomes and one 1-unit townhouse, with an HOA. Each unit will be 3 stories with parking underneath. Stormwater will be directed toward Spartanburg Avenue and/or Third Street. The lot can contain a maximum of 5 units by R-1 zoning standards.

The property requires 40% lot coverage, standard parking, 25% open space, standard stormwater design, and a 5-foot landscaping buffer. All of these have been met/provided in the proposed layout.

The Town in 2005 approved a Conditional Use Permit (CUP) for three triplex units and one 2-unit structure on the property. Two of the triplex units were built but the project was abandoned, leaving the right-side parcel incomplete. In 2015, Council approved another CUP for five units with a reduced side setback of 10 feet.

Mr. Murphy listed the adjacent properties on Third Street and Spartanburg Avenue. He said it is a mix of triplex, single-family, duplex, and a couple of undeveloped lots. He said the lot is currently set up as one large parcel, and the applicant is asking for permission to set it up as three.

#### Design details

- All units will meet 2-hour minimum firewall separation requirements
- Meets minimum building separations for fire
- 5-foot landscape buffer required
- Open space 25% (51%)
- Lot coverage 40% (37%)

Mr. Murphy said the project meets the 7 specific standards and 4 general conditions. Staff recommends approval of the CUP with the inclusion of 4-foot-wide sidewalks parallel to Spartanburg Avenue and South Third Street. The Planning and Zoning Commission voted 6-1 in favor of approving the CUP.

Ned Barnes of 814 Carolina Beach Avenue North, attorney for the applicant, reiterated that the 7 specific standards and 4 general conditions have been met. He said the CUP was approved in 2015 but has lapsed, so that's why it's back before Council now. Mr. Barnes said the Town's Technical Review Committee (TRC) has no issues with the project. He said everything is in harmony with the adjacent properties.

Shepherd Rosenblum of 811 South Third Street passed out materials to Council and went through ordinances, contending that they do not conform with proposed development. He said there was not ample opportunity for public participation in the process because notifications had gone to the wrong address for him and others received nothing. Mr. Rosenblum said a sign posted on the property was flat on the ground and not visible. He voiced concerns about flooding and noise and said the project will deteriorate local value. He asked Council to consider approving 4 units instead of 5. Mr. Rosenblum said it was the duty of Council to preserve the fundamental nature of the beach community rather than allow greater density.

Joe Waters of 809 South Third Street said he was concerned about putting too many properties on one lot. He said it does not look good for the Town and is not a great idea. Council Member Shuttleworth said the density of Mr. Waters' building is actually higher than this project. Mr. Waters asked what that has to do with anything because it was years ago.

Argie Poulos Brown of 206-212 Spartanburg Avenue said her family has had property in the area since the 1960s. She said the backyards now stay wet, and residents walk in ankle-deep mud frequently. She asked who will help prevent flooding on her family's land if development continues to cause issues.

Thomas Marr of 214 Spartanburg Avenue passed out a presentation to Council. He said his concerns are as follows: public health and safety, meeting all conditions and specifications, making sure there is no injury to value of abutting properties, and making sure development is in harmony with the area. He said the changes reflected in the revised drawings reduce but do not eliminate concerns. Mr. Marr mentioned a real estate expert's testimony regarding value at the Planning and Zoning Commission meeting. Council Member Barbee and Mayor Pierce asked if the expert was present to give that testimony at this time. Mr. Marr said he can provide that part of the Planning and Zoning Commission meeting presentation to them. Mayor Pierce said it must be presented now. Ms. Fox said Council can't consider evidence that isn't competent. Mr. Marr shifted his focus to stormwater flooding concerns. He said his credentials are as follows: he's a licensed hydrogeologist with 35 years of experience, a licensed N.C. geologist, and a licensed remediation site manager for the registered environmental consultant program. Mr. Marr said he is concerned with the use of fill dirt to raise the property and drain floodwater from it. He said his expert opinion is that this will cause detrimental flooding to surrounding properties. Council Member Garza pointed out that Mr. Marr had been taking more time than other residents who spoke. Mayor Pierce said Ms. Fox had asked that Council not limit speakers to three minutes but requested that they keep to relevant facts. Mr. Marr requested that the project capture rainwater with downspouts and put it in pipes to direct into storm drains. Mayor Pierce said Council will ask the applicant to address the stormwater issue. Mr. Marr said he is also concerned about future stormwater management plans for the area. Mayor Pierce asked about his ownership of his property. Mr. Marr said he has owned it for two years and does not live there full-time. Council Member Shuttleworth said Mr. Marr's lot is 150 feet deep and asked how wide it is. Mr. Marr said 50 feet.

Mr. Barnes spoke again and said this project has undergone lots of review and approval before coming before Council. He said all standards and conditions have been met without question, and some have been exceeded.

Mason Manhertz, who represents the applicant on behalf of Cape Fear Engineering, said the applicant is required to provide stormwater control measures that are adequate to draining the property toward the road. He said it's a small property and therefore does not need a state stormwater permit. Mr. Manhertz said the drainage issues mentioned are more of a Town problem than being the responsibility of his client to address. He said the project meets all Town rules and regulations.

Council Member Barbee asked about the notice requirements for the CUP. Mr. Parvin said staff used the New Hanover County tax records addresses on file for notifications and that the matter was posted in the newspaper. Mr. Murphy said a sign was placed on the property 10-14 days before the meeting.

Mayor Pro Tem Healy asked how long the previous CUP was valid. Mr. Murphy said three years.

Mayor Pierce asked if the applicant meets all stormwater and drainage requirements. Mr. Murphy said the project was approved by Stormwater staff as well as the TRC. Mayor Pierce said as the project develops, it will be overseen by different regulating authorities.

Council Member Garza asked how often there are flooding issues and if they are on file. Mr. Murphy said as a zoning official he can't comment on flooding. Council Member Garza also asked some design questions about the elimination of trees that Mr. Murphy said he could not answer. Council Member Garza asked about the difference between swales and runoff, and Mr. Murphy said he was not privy to the review.

Council Member Shuttleworth asked whether a duplex is allowed by right in the R-1 zone. Mr. Murphy said yes. Council Member Shuttleworth asked if staff was enabled to approve certain uses whether this project would still have come before Council. Mr. Murphy said yes because it exceeds staff's proposal due to the amount of units, but in the future this may be different.

Mayor Pierce asked Ms. Fox to address the task at hand. Ms. Fox said Council must determine based on the evidence presented whether the applicant meets the general and specific standards. She said Council Members must base their decisions on competent, material, and substantial evidence.

Council Member Garza said he's not sure if that's a zone that floods a lot, but he is fine with the rest of the proposal. He asked if the project is going to create flooding issues and an overall negative impact on the vicinity.

Mayor Pro Tem Healy said Council passed the CUP in two previous years, and this version meets the specific standards, general conditions, and everything Council is seeking.

Council Member Barbee said he thinks nearby residents have genuine concerns, but he thinks they are stormwater concerns and should serve as a warning to Town staff. He said the applicant is doing his job of getting water off the property into the street, so then it becomes a stormwater issue for the Town.

Council Member Shuttleworth said he thinks stormwater is the key issue. He said putting sidewalks is going to compound the problem. He said there is no connecting sidewalk and no long-term plan to add sidewalks, and the Town doesn't maintain the ones already there.

Council Member Garza said instead of sidewalks maybe the applicant can consider native plants that absorb water.

Mayor Pierce said she shares concerns about stormwater and asked the staff to help mitigate that as much as possible, but she emphasized that Council must make the decision based on zoning code issues based on 7 specific standards and 4 general conditions.

**ACTION:** Motion to approve the CUP for a 5-unit residential Planned Unit Development that is in accordance with the draft grant order and that it otherwise meets the 7 specific standards and the 4 general conditions if developed in accordance with the plan as submitted and approved

**Motion made by Council Member Shuttleworth**

**Voting Yea:** Mayor Pierce, Mayor Pro Tem Healy, Council Member Barbee, Council Member Garza, Council Member Shuttleworth

**Motion passed unanimously**

Mayor Pierce asked if Council wants to leave in the option of the sidewalks and leave it up to the applicant. Council Member Shuttleworth said he took out the sidewalks verbiage and did not include it in his motion, so the applicant will not be required to add the sidewalks.

Council Member Garza said anytime a CUP comes up in a vicinity where residents mention flooding, the Town should make a note of it so there is a track record.

**ACTION:** Motion to close the public hearing

**Motion made by Mayor Pierce**

**Voting Yea:** Mayor Pierce, Mayor Pro Tem Healy, Council Member Barbee, Council Member Garza, Council Member Shuttleworth

**Motion passed unanimously**

9. Consider a Text Amendment to Chapter 40, Sec. 40-72 Table of Permissible Uses - Residential PUDs and Multifamily Developments  
Applicant: Town of Carolina Beach

**ACTION:** Motion to open the public hearing

**Motion made by Mayor Pierce**

**Voting Yea:** Mayor Pierce, Mayor Pro Tem Healy, Council Member Barbee, Council Member Garza, Council Member Shuttleworth

**Motion passed unanimously**

Staff is currently updating many aspects of the zoning ordinance related to the required 160D update in the state statutes. As a prequel to other updates, staff has been directed to review all uses and determine whether they should remain a conditional zoning use or if they are not intensive enough a use to merit the conditional zoning process.

Staff was specifically directed to examine the way small multifamily and residential PUDs were organized. Staff adjusted the table so that small-scale PUD and multifamily no longer require the intensive conditional process/review of the Planning and Zoning Commission and Council. These projects would still have to follow the zoning standards related to the district where they are located and meet all other requirements for a building permit issuance. With these goals in mind, staff decided to divide the requirements for PUDs and multifamily into two categories. PUDs and multifamily consisting of 4 units or less will no longer require a conditional process. PUDs and multifamily greater than 4 units will require a conditional review process.

Mr. Murphy gave a presentation of details.

#### Background

- State statute changes from 153/160A to 160D for zoning
- Many, many changes required in local ordinances
- Reviewing table of permissible uses
- Previous directions – Small PUDs and multifamily developments “should not require CUP”

What is changing?

#### Changing

- Unit density that triggers requirement for additional scrutiny
- Procedural changes for smaller-scale, less intensive developments

#### Not Changing

- Use location/zone is not changing
- Standards for building/fire/flood/zoning review prior to permit issuance are not changing

No one requested to speak about the matter.

**ACTION:** Motion to amend Chapter 40 Article VIII Sec. 40-72 – PUDs and Multifamily Developments in the Town of Carolina Beach; it is consistent with the goals and objectives of the adopted Land Use Plan and long-range plans

**Motion made by Mayor Pierce**

**Voting Yea:** Mayor Pierce, Mayor Pro Tem Healy, Council Member Barbee, Council Member Garza, Council Member Shuttleworth

**Motion passed unanimously**

**ACTION:** Motion to close the public hearing

**Motion made by Mayor Pierce**

**Voting Yea:** Mayor Pierce, Mayor Pro Tem Healy, Council Member Barbee, Council Member Garza, Council Member Shuttleworth

**Motion passed unanimously**

#### ITEMS OF BUSINESS

##### 10. Harbor Master Hours

Mr. Parvin presented information about a proposed budget amendment to expand the hours for Harbor Master Larry Denning, who started the role as a contractor but was hired as a Town employee at 30 hours per week in July 2020. Town staff is recommending approval of a \$15,163 budget amendment to bring Mr. Denning to 40 hours per week due to the need for increased oversight in the harbor area.

Mr. Parvin said Mr. Denning has done a great job establishing relationships with marinas and boat captains and has been an integral part of the effort to get abandoned vessels removed. Mr. Denning is



also in charge of the nightly rentals of transient slips at the Town marina. Mr. Parvin said Mr. Denning is already working up to 40 hours per week during certain times.

Council Member Shuttleworth said he doesn't typically like to add staff but thinks Mr. Denning is a great asset.

Mayor Pierce asked what Mr. Denning uses for transportation while on duty. Mr. Parvin said he uses a 17-foot skiff.

**ACTION:** Motion to approve the budget amendment on the Myrtle Grove Sound staff recommendation that staff presented

**Motion made by Council Member Shuttleworth**

**Voting Yea:** Mayor Pierce, Mayor Pro Tem Healy, Council Member Barbee, Council Member Garza, Council Member Shuttleworth

**Motion passed unanimously**

### **NON-AGENDA ITEMS**

Council Member Garza asked about doing annual reviews for staff members that report to Council. Mayor Pierce asked Ms. Ward or Mr. Oakley to be sure Council gets this done. Council Member Garza also praised efforts with the MOTSU relationship and said he hoped this would offer good opportunities for Wastewater and Parks & Recreation. He also said he would like to trim the time spent on the workshop portion of January 26 and spend more time on the budget retreat to allow for time to hear creative ideas. Council Member Garza said he heard positive feedback about the decorated parking meters and would like to see the opportunity for people and businesses to sponsor parking meters throughout the off-season to generate revenue for the Town. He also said he would like to know how much of the County budget is coming back to the Town regarding help with the pandemic, and he mentioned the idea of allowing open-container beverages in the Boardwalk area to help businesses. In addition, Council Member Garza reiterated that he'd like to explore the concept of native plants helping with stormwater, said he wants to revisit the tree ordinance, and hopes to see the Fire Department sign used for positive messaging and information.

Council Member Barbee brought up the lake dredge issue and asked if anything came out of the meeting with the engineering firm. Mr. Oakley said the engineering firm recommended that the Town put the matter out for a design build RFP. He said the cost for the firm to create the RFP was high, so the Town was trying to do this in-house. Council Member Barbee also said at the recent Police Advisory Committee meeting there was good discussion about the 45-mph speed limit on Dow Road. He praised the Police Department for the signage and said he thinks the transition is going well.

Mayor Pro Tem Healy said he would like to recommend next month that the Beautification Committee be changed from ad hoc to standing because this will enable it to better accomplish long-range plans. He said similar committees for other cities are standing. Council Member Barbee asked Mayor Pro Tem Healy to explain the difference between the two. Mayor Pro Tem Healy said ad hoc is typically viewed as a short-term solution to fix a situation, while standing is ongoing for years and is more conducive to formulating and achieving a plan. Mr. Parvin said ad hoc is temporary, while standing is defined in code and must adhere to bylaws and operating procedures. Council Member Garza said the efficiency study

recommended that the Town condense committees, so he would like to see some of them join forces. Mayor Pierce said this was her thought as well, but she would like to hear ideas from Mr. Oakley at the retreat in January. Council Member Barbee said he would like to hear priorities from the efficiency study. Council Member Shuttleworth said his concern about committees was the drain on staff, and he would like to see a close look at the structure of each one to see if streamlining is possible. He also said he would like to see a more defined scope and purpose for each committee so they stay on track toward their missions without so much staff involvement. He recommended realigning committees rather than shutting them down to keep public participation high.

Mayor Pierce said the efficiency study and committees were on her list of non-agenda items. She said she would like to hear about quick vs. long-term implementations from the study. Mayor Pierce asked if committees are still meeting under the current COVID-19 guidelines. Mr. Oakley said some are meeting in-person if they can keep the group to under 10 people, while others are using Zoom. Mayor Pierce said to make sure there is always a virtual option.

Council Member Garza asked everyone to remember to support local businesses.

Mayor Pierce asked Mr. Oakley to look at the extra money received from ABC revenue to make sure it doesn't get absorbed somewhere. She said she would like to hear suggestions for options on how it can best be used. Mayor Pierce also welcomed Police Chief Ward again. She said she wishes everyone a wonderful holiday season and hopes people can find a way to be with family and neighbors, even if it is via phone or virtually.

#### **ADJOURNMENT**

**ACTION:** Motion to adjourn at 8:25 PM

**Motion made by Mayor Pierce**

**Voting Yea:** Mayor Pierce, Mayor Pro Tem Healy, Council Member Barbee, Council Member Garza, Council Member Shuttleworth

**Motion passed unanimously**