

This email is to follow up on the August 26 BOC regular meeting, and specifically the presentation and request for establishment of a beautification commission for the Town. There are several N.C. General Statutes relevant to this proposal. The option of styling the proposed beautification commission as an independent, public or private entity, rather than an official Town committee, was discussed. Below are some things to consider:

Town Advisory Committee/Board Option. NC General Statute 160A-304, attached, authorizes and lists duties and functions of town “Appearance Commissions.” GS 160D-304, also attached, contains similar and more extensive authority for “Community Appearance Commissions”. Finally, GS 160D- 306 authorizes the creation of other, non-categorized, advisory boards, as the governing board may choose to establish. Bottom line: The BOC has broad authority to establish and define the powers and duties of boards or committees to serve in an advisory capacity to the BOC.

Town Advisory Board/Committee – Pros and Cons. An official Town advisory board would typically serve at the BOC’s pleasure. The Board would not be an independent legal entity, with power to contract, sue or be sued, or to own property in its name. It would exist as an instrumentality of the Town, though its functions would be advisory, supportive, and therefore limited. Such a board would typically be authorized/encouraged to solicit donations and other funding for the desired purposes; however, funds would need to be held, received and maintained in the accounts of the Town. As an officially constituted board or committee of the Town, it would be subject to the NC Public Records, Open Meetings, and other laws applicable to Town agencies. It is worth mentioning that several larger municipalities delegate limited quasi-judicial authority, in addition to advisory duties, to appearance or beautification committees. Note the similarities to the Town’s Historic District’s Commission, whose duties include fact-finding, fund solicitation, and advisory duties, as well as responsibility for quasi-judicial decision making. Historic Preservation Commissions are created and subject to their own general statutes, however.

Independent Commission or Authority. JOED is an independent, economic development commission, authorized under Chapter 158 of the General Statutes. As a legally constituted and independent entity, it may contract; sue and be sued; and solicit, hold, and receive funds in its own accounts. The Swansboro Tourism and Development Authority has similar status as an independent, public entity. It was authorized and granted powers by a special act of the General Assembly, NC Session Laws 2011, Chapter 170. There is no legal authority for a public beautification/appearance entity separate from and independent of the Town - other than described in the attached appearance commission statutes.

Private, Non-profit Entity. The Town is legally authorized to enter into agreements whereby a private, non-profit entity (such as a corporation or LLC) may carry out responsibilities and duties which the Town could otherwise undertake and perform directly. Such an entity may contract; sue and be sued; and solicit, hold, and receive funds, in its own bank account. Any funding or authorized pass-through of grant monies would be subject to pre- and post- auditing requirements, however. As an example, a town might contract with a private non-profit entity to carry out a recreation trail or a tree-planting program. If this is the Town's preferred direction, the form of the entity, organizational structure, charter and bylaws of the entity would be for the private group to explore and decide upon.

As a final aside, I did not address the possible overlap of the beautification steering group's downtown area focus, with the Town HPC's responsibilities in the designated Historic District.