

MINUTES
OAK ISLAND TOWN COUNCIL REGULAR MEETING
TUESDAY, APRIL 21, 2020 – 6:00 PM
COUNCIL CHAMBERS - OAK ISLAND TOWN HALL
(meeting available to the public via Zoom)

Present: Mayor Ken Thomas, Mayor Pro Tempore Winecoff, Council members John W. Bach, Sheila M. Bell, Charlie K. Blalock and Loman Scott, Town Manager David Kelly, Town Attorney Brian Edes and Town Clerk Lisa P. Stites, MMC.

Mayor Thomas called the meeting to order at 6:05 p.m. once everyone was present. Councilor Blalock gave the invocation and led the Pledge of Allegiance to the flag.

PRESENTATIONS, PROCLAMATIONS AND RECOGNITIONS: Southeastern NC Regional Hazard Mitigation Plan Update – a written report was provided by Steve Edwards, Development Services Director; a copy of the report is attached and is hereby made a part of these Minutes. Mayor Thomas noted that the written report was available in the agenda packet for the public to review.

ADJUSTMENT/APPROVAL OF THE AGENDA: Council reports were moved to follow New Business. **Councilor Bach made a motion to approve the agenda as amended. Councilor Blalock seconded the motion and it passed unanimously.**

PUBLIC COMMENT - GENERAL TOPICS & AGENDA ITEMS: Since access to the meeting room was limited, public access to the meeting was provided via electronic means. Written comments were emailed to the Town Clerk and were provided to Council before the meeting began. The Town Clerk indicated that 37 sets of comments were received; eight of them were about the Town's plan to nourish the beach at the west end where there is erosion, three were considered other (timeline for allowing a house to be built, a letter from the Chamber of Commerce asking for a plan going forward with phased re-openings, and an update from the Beach Preservation Society), there were four in favor of opening the beach for exercise and fishing, three opposing opening the beach or expressing concern about opening the beach, and 20 in favor of opening the beach or at least opening it for exercise. Comments are attached and are hereby made a part of these Minutes.

I. CONSENT AGENDA

I.1 Approval of Minutes (February 6, 2020 - Council Retreat; February 11, 2020 - Regular Meeting; and March 10, 2020 - Public Hearings & Regular Meeting): **Mayor Pro Tempore Winecoff made a motion to approve the Consent Agenda as presented. Councilor Scott seconded the motion and it passed unanimously.**

II. COMMITTEE APPOINTMENTS

II.1 Committee Appointments - Board of Adjustment: **Council unanimously re-appointed Ed Hardy and Steve Yuhasz to terms ending in March 2023 and Kristy Sappe to an alternate term ending in March 2023.** Applicants Shawn Barry and Charles Farley were not appointed.

III.2 Committee Appointments -- Parks and Recreation Advisory Board: **Council unanimously re-appointed Marge Bell, Bill Craft and Lisa Nolin to terms ending in March 2023.** Applicants Chester Brookover, Denise Justice and John Schading were not appointed.

IV. ADMINISTRATIVE REPORTS

IV.1 Department Reports: Department reports are attached and are hereby made a part of these Minutes.

V. OLD BUSINESS

V.1 Discussion of Fountain in Traffic Island: Mr. Kelly explained the history of the effort to put a fountain in the traffic island. He said as they worked with NCDOT, it became a more complicated process; they wanted an art committee and approval from NCDOT and it started to get bogged down in the system. The Beautification Club presented drawings to NCDOT, it was approved the project to a point and turned over to the art committee, but then it required an engineering study, NCDOT would have to approve the engineering study and the Town would take liability for the fountain. He said they had not had further clarification from Council as staff had taken it as far as they can without spending funds. He said that the fountain would have to be added to the Town's liability insurance and he would have to check on the cost. He said that NCDOT had said that any incident that happened within that curve area, whether vehicles or pedestrians, the Town would be liable since the Town will have approved the positioning of the fountain. Councilor Bell asked who would pay for the engineering study; Mr. Kelly said the Town would. Mr. Edes spoke about the Town's liability, saying that someone would have to prove that the Town did something negligent. Answering a question from Mayor Pro Tempore Winecoff, Mr. Kelly said that the art committee turned down the proposal that the Beautification Club submitted because it didn't have the study, or the required diagrams or paperwork. Mr. Kelly said that there is a radius that NCDOT does not want the object to travel outside of, and it was 25 feet; the median is barely 25 feet at its widest point. He said the fountain they asked to install couldn't be installed since it wasn't one piece; he said the Club had purchased a kit that would not work at that location. Mayor Thomas said that if NCDOT would put a roundabout there, there could be a fountain. He said that it would be a problem for a tractor trailer to make the turn otherwise. Councilor Scott said that the Beautification Club does a lot for us and they make things look pretty. He said that he'd like to support them, but he'd like to know the total cost. Mr. Kelly said there would be the engineering costs, possibly between \$2,000 and \$12,000, and what would be needed to make it secure in place. Councilor Bell asked if this was an Oak Island resident requesting it or the Club; Councilor Scott said it was the Club. Mr. Kelly said that Caswell Beach has offered to put it in front of that town hall or Oak Island could put it at Veterans Park or another location. Councilor Bach said that that wasn't possible given the restrictions on the donation. He said he'd also like to know the costs, for the installation, the engineering and the insurance, even if they are estimates. He said he's also like to see a picture of the fountain. Mr. Kelly said that the fountain the Club proposed will not be approved by NCDOT since it has to be a solid structure, so they would have to get someone to precast something for that location. Councilor Scott asked if the Club would pay for that portion, and Mr. Kelly said that the Club had only offered the fountain they already had. Councilor Bell said that when she spoke to Ms. Hupp with the Beautification Club, she was told that there would be no cost to the Club. Council asked for costs to review. Councilor Bell said that this issue had been dragging on, and that one way or the other, they would like a decision so they can move on; Mr. Kelly said they could bring some estimates to the May meeting. Answering a question from Councilor Scott, Mr. Edes further explained the liability issue, saying that the complainant would have to prove that the Town was negligent. For clarification, it would be the Town designing something that would fit NCDOT requirements. Councilor Bach said this was a friendly, service-oriented group, and that the Town should gather all the information so the group could be given a decision; he said he was looking at recurring costs, installation and engineering costs, and whatever kind of dance has to be done with NCDOT, and that measured against whether that would be a singular piece of architecture which people see when they come on the island or if it would be costly project that was potentially unsafe. Mr. Edes said he would certainly want to hear an engineer's position, because if a truck is having to use two lanes to make a turn, that could lead an accident – that was an opinion they needed to have.

Councilor Bach asked about the Hazard Mitigation Plan mentioned earlier, specifically what the status was of an off-island emergency operations center. Mr. Kelly said that the Town had asked for the land donation from NCDOT, He said there was no money included in the upcoming budget to start that process, though staff had looked into other mainland areas to use in an emergency in the meantime. Staff would be able to access records remotely if necessary, and the satellite plant on 52nd Street could be used if absolutely necessary.

Mr. Kelly also said he had a report on the west end erosion issue, saying a dredge (the Currituck) would be coming on May 10. It would be a hopper dredge that would take sand from the inlet and do near-shore placement, addressing the “hot spot.” He said the State would pay \$200,000, the County’s cost would be \$50,000 and the Town would spend \$50,000 for the dredging project. Mr. Kelly said west end property owners are concerned about the condition of the beach, and this would be a temporary measure that the Town could do. Council consensus was to proceed. Councilor Scott asked if this would be a yearly thing. Mr. Kelly said that the Town is now aggressively pursuing sand out of the Lockwood Folly Inlet, whereas in years past, the Town didn’t participate. Mr. Kelly said that they have made it clear that the Town of Oak Island wants to participate any time sand is available. He said that Holden Beach got sand from the last Inlet project, so the other project coming up next year should go to Oak Island, but that this is something we can go after right now to fill in the hole, or the “hot spot.” Councilor Bach asked the Town to notify the homeowners on the west end about the project. Answering a question from Councilor Blalock, Mr. Kelly said that years ago, the Town didn’t participate in projects and didn’t always put sand on the beach, and Holden Beach was always willing to participate. Sand goes from east to west, and we feel like the sand in the Inlet is Oak Islands’ sand. He said Bald Head feels like the sand that goes into the channel is their sand. In that case, there is an agreement with the Corps, Bald Head and Caswell Beach that Oak Island gets sand every third cycle, and that he believes that should be looked at again. Mr. Kelly also said he regularly asks for the opportunity to sit down with the County and Holden Beach to work out a plan for alternating projects or create some kind of schedule to share sand from the Inlet. He said it is always a tight schedule when the Corps asks for participation in a project, with just a matter of days to provide the funds. Mayor Thomas asked what the Town needed to do to be ready. Mr. Kelly said that staff was working on easements for upcoming projects, and that Mr. Edes had reviewed the Town’s easement language with the Corps, and that the easements already in place at the west end were still fine. He said he thinks the Town is going in the right direction as far as being ready.

V.2 Consideration of Extending/Amending Restrictions of the Declaration of a State of Emergency: Mr. Edes reviewed the proposed Fifth Amended Declaration, which would be effective Friday at 6 a.m. He reviewed the new provisions of the Declaration. A copy of the Declaration is attached and is hereby made a part of these Minutes. He noted that the provision about the driveways was included as it seemed people were charging for use of driveway space for people to access the beach. He said this was an incremental step toward some sense of normalcy, and that if these restrictions are violated, then the Town may have to close the beach again. Mr. Edes said that all the Town’s parking ordinances that are contract to the Declaration are superseded by it. He also said this Declaration was consistent with a soft re-opening that is occurring in New Hanover and Brunswick Counties. He commended the Council for considering this action at this time. He said that these were tough decisions and they were made after much consideration and research. He said that as long as they saw compliance, they could move forward, but if they see abuse, they’ll have to take a step back. He said in his opinion, where it went from there was in as much the public’s hands as it was the Council’s hands. **Councilor Scott made a motion to accept the revisions in the Fifth Amended Declaration of a State of Emergency of the Town of Oak Island. Councilor Bell seconded and the motion passed unanimously.** A copy of the Declaration is attached and is hereby made a part of these Minutes. Mr. Edes said that these were not the only things the Town was considering; they have had individual polling of Council and discussions. He commended Council for thinking outside the box and trying to get the Town from where it was to back to normal. Councilor Bach thanked citizens for compliance with the exiting order. He said to him, it was a matter of social responsibility that they have for other people. He also thanked citizens for sending in their ideas. He said Council had worked arduously to reach a consensus. He said that personally, he would have preferred a more conservative approach, but he understands that it’s more important for the Council to be unified and to support the Mayor. Councilor Bach also thanked Council members for their commitment. Mr. Edes said that he wanted to make sure that the Minutes reflected that discussions did not violate open meeting laws. He said the go to great lengths to make sure the discussions are one-on-one, and that there was no electronic debate. Mr. Edes said that the UNC School of Government has put out several publications stating that polling the board on various issues does not violate the open meeting laws. He said that they were in a State of Emergency, and if they had to wait

until they could call a meeting, things are so dynamic that it may be too long to wait. He said that this was a Council-wide effort but that they were doing it in accordance with open meeting law.

VI. NEW BUSINESS

VI.1 Consideration of Request for De-Annexation: Mr. Edes said that the only way to de-annex is through the General Assembly, and that if the Town agrees to such a request, that would probably go a long way with the General Assembly. Answering a question from Mayor Thomas, Mr. Edes said that the General Assembly could take action regardless of the Town's recommendation. He said that she said when she bought this property in Oakwood Glen, she said she didn't know that the property was part of the Town. Mr. Kelly said that the property owner had requested this about two months ago. He said the Town does provide services there, such as yard debris collection and stormwater, but that not all of the properties in the community had been annexed. He said staff wouldn't object to the request. Councilor Scott asked if this would set a precedent. Mr. Edes said it would not set a legal precedent. He said that if Council voted to support this, it would not be bound to do so in the future. Councilor Bach asked Mr. Edes to explain the rationale – was it just that the property owner didn't want to pay property taxes to the Town? Councilor Scott said that he was concerned that if they did this, they would start a plethora of these. Answering a question from Councilor Scott, Mr. Edes said that de-annexations are not frequent, but they do happen. Councilor Bach asked about the loss of revenue. Mr. Kelly said that was minimal. Councilor Bach asked for specifics, and Mr. Kelly said it would be the monthly fees for stormwater and taxes. Mr. Kelly said that these properties came into the Town when the property owners didn't want to become part of St. James, but that not all of the properties came into Oak Island, so it was sort of spotty. Councilor Bell said that this was done at a time when towns could still do forcible annexation, right before the legislation changed. She said that the Mayor at that time started with the voluntary annexations, which is why there are pieces on Long Beach Road that are in the Town of Oak Island and pieces of Oakwood Glen. Mr. Edes said that there was an annexation disagreement between Oak Island and a neighboring municipality, and there was a concern among property owners that if they were going to be annexed, which town did they want to be a part of. He said that several parcels chose Oak Island. He believed the annexation laws were re-written in 2012. Councilor Scott said that he was concerned that if they did this, they would start a plethora of these. **Councilor Scott made a motion to deny the request for de-annexation. Councilor Bell seconded the motion.** Councilor Bach said he didn't want to set a precedent and Councilor Blalock said that if the property owner didn't know the property was in Oak Island when she bought it, that was an issue to take up with her real estate agent. **The motion passed unanimously.**

VI.2 Consideration of Request for Annexation (on NC 211): Mayor Thomas noted that they would need to change the Public Hearing date to June 10. Mr. Edes said that the School of Government recommends postponing non-essential public hearings, and they need to make sure they have the ability for people to participate in the hearing. **Councilor Bell made a motion to Adopt a Resolution Directing the Clerk to Investigate a Petition Received Under NCGS 160A-31 Voluntary Contiguous Annexation for Parcels 20400048, 20400009, 20400010, 20400011, 20400012, 20400013, and 20400014. Mayor Pro Tempore Winecoff seconded the motion and it passed unanimously.** Mayor Pro Tempore Winecoff made a motion to Accept of the Town Clerk's Certificate of Sufficiency of Petition for Voluntary Annexation for Parcels 20400048, 20400009, 20400010, 20400011, 20400012, 20400013, and 20400014. **Councilor Bach seconded the motion and it passed unanimously.** Councilor Bach made a motion to Adopt a Resolution Fixing the Date for a Public Hearing on the Question of Annexation Pursuant to NCGS 160A-31 for Parcels 20400048, 20400009, 20400010, 20400011, 20400012, 20400013, and 20400014, Setting the Public Hearing for 6 p.m. on June 10, 2020. **Councilor Bell seconded the motion and it passed unanimously.**

VI.3 Consideration of Approving a Contract for the FY 2019-2020 Audit: Mayor Thomas said this firm had been doing the Town's audit for a while. Councilor Bach said that he recommended establishing a schedule for RFPs for major services so they are getting the best competitive bid from the marketplace and

from their providers. He asked how long this firm had been doing the audit. Mr. Hatten said this would be the firm's sixth year. **Councilor Bell made a motion to grant authority to enter into a standard audit contract subject to approval by the Local Government Commission with S. Preston Douglas LLP for audited financial statement preparation purposes for FY ending June 30, 2020 at a fee not to exceed \$44,000. Mayor Pro Tempore Winecoff seconded the motion and it passed unanimously.**

Councilor Bell said that she had been receiving questions about rentals. She said that the Declaration ended on the 29th, and the agencies were asking if that meant that they could start having rentals May 1. Mr. Kelly said that the Declaration in place carries through the 19th. He said that there would be a meeting on April 30, and he would like Council to add a Special Meeting that day to discuss additional actions. He said he believed the Governor would be making some announcements on the 29th. He said Council could make changes, but at this time, there were no new long-term or short-term leases. He reminded Council that there were budget workshops on the 23rd, 28th and 30th. Mr. Edes said that under the Town's ordinances and the General Statutes, the Mayor can amend the State of Emergency. He said that although certain dates are listed in the Declaration, until they were lifted, he didn't think it was wise to assume they would automatically expire, particularly when they are looking to what the Governor is considering as well. Councilor Bach said that short-term rentals represented a huge increase in risk, but that long-term is something that Council needs to discuss as part of the second phase, along with parks and other items. Mr. Edes said that the difficulty with short-term rentals was that beach towns were a mecca for transient travel, whether it comes from a remote place or the most hard-hit area dealing with COVID-19. He said that was a unique concern for beach towns. He said he hoped the public would understand that it wasn't a matter of turning a switch as there were a number of matrix to consider. Councilor Bell said that the question from rental agencies was what to do after April 29, could they start with rentals May 1. Councilor Bell said that she replied that she did not think that was going to happen, but that wasn't her decision to make. Councilor Bell said that their question is how to deal with requests for short-term rentals they are getting. Mr. Kelly said that he didn't think Council could provide a date at this time, and Councilor Bell said that is what she told the person asking. Mr. Edes said this was a very fluid situation, and if people ignore that, they do so at their own peril. Mr. Edes said they certainty wanted to accommodate business concerns and they he understood that they thrive on tourism, but that if they didn't take the prudent incremental steps, instead of losing a 6-week rental period, they could be looking at much longer. He also wondered what would happen if someone contracted the virus while in Oak Island – where would that person go to be quarantined? Mr. Edes said he didn't think that people understand how hard Council was wrestling with these decisions. Councilor Blalock asked if a person with a short-term rental can restrict who says there, such as someone who comes from an area hard hit with the virus as opposed to an area that is not. Mr. Edes said he couldn't give legal advice to the general public, but that would sound like government action.

COUNCIL REPORTS

Councilor Bach said that the pandemic was probably the greatest disruption of our lifetimes. He said he wanted to assure the public that they were looking at a conservative budget model for the coming year, with a goal of not raising taxes in a recession, preserving staff and saving what programs they can. He said that he hoped there wouldn't be another wave of this in the fall. He said that it would not be business as usual, and that there would be losses. He said that he hoped the business community would survive this.

Councilor Scott said that for all the people who have emailed and called, the small business and the hotels/short-term rentals, he felt what they were saying, but until the Governor made some decisions, they could try to get back to normal as quickly as reasonable.

Mayor Thomas said that this won't be easy, but that this was a consensus. He said that this was probably a good decision, because no one would be happy with them -- half would be happy with what they did and half would say it was not enough.

Councilor Blalock said he appreciated his fellow Council members and staff for the support and for answering his questions. He encouraged citizens to keep communicating.

Mayor Pro Tempore Winecoff said it was tough times and everyone was struggling. He said that in the nursing homes, they can't sit in common areas and they have to eat in their rooms. They can't see their families or give them a hug. He said that by giving people the chance to get some exercise and walk on the beach, he hoped they would respect it.

Councilor Bell thanked Councilor Bach for all the effort he had put into getting Council to a consensus.

VII. CLOSED SESSION Council may go into Closed Session to preserve the Attorney/Client Privilege pursuant to NCGS 143-318.11(a)(3): There was no Closed Session.

VIII. ADJOURN: Councilor Bach made a motion to adjourn at 7:14 p.m. Councilor Bell seconded the motion and it passed unanimously.

Ken Thomas, Mayor

Attested: _____
Lisa P. Stites, MMC
Town Clerk

Clerk's Statement: Minutes are in compliance with the open meetings laws. The purpose of minutes per the open meetings laws is to provide a record of the actions taken by a Council or a Board and evidence that the actions were taken according to proper procedures. All actions of the Council are recorded in the official minutes. Not all portions of Town of Oak Island meetings are recorded verbatim in the official minutes, with general discussion items, reports, presentations, and public comments being paraphrased or summarized in many instances. Public comments in writing should be submitted to the clerk via hard copy, electronic mail, or other means so as to ensure an exact verbatim account. The Town of Oak Island provides full coverage of meetings on Government Channel 8 so that the Citizens and the Public may view and listen to the meetings in their entirety.