



KURE BEACH TOWN COUNCIL
WORK SESSION
March 13, 2007

MINUTES

On March 13, 2007 at 6:45pm, the Town Council and ADA Committee held a work session to discuss a draft ordinance regarding use of vehicles on the beach by handicapped persons. Notice of the work session was posted at Town Hall and advertised in the local newspaper.

Mayor Fuller called the work session to order at 6:45pm. A quorum was present.

COUNCIL MEMBERS PRESENT:

Mayor	Tim Fuller
Mayor Pro Tem	Mac Montgomery
Commissioner	Jim Dugan
Commissioner	Bill Ufferman
Commissioner	Dean Lambeth

STAFF PRESENT:

Police	Andy Everhart
Police	Paul Hubbard
Town Clerk	Nancy Avery

Town Attorney A.A. Canoutas was in attendance.

ADA chairman, Gilbert Alphin, stated:

- his committee brought a request to allow use of vehicles on the beach by handicapped persons because of a court case held in Topsail Beach that ruled handicapped must be given access to the beach.
- Topsail Beach is different from Kure Beach in that they already allowed heavier vehicles, such as ATVs, on their beach for recreation.
- Court case opened up the privilege for Kure Beach handicapped residents
- Qualified people with their own means of transportation should be allowed the same access on the beach as pedestrians

Town Attorney Canoutas stated:

- the Superior Court ruling is the precedent and law of the state until changed, therefore the town has an obligation to comply
- when the case was decided there were not as many CAMA restrictions as there are today
- per the case, an individual has the right to get a permit to drive on the beach
- the language he used in the draft ordinance was based on the language used in the court case which is from the 1990s and today's language/laws are different due to

ADA federal laws and beach re-nourishment contractual agreements which is US Army Corps of Engineers– would like opinion of Attorney General

- he has not contacted Attorney General or other agencies – waiting on council's direction
- Federal requirement is that handicapped must be allowed to go where pedestrians can
- Issues are:
 - ATVs can't be driven on highways or roads – can't be licensed due to light weight and insurability
 - Critical to protect the dunes and sunbathers
 - Who will drive the vehicle – the handicapped person or another person for the handicapped person

Commissioner comments/questions:

- Has the court decision been challenged in Topsail? Are they granting access? Does Topsail Beach have re-nourishment?
- If a handicapped person requests access and the Town denies, can they take legal action?
- What about gas spills on beach?
- Public entity should be proactive and act because it's the right thing to do not because of response to lawsuit
- Council is willing to explore if possible to do and safeguard all other issues
- Purchasing motorized wheel chairs may apply to the Parks and Recreation Committee

Attorney responses: case has not been challenged, access has been granted only for designated ramps, not sure if they have re-nourishment or not and yes, if Town denies access, person can take legal action

Officer Paul Hubbard of the Kure Beach Police Department stated:

- Topsail Beach is different in that ATV's were already allowed on beach
- Kure Beach has opportunity to create a model
- Don't recommend approving ordinance allowing ATVs
- Main concerns with All Terrain Vehicles (ATV) are:
 - Speed as high as 60 mph
 - Weigh up to a 1,000 lbs
 - Can't be licensed per State so can't drive on street - how would you get ATV from house to beach – would require trailer, which could cause parking issues
 - Use fuel – may be spills
 - Owner has no financial responsibility under the law
 - Difficult to maneuver
 - Would require truck to pull out if stuck in sand
 - Might have to retrofit access ramps so ATVs would fit

- Recommends motorized beach chair instead:
 - Limited to 15mph by design which would translate to 10 mph in sand
 - Wouldn't have to retrofit access ramps
 - Doesn't require a license as per NC G.S. 20-49
 - An electric wheel chair can be retrofitted as a motorized beach chair
 - Battery operated – no fuel
 - Can be accommodated to have place for fishing pole/storage
 - Lots of studies are available and successfully being used in California
 - Grant money is available

Comments from public:

1) Chris Leach asked who qualifies person as handicapped, what criteria would be used
Officer Hubbard responded the Town should reference NC G.S. 20-37.5 in the ordinance to use as standards for qualifying handicapped

2) Wanda Tsangarides commented that money will be spent either way and motorized beach wheel chair sounds better and safer - Town could have available for rent
ADA Chair Alphin responded that UNCW has something similar to a motorized vehicle and his personal opinion is that if handicapped persons are charged to access the beach, all persons accessing the beach should be charged.
Officer Hubbard stated he is not proposing the Town buy or provide the vehicles, only recommending using the motorized wheelchair in lieu of the ATV

3) Dick Graham, member of the ADA committee, commented:

- The committee presumed the draft ordinance was based on the current language not the old
- It is appropriate for the town attorney to make the contacts and maybe the ADA, Police and attorney can work together
- Town doesn't have to do or even have an ADA committee and commends council for having the work session

4) Mo Lindquist stated:

- one thing to focus on is "visit-ability" for the Town
- Town should avoid negatives in visiting the beach
- She is concerned about gasoline operated vehicles on the beach – possibly electric okay
- Will access be allowed for entire beach or only in designated areas?
- What about a volunteer staff to monitor program

Mayor Fuller replied that access would be only at N Avenue and Davis Road where access already exists - this motorized wheel chair may change that - more research needs to be done

5) Mike Conselo – I am one of the handicapped trying to get on the beach. The beach buggies that are allowed on streets are licensed and insured, is there must difference with those and an ATV? What if the handicapped person can't operate the chair and needs a

companion – there is only one seat. Think it would be great if Town would purchase and have available for public use.

Officer Hubbard stated handicapped beach buggies/golf carts are allowed on streets if they are licensed by DOT, but ATVs can't be licensed per DOT. A companion would need to walk along beside the wheel chair and operate.

6) Eric Vann – what does Carolina Beach have?

Officer Hubbard responded they use a push able wheelchair – not motorized
ADA chair Alphin added that a citizen can drive an ATV at Fort Fisher

Officer Hubbard distributed another proposed ordinance for consideration. (herein included as part of these minutes as attachment A).

ADA chair Alphin stated he didn't like using the word "entitled" and prefers "privileged", so if there are problems, it can be taken away.

7) Sandy Putnam asked what happens to handicapped individuals on beach if they encounter a problem – whose responsibility? Thinks person should call before going on the beach.

Mayor Fuller replied that there is a limit to what the Town can do, but if the Town provided the use of the motorized wheel chairs, it could be tracked as to how many were in use. Commissioner Lambeth stated the Town would need a hold harmless agreement and Attorney Canoutas agreed. Mayor Pro Tem Montgomery stated it shouldn't be assumed that we know what a handicapped person wants and limits shouldn't be set because it just makes that person more dependent.

8) Ron Hanna asked if there would be any impact on turtles during the season.

Officer Hubbard stated that should be referenced in the ordinance and procedures

9) Chris Leach stated that a manufacturer she had spoken with had stopped making the motorized beach wheel chairs because of safety issues

10) Wanda Tsangarides said if this is passed and a person has his own chair, it should be permitted requiring the name and address

11) Mo Lindquist asked how visitors would know Town has these available. Mayor Pro Tem Montgomery stated there is a website that lists handicapped accessibility and Kure Beach could be listed.

Consensus after discussion

- Dick Graham (ADA committee), Officer Hubbard (Police), Commissioner Lambeth and Town Attorney Canoutas are to work together to draft a letter to the Attorney General and other relative agencies for advice
- Mayor Pro Tem Montgomery and Commissioner Dugan are to research grant opportunities
- Recommendations on above are to be made at the April council meeting

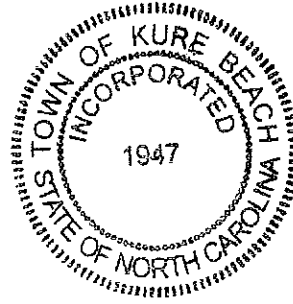
Mayor Pro tem Montgomery stated this item should be carried as a tabled item on the agenda.


Adjournment

The meeting adjourned at 7:50pm



Tim Fuller, Mayor



ATTEST: 

Nancy Avery, Town Clerk