



KURE BEACH TOWN COUNCIL
REGULAR MEETING
APRIL 15, 2008
6:30 pm

MINUTES

The Kure Beach Town Council held their regular meeting on Tuesday, April 15th, 2008. Mayor Montgomery called the meeting to order at 6:33 pm, delivered the invocation and led in the pledge of allegiance.

COUNCIL MEMBERS PRESENT:

Mayor	Mac Montgomery
Mayor Pro Tem	Jim Dugan
Commissioner	Dean Lambeth
Commissioner	Barry Nelder
Commissioner	Jim Vattr

COUNCIL MEMBERS ABSENT:

None

STAFF PRESENT:

Town Administrator	Michelle James
Building Inspector	John Batson
Finance	Jennifer Watson
Fire Chief	Harold Heglur
Police	Andy Everhart
Public Works	Sonny Beeker
Town Clerk	Nancy Avery

Town Attorney A. A. Canoutas was in attendance. Planning and Zoning Attorney Holt Moore was in attendance. A quorum of the Town Council was present.

RECOGNITION AND AWARDS

1. Presentation of Proclamation P08-03 proclaiming April as Fair Housing Month to representative of New Hanover County Human Relations Committee

Mayor Montgomery presented a proclamation naming April as Fair Housing Month to Marilyn Youngbluth, Kure Beach's representative on the Human Relations Commission and Carl Byrd, Director of the New Hanover County Human Relations Commission.

Ms. Youngbluth and Mr. Byrd stated that the Human Relations Commission would like to send a letter of support to the Council on behalf of the Ocean Front Park.

2. Island of Lights Awards

Mayor Montgomery presented certificates of appreciation from the Island of Lights to:

- Fire Dept (not present)
- Police Chief Cooper

PERSONS TO ADDRESS COUNCIL

1. State House Representative Danny McComas

Mayor Montgomery introduced representative Danny McComas who stated:

- Kure Beach is an example for the rest of the municipalities in what you do with the Tourist Development Authority/Room Occupancy Tax funding for beach renourishment
- The subject of taxes is near and dear to his heart
- He is not in favor of annexation because it is extra taxation with no extra services and puts a hardship on property owners to have to pay double taxes
- Kure Beach was most impacted in property taxes in the last revaluation
- He has spent a significant amount of time in the last 5-6 years trying to find ways to maintain low property taxes particularly for people on retirement income – the homestead exemption is not significant enough, doesn't go far enough and the house and senate are working to make it better
- He anticipates property taxes to be a 'hot' issue in the next session
- He wants Kure Beach to remain a permanent resident town as it has been
- He commends the Council on their diligence and effort concerning the Ocean Front Park

2. Waste Management – recent change in policy

Chris McKeathan, Waste Management, stated:

- They will no longer collect recyclables contained in plastic bags
- Do not put plastic bags in your recycling bins because they get caught in the recycling equipment and shut down the machinery that sorts recyclables prior to shipping
- If space is an issue, the owner can use another bin, but there is a charge for the second bin
- Residents can take plastic bags to larger container provided at park

Mr. McKeathan handed out a written apology to Council for confusion that resulted recently over not being able to accept plastic bags.

ACTION - consensus - Mr. McKeathan and Public Works Director Beeker are to try to coordinate schedules to coincide pick up of recycling and garbage/trash on the same day.

3. Audrey Albrecht and Cindy Wartel, Carolina Beach Elementary School, time capsule celebration

Ms. Albrecht stated:

- The school is sponsoring a time capsule celebration and is asking support of the Fire Department to prepare and provide hamburgers and hotdogs
- In May of 2008, the school will open a time capsule buried in 1982, and assemble another time capsule for 2007-2008 to be buried for 25 years

Ms. Wartel stated:

- She has never been in a school where the school is such an important part of the community
- The school has already been getting requests about when the 1982 time capsule will be opened and she wants to invite everyone to be a part of opening the time capsule

Mayor Montgomery stated the school has the support of the Fire Department and Council to support and help with what ever we can

4. Sandy Cox

Thanked Public Works and the Town for the free bulk trash pick up.

PRESENTATIONS TO COUNCIL

1. Frances Regan, Community Center committee chair, stated the committee recommended an increase in rates as part of their FY08-09 budget as follows:

- Increase rental rates for residents/property owners from \$10 per hour to \$15 per hour
- Increase rental rates for non residents from \$25 per hour to \$35 per hour
- The current Aikido class will be grandfathered in at the old rate since it has been a long term customer and income generator

ACTION – consensus – Council would like the Community Center committee to charge non profit organizations the same as the residential/property owner rate –currently non profits aren't being charged at all.

2. Bob Fitzsimons and Robert Wells, intern, Parks and Recreation program

Chairman Bob Fitzsimons introduced Robert Wells, an intern that worked on setting up classes that resulted from the survey completed last year.

APPROVAL OF CONSENT AGENDA

1. Minutes: 3/18/08 special meeting, 3/18/08 regular
2. Building report: March 2008
3. Fire Department Report: March 2008
4. Police Department Report: March 2008
5. Appoint Tony Garibay to stormwater committee
6. Reappoint Betty Swann and Harry Humphries for another term on BOA and appoint Charles Allo as permanent member on BOA rather than alternate to fill vacancy
7. Adopt Proclamation P08-02 proclaiming May as Seat Belt Awareness Month as per Governor's proclamation
8. Adopt Proclamation P08-03 proclaiming April as Fair Housing Month

9. Declared surplus 15 police radios and 2 police laptop computers and authorized police chief to dispose of as he sees fit. (list of surplus items herein included as part of these minutes)

ACTION - Commissioner Vattrt **MADE THE MOTION** to approved the consent agenda. Commissioner Dugan seconded the motion. **THE VOTE OF APPROVAL WAS UNANIMOUS**

APPROVAL OF THE AGENDA

ACTION - Commissioner Nelder **MADE THE MOTION** to adopt the agenda with the addition of a closed session to discuss land and grant requirements. Commissioner Vattrt seconded the motion. **THE VOTE OF APPROVAL WAS UNANIMOUS.**

OLD BUSINESS

1. Review of revised Sewer Rehab Project on Fort Fisher Blvd from E to N Avenues (Engineering Services)

Brian Cox of Engineering Services stated:

- In 2007 the Town applied to the Clean Water Trust Fund for a grant for the sewer rehabilitation of Fort Fisher Boulevard and Atlantic Avenue between E and N Avenues
- The contract included with the grant application needs to be revised because only \$591,000 was awarded and the cost of the project was reduced from \$1.9 million to \$1.2 million
- He expects to advertise by the end of July, accept a bid the first of September, and construction will be from October 2008 to March 2009
- All costs since the date the grant was awarded to this point are billable against the date the grant was awarded, not the date of the contract
- He will submit a revised contract to the Clean Water Trust Fund

2. Review and consideration of Planning and Zoning recommendations regarding amendments to the Code of Ordinances, Chapter 19 on Zoning:

a) send back to Council the previously recommended proposed amendment # 1 to Article III, Division 10, Section 243, Permitted uses in B1 as follows:

- delete permitted use # 13 'manufacturing' from permitted uses in the B1 district with the understanding that types of businesses such as jewelry making, arts and crafts, surf board building, etc are covered under permitted use # 18 'retail' according to industry code definitions. The deletion of permitted use # 13 'manufacturing' is in line with both the B1 study and Land Use Plan.

ACTION - Commissioner Lambeth **MADE THE MOTION** to adopt amendment # 1 as read with no changes. Commissioner Nelder seconded the motion. **THE VOTE WAS UNANIMOUS.** Said amendment # 1 is herein incorporated as part of these minutes.

b) send back to Council the previously recommended amendment # 4 to Chapter 19, section 1 (definitions) to also include amending the unit size in definition of tourist lodgings from 425 square feet to 650 square feet to include bathroom and closet areas, but not balcony area.

Proposed amendment to read:

Section 19-1 Definitions (Tourist lodgings)

Tourist lodgings (7011) shall mean a building containing rooms designed to be used for the most part as sleeping accommodations for tourist/vacationers or short term transients (i.e., hotel, motel, boardinghouse, rooming house and bed breakfast) as distinguished from a residential dwelling. No more than five percent of the individual units shall be occupied for more than 90 continuous days by the same occupant. The individual unit will be no larger than six hundred fifty (650) square feet in size inclusive of bathroom and closet areas but not balcony area. Any unit exceeding six hundred fifty (650) square feet in size will meet the dimensional and parking requirements of residential units section 19-331 and section 19-339. A tourist lodging will have one (1) water meter and one (1) electric meter. Individual metering is prohibited.

Section 19-1 Definitions (Hotel)

Hotel (7011) shall mean a building intended or designed to be used as tourist lodgings which are rented to short term transients where a general kitchen and dining room are provided within the building or in an accessory building. Typical hotel services must be offered including daily linen and maid service, and receipt and disbursement of keys and mail by the attendant at the desk in the lobby or office, for the occupants of the hotel. No hotel facility shall be converted to or used as a multi-family residential dwelling (See tourist lodgings)

ACTION - Commissioner Lambeth MADE THE MOTION to adopt the amendment as read with no changes. Commissioner Nelder seconded the motion.
THE VOTE OF APPROVAL WAS UNANIMOUS

c) a new amendment #8 to Chapter 19, section 333 (height limit exceptions), subsection (b), that deletes the words 'cooling towers, scenery, lofts, monuments, domes, spires' from the existing language.

Proposed amendment deletes the lined through words:

Chimneys, cooling towers, elevators, bulkheads, scenery, lofts, monuments, domes, spires, parapet walls, and masonry mechanical appurtenances may be erected, to any height in accordance with existing or hereafter adopted ordinances

Proposed amendment # 8 to read:

"Chimneys, elevators, bulkheads, parapet walls, and masonry mechanical appurtenances may be erected, to any height in accordance with existing or hereafter adopted ordinance"

Discussion:

Commissioner Lambeth stated:

I recommend rejecting proposed amendment # 8 completely because:

- Chimneys haven't been built in Kure Beach in the last few years and with gas fire places, chimneys are not necessary
- Commercial elevator minimum requirements are 30 inches of maintenance space above the elevator door and with the 4/12 pitch of our roofs it doesn't make it necessary to have any elevator shaft at any time above 35 feet
- Bulkheads, parapet walls, masonry mechanical appurtenances are design elements that the owner needs to get an architect that can build within the 35 foot height limit
- Not overseeing permanent staff has resulted in new Coastal Area Management Authority rules and quagmires that the Town has been in
- The rule should not be interpreted in any way than what it is, which is 35 foot one inch means exactly 35 foot one inch – nothing should be above 35 feet, period

Discussion:

Commissioner Dugan commented that the state law is two paragraphs long and we have to talk about both of them. What is the impact of this motion on the state law?

Attorney Canoutas stated the Town may be more restrictive of state law, but not less.

Mayor Montgomery asked if this new proposed amendment applies for all districts?

Commissioner Lambeth stated yes, all districts.

Mayor Montgomery commented:

- What about a new church – does this mean their spire may not exceed 35 feet?
- What if the Town needs to put a radio system antenna on top of the Police Department – are you saying that can't exceed 35 feet?
- The only exception would be through the Board Of Adjustment as per state statute, if the Building Inspector denies a request, the appeal process is to the Board of Adjustment
- How do you provide means for an exception?

Commissioner Nelder commented:

- What about special use? Wouldn't that apply?

Attorney Moore replied that he would defer to the Town Attorney on this question, but that when using the special use permit you have to list somewhere in the ordinance that an antennae or whatever is allowed by a special use permit. The Town couldn't grant special use if the ordinance doesn't already allow it for that specific thing.

Commissioner Vatr commented:

- what impact is there to the fire code if we eliminate anything over 35 feet?

Building Inspector Batson replied that NC Building Code states that if a parapet wall is required it must be at least 30 inches high.

Commissioner Vatr stated that if a variance is requested and granted by the Board of Adjustment, then the Board Of Adjustment essentially determines the look of the Town.

Commissioner Nelder stated he thinks we are picking some nits since we have established there is a course of review through the Board Of Adjustment, which is what he and Commissioner Lambeth were trying to get at. Proposed amendment # 8 states items may be erected 'to any height' and that is the same clause that sent it back the first time. I think there has to be another solution by rejecting this entirely and having another public hearing.

ACTION – Commissioner Lambeth MADE THE MOTION to adopt a new amendment to state “no structure or part of any structure in Kure Beach should exceed 35 feet.” Commissioner Nelder seconded the motion.

ACTION – Commissioner Lambeth AMENDED THE MOTION to add 'habitable' – motion to read “no habitable structure or part of any habitable structure in Kure Beach should exceed 35 feet.” Commissioner Nelder seconded the motion. THE MOTION CARRIES WITH A VOTE OF FOUR TO ONE with Mayor Montgomery voting in the negative.

ACTION – consensus – this new amendment is to be referred back to Planning and Zoning Commission for consideration with direction from Council that the exception process is only through the Board Of Adjustment.

d) new amendment # 9 to Chapter 19, section 333 (height limit exceptions), subsection (c), to add the following language “to ensure compliance with the zoning ordinance” to the existing ordinance

Proposed amendment # 9 to read:

“Structures that exceed the height limitation established must be approved by the building inspector's office to ensure compliance with the zoning ordinance”

ACTION – Mayor Dugan MADE THE MOTION to reject amendment # 9. Commissioner Lambeth seconded the motion. THE VOTE OF APPROVAL WAS UNANIMOUS.

3. Recycling - deferred recommendation from Public Works Director and Town Administrator on commercial recycling program to April meeting with direction that Commissioner Nelder be liason to work with businesses to recommend a solution and bring to April council meeting

Commissioner Nelder stated

- Business owners in the B1 district came to an agreement about commercial recycling
- The Town provided a place for the dumpster
- The Dumpster is tight fit and maybe it can be rearranged

Commissioner Lambeth stated the wrong dumpster was delivered by Waste Management. It isn't lockable and has an opening in the top.

Town Administrator James stated the business owners chose that dumpster and the contract is between the business owners and Waste Management, not the Town.

4. Status of Ocean Front Park

Commissioner Dugan stated a public meeting was held earlier in the evening and comments received will be added to other suggestions for review by the committee for a recommendation to Council.

Commissioner Lambeth stated he wants Building Inspector Batson to approach Coastal Area Management Authority to get clear directions on setbacks for building on the land for the Ocean Front Park and let the committee know.

Commissioner Dugan gave an update on grants for the Ocean Front Park:
Received \$300,000 from Division of Water Resources
CAMA has conditionally approved \$500,000
NC Natural Heritage Trust Fund conditionally approved \$500,000
Expecting \$500,000 from NC Parks and Recreation Trust Fund
Received \$500,000 from New Hanover County Park Bond

NEW BUSINESS

1. Review and consideration of new amendment #10 to Chapter 19 (Zoning), section 333 (height limit exceptions), subsection (b) of the Code of Ordinances

Proposed amendment # 10 deletes existing language that reads:

Chimneys, cooling towers, elevators, bulkheads, scenery, lofts, monuments, domes, spires, parapet walls, and masonry mechanical appurtenances may be erected, to any height in accordance with existing or hereafter adopted ordinances

Proposed amendment # 10 replaces existing language with following language:

Any structure built within the corporate limits of the Town of Kure Beach shall not exceed 35 foot in height. Any exceptions must show due cause as per International Building Codes or existing ordinance. Any aesthetic or architectural embellishment must be reviewed and approved by the Town Council.

ACTION – Commissioner Lambeth MADE THE MOTION to cancel amendment # 10 that he and Commissioner Nelder proposed. Commissioner Nelder seconded the motion. THE VOTE OF APPROVAL WAS UNANIMOUS.

Mayor Montgomery called for a ten minute break at 8:30pm.
Mayor Montgomery resumed the meeting at 8:40p./

CLOSED SESSION

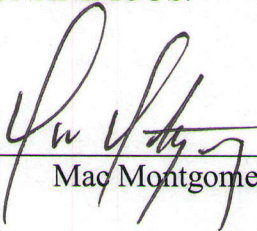
ACTION –Commissioner Vatr MADE THE MOTION to go into a closed session for the purpose of discussing land and grant contingencies. Commissioner Lambeth seconded the motion. THE VOTE OF APPROVAL WAS UNANIMOUS.

ACTION – Commissioner Lambeth MADE THE MOTION to return to open session at 9:20pm. Commissioner Vatr seconded the motion. THE VOTE OF APPROVAL WAS UNANIMOUS.

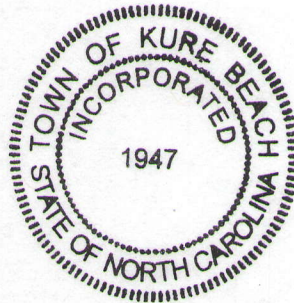
Mayor Montgomery stated that during closed session, Council consulted with the attorney regarding possible acquisition of land and transfer of title of land and no decision was reached.

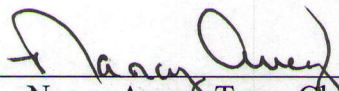
ADJOURNMENT

ACTION - Commissioner Nelder MADE THE MOTION to adjourn at 9:22pm. Commissioner Lambeth seconded the motion. THE VOTE OF APPROVAL WAS UNANIMOUS.



Mac Montgomery, Mayor



ATTEST: 

Nancy Avery, Town Clerk

NOTE: These are action minutes reflecting items considered and actions taken by Council. These minutes are not a transcript of the meeting. Persons wishing to hear the recording of this meeting may request to do so by contacting the Town Clerk.