

KURE BEACH TOWN COUNCIL
SPECIAL MEETING
AUGUST 19, 2008
4:30 pm

MINUTES

The Kure Beach Town Council held a special meeting on Tuesday, August 19, 2008 at 4:30 pm for the purpose of holding a work session to discuss possible changes to the ordinance on exceptions to the 35 foot building height limit, to discuss the Atlantic Avenue boardwalk project and to hold a closed session for a consultation with the Town Attorney. Notice of the meeting was posted at Town Hall on August 4, 2008.

COUNCIL MEMBERS PRESENT:

Mayor Mac Montgomery
Commissioner Dean Lambeth
Commissioner Barry Nelder
Commissioner Jim Vattr

COUNCIL MEMBERS ABSENT:

Mayor Pro Tem Jim Dugan

STAFF PRESENT:

Building Department John Batson
Town Administrator Michelle James
Town Clerk Nancy Avery

Town Attorney A. A. Canoutas was in attendance. There was a quorum of the Town Council present.

Mayor Montgomery called the meeting to order at 4:32 pm stating the purpose of the meeting is to hold a work session on the 35 foot height limit exceptions, the Atlantic Avenue boardwalk project and to hold a closed session for a consultation with the attorney.

Discussion on exceptions to the 35 foot height limit

Mayor Montgomery stated:

- A draft amendment to Council from Planning and Zoning delineates what exceptions could be allowed above 35 feet.
- The attorney for Planning and Zoning, Holt Moore, has determined that roof top decks and anything around the deck such as railings are not allowed above the 35 foot height.
- What we are talking about tonight is exceptions currently allowed above the 35 foot height limit.
- The Planning and Zoning Commission has recommended limitations on some exceptions for commercial buildings only.

- Planning and Zoning member Alan Votta has recommended that a detailed plan be submitted from an applicant to the Building Inspector's office, then to Planning and Zoning and then to Council for approval.

Commissioner Nelder stated:

- There are some that don't want any exceptions to the 35 foot height limit.
- My personal feeling and what I get from people I am associated with and know, is that we don't want any exceptions over 35 feet.
- I think architects and engineers are skilled enough to work within the height limits. Most should be able to understand and design those restrictions.
- We are talking about setting a benchmark with no exceptions.
- There are elevation differences from the bottom of Third Avenue to Atlantic Avenue. This gives a different visual view that could be used as a guide and would still have a limit.
- A lot of exceptions are vague.
- The sticking point is the process for review that puts it in the Building Inspector's hands.
- Planning and Zoning could act as an architectural review board.

Commissioner Lambeth stated:

- In reviewing the draft amendment, I don't see why ventless fireplaces can't meet the 35 foot limit –let's put the burden on the builder to have the fireplace meet the 35 foot height limit.
- Electronic communication antennas are available that fit into the sockets of commercial buildings. That should be the due diligence of the architect.
- Public safety issues and parapets wall are necessary, that's a no brainer. If it's for a public safety issue, then it's public safety.
- Architectural details and screening should not be over 35 feet, not under any conditions.
- Ventilation hoods shouldn't exceed 35 feet unless a hardship is proven.
- Unless there is a public safety issue, not one inch more.
- A residential railing requirement is 36 inches and the rails should not be above 35 feet.

Commissioner Vatrtr stated:

- In talking to business land owners at an economic development meeting, I have a real concern about the condition of the Town. I feel it is in decay.
- People are having a tough time investing money to keep hotels and restaurants open to offer residents the right mix of product.
- Everyone should be comfortable with 35 foot habitable space.
- I listened to former Mayor Fuller's experiences of the folks that went to Raleigh (General Assembly) to get the 35 foot law passed.
- I feel comfortable with the draft submitted by Planning and Zoning – it fits hand to glove.

Mayor Montgomery stated:

- Planning and Zoning's recommendation is for commercial only.
- I can only go along with it if it is commercial only – not residential.
- If exceptions were allowed, how would we handle them?
- I think an architectural review committee is subjective and arbitrary depending upon who is on the board.
- If we use the Board Of Adjustment, the only appeal to their decision is for Council to take them to court and I am not anxious to do that.
- I recommend any exceptions be presented to Planning and Zoning with an appeal to Council. If the applicant is turned down, Council could over rule. If Planning and Zoning granted it, and Council or the Building Inspector felt it was inappropriate, they could also appeal to Council. Council becomes the appeal process.
- An appeal to Council would go to court. Council would have the oversight.
- I'm concerned that the current state law provides for exceptions to the 35 foot height limit and outlines some. If we say we are not going to allow any are we opening ourselves up for someone to take the Town to court for violating state law?
- I can live with the draft presented by Planning and Zoning if limited to commercial only with limits put on them.
- I'd like to see them put this together in a precise form. No Air Conditioning units or elevators on the roof with no limitation.
- I am concerned that if we take away floor space, we have affected the usable space that the investor can use for investment.
- How high are we going to let the façade go? The limit above 35 feet needs to be defined very clearly as to what the maximum will be and a clearly defined process that isn't arbitrary.
- I believe we are further along than we were, but it is not resolved by Council yet.

Discussion on contract for the Atlantic Avenue boardwalk project

Mayor Montgomery stated:

- A public meeting was held on August 11, 2008 where public comments were received regarding the Atlantic Avenue boardwalk project.
- Most vocal advocates/opponents are saying:
 - They don't like the elevated boardwalk. (designed to go from 10-12 inches) The main topic is whether the boardwalk is above or on the ground.
 - There are people that want nothing.
 - They feel that ground level is preferable to an elevated boardwalk.
 - They are concerned about foxes and snakes under an elevated one.
 - They are concerned that the business district boardwalk is being extended into the residential area.
 - Boardwalks are not found in residential areas – they get sidewalks, not boardwalks.

- I researched idea of why we can't have a sidewalk. The prevailing thought is that you can't do anything for Atlantic Avenue because it is limited by CAMA restrictions. I have found out that with a waiver that is not true. We can widen our Right Of Way and we could have a sidewalk. It would be hard to find someone to pay for it – financially out of the ballpark. The point is that we could widen and put an asphalt/concrete sidewalk.

Commissioner Nelder stated:

- Three proposed drawings were presented by Ken Withrow at the public hearing held on August 11, 2008. Two are for a hatteras style on the ground.

Commissioner Lambeth stated:

- We made a mistake and we need to rectify it here and now. Besides the cost savings, the \$35,000 in TDA funds could be used again.
- CAMA has been good to us and if we show them a more frugal way to do the project, we should do so.
- If we can do it better and cheaper, we should.
- I understand the Mayor, Town Administrator and Mayor Pro Tem Dugan met with the head of CAMA. Did you discuss this? I'm curious that you had a meeting with him when the rest of Council didn't know.
- Cost savings that were discussed were about 50%. In plans that were approved, the hatteras walkway was on the plans to make the ADA walkway work.
- I can live with an edge to a walkway on the ground, but that is a question for risk management.
- I think a fence is necessary so that think people won't be all over the dunes and in the infiltration pipes. It's a necessary evil.
- We could put short 4x4 posts as a deterrent because it would damage tires.
- In my opinion, the hatteras boardwalk would be the only system we could use as per my interpretation of the Land Use Plan.

Commissioner Vatrt stated:

- I saw only the raised walkway not the others as I wasn't on the board at the time.
- If in fact a hatteras walkway is ADA approvable, and if there is cost savings to doing this, even with a TOPO, and a new set of plans, then I'm comfortable with a hatteras design. Putting trash cans on the east side of the fence makes all the sense. Think you have to have a fence to prevent people from walking across the dunes.
- We need indigenous plantings to make it look pretty and give a normal person enough notice not to drive on it. The person that will, will do it anyway.

Mayor Montgomery stated:

- The approved plans have a low rail on both sides to preclude a wheelchair or person from walking off the walk.

- With it on the ground, the wheelchair will roll off into the sand. All I've seen on the ground have a 2 inch lip on the sides to stop a wheelchair from going off the walk. It's not meant to stop you from falling over but to be a warning.
- I can't accept the statement that we aren't responsible for someone in a wheelchair falling off into the sand. I think we are responsible.
- How would a walk on the ground be anchored to keep from shifting and what about a lip?
- At ground level, we need something to prevent a SUV from driving onto the walk. Bushes won't stop a SUV. Other beach accesses have fence/posts with rope of some type for this.
- My concern is if we go lower, we eliminate any barriers from vehicles getting on the walkway. This was an Issue when we first discussed this.

Comments from audience:

1. John Gregory:

Anything made from wood will rot. A concrete type sidewalk wouldn't have to be replaced for years. Boards get weak and someone steps in it, gets hurt, and you have a lawsuit. Look at a regular type sidewalk as in a residential neighborhood. All colors are available, it doesn't have to be white.

2. Judy Larrick:

Concrete is not as environmentally friendly because water won't seep through. It would be a wonderful idea to restrict commercial vehicles on that end of Atlantic Avenue. We wanted to use permeable material originally but couldn't because of commercial vehicles.

3. Philip Humprey, John Sawyer Architects:

A curb and gutter could be put in when the road is repaired that will drop down at accesses. This could be used as a barrier. That and plantings would be a good deterrent.

4. John Gordon:

Original idea was to beautify the area. I recommend if we put shrubbery to make sure we maintain it and not let it overgrow. An elevated boardwalk is a maintenance nightmare for weeds and trash.

5. Candace Clark:

Since I put plantings in my yard, I've only had one 18 wheeler drive in my yard. People respect the plantings.

6. Jean Rice:

I live off Atlantic Avenue and we have a terrible problem with raccoons, foxes, snakes and rats. I have seen rats on my fence. I think if it is raised, it will leave a breeding ground for this. If you change the traffic route, it will help a lot of issues on Atlantic Avenue.

Closed session – consultation with attorney

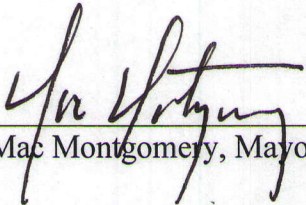
ACTION – Commissioner Vatr MADE THE MOTION to go into closed session at 6:46 pm for the purpose of a consultation with the Town Attorney. Commissioner Nelder seconded the motion. THE VOTE OF APPROVAL WAS UNANIMOUS.

ACTION – Commissioner Vatr MADE THE MOTION to return to open session at 6:14 pm. Commissioner Nelder seconded. THE VOTE OF APPROVAL WAS UNANIMOUS.

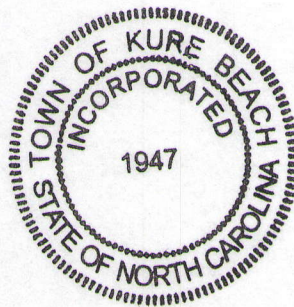
Mayor Montgomery stated pending legal matters were discussed and referred to the Town Attorney.

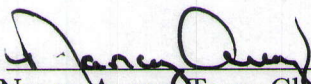
Adjournment

ACTION – Commissioner Vatr MADE THE MOTION to adjourn the meeting at 6:15 pm. Commissioner Nelder 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.