



# CAROLINA BEACH

## TOWN COUNCIL MEETING

### MINUTES • JANUARY 10, 2017

Council Chambers

Regular Meeting

6:30 PM

1121 N. LAKE PARK BLVD.  
CAROLINA BEACH, NC 28428

#### 1. CALL MEETING TO ORDER WITH INVOCATION AND PLEDGE OF ALLEGIANCE

Mayor Wilcox called the meeting to order. Reverend Jonathan Bowling with the Carolina Beach Presbyterian Church gave the invocation followed by the Pledge of Allegiance.

Attendee Name	Title	Status	Arrived
Dan Wilcox	Mayor	Present	
LeAnn Pierce	Mayor Pro Tem	Present	
Steve Shuttleworth	Council Member	Present	
Tom Bridges	Council Member	Present	
Gary Doetsch	Council Member	Present	
Michael Cramer	Town Manager	Present	
Ed Parvin	Assistant Town Manager	Present	
Debbie Hall	Finance Director	Present	
Kim Ward	Town Clerk	Present	
Noel Fox	Attorney	Present	

#### 2. ADOPT THE AGENDA

**Council Member Doetsch made a motion to adopt the agenda with the following change:**

Change Item 3a, eliminate Gil DuBois update and replace it with Go Topless Jeeps.

**Motion carried unanimously.**

#### 3. SPECIAL PRESENTATIONS

##### a. Presentation by Go Topless Jeep Club

*(Requested by Michael Cramer, Town Manager's Office)*

Matt Gillian with Go Topless Jeeps, made the presentation. He spoke about their 2016 event with over 511 vehicles and 1,100 people in attendance at the north end raising over \$19,000. They donated back to the community - \$3,900 to the Boys and Girls Club, \$3,900 to the NHC Sheriff's Office for their Make a Wish Program and supported Wake and Bake Donuts. They spent about \$4,500 on day passes (309). He presented a check for \$7,700 to the Carolina Beach Help Center.

##### b. Manager's Update

*(Requested by Michael Cramer, Town Manager's Office)*

Michael Cramer reviewed the following:

Town identification cards issuance began on January 2. Beginning the week of the 16th, we will be sending out 2,497 cards by mail to property owners whose mailing address is in Carolina Beach.

We adjusted the parking decals to include residential, non-residential, Central Business District employee, and golf cart decals. We ran out of residential decals and expect to have them tomorrow.

The budget process will start with three successive meetings of public hearings beginning on February 14th with presentations from the Chamber and CBDI regarding non-profit funds that come from the ROT funds; March 14th will have other non-profits presentations; April 11th will include presentations from standing committees. Council will also have four public workshops on March 28th, April 18th, May 2nd and May 30th.

Project update:

Phase B water, sewer, stormwater, roadway and sidewalk improvement project was delayed due to weather and holidays. Atlanta Avenue is taking longer putting in sidewalks and rearranging plants in the right-of-way. T. A. Loving added two crews to help make up time and stay on track. Atlanta Avenue section being worked on should be completed by February 3rd with the exception of a finished course of asphalt to be completed at the end of the project. Section 2, Carolina Beach Avenue South between the Marriott down to Driftwood - 80% sewer work is complete, 50% water, 25% of stormwater and about 10% of road grading and staking. This project is estimated to be complete at the end of March. Other phases of projects have begun sooner - Fayetteville improvements, completion estimated in May; Raleigh, completion estimated in October. Overall completion should be done within the 18 month to 2 year time frame. Select intersections on Lake Park Boulevard will be down in the next two weeks with detours for trucks down Dow Road. All others up Cape Fear, down Third or Fourth Street over to Spartanburg and then down again. The major portion of the project will be to repair storm drainage from the lake across Lake Park. That area will be closed for about two weeks.

Council Member Shuttleworth asked about the Cape Fear Bike Path timing and the Greenway Bike Trail from Mike Chappell Park south.

Mr. Cramer said the Island Greenway is still on track to get bids in and go to construction somewhere in April with a completion in the fall. Cape Fear is just about the same track, looking at March to have all the planning and approvals through NCDOT and the bid results and start construction hopefully in April with a mid-summer completion.

Ed Parvin said a map for Phase B and timelines, Cape Fear project and some others were just updated and is on the project page of the town's website.

MPT Pierce asked about the Harris Teeter project.

Mr. Cramer said there is not much new information but they have made some new arrangements with NCDOT and are looking to come back before council in March and asking for a slight modification to their CUP to meet NCDOT's requirements for the entryway into their store.

Council Member Shuttleworth asked that Gil DuBois double check the stop signs around the school, some are missing, and coordinate with the school and New Hanover County on bus travel.

#### **4. OLD BUSINESS**

a. Consider Award of Lake Dredge Construction Contract

*(Requested by Michael Cramer, Town Manager's Office)*

Jerry Haire said the lowest responsible bidder was Civil Works Contracting at \$2,766,338. Management and staff recommend awarding the contract to the lowest responsible bidder subject to the town manager's ability to negotiate with the bidder to make reasonable and non-substantial changes in the plans and specs as may be necessary to perform the work than negotiate a price with funds available. This round of bidders were all prequalified. We hope to start in the next 30 days and will be done in two phases so we're not working on it in the summer. We would start in February and work through May 30th, stop for the summer, then start back on October 1st through another 5 months.

**Council Member Shuttleworth made a motion to award the lake dredge construction contract to Civil Works Contracting in accordance with staff recommendations as listed. Motion carried unanimously.**

## 5. PUBLIC DISCUSSION

Captain David Tilley, operates the Wild River III and Chairman of the Harbor Committee, he and cohorts are asking to put off the signing of the licensing agreement for 30 more days (March) to review and discuss some of the changes in the agreement that were different than what we had submitted.

Ed Parvin said if they would like to delay one more month. We can do that and staff could incorporate those changes. If you wanted to see those again we could bring them back as well.

Capt. Tilley said he could provide a list tomorrow morning with what they propose.

Noel Fox said the delay could take place but the license agreement that was presented to the Harbor Commission almost a year ago has been only changed in minor ways that were brought out of that meeting with the Harbor Commission so these changes are after almost a year of discussion with the Harbor Commission about what the license agreement needs to be in order to accomplish both the town's desire to have a thriving municipal marina and also for the boat captains to feel protected. The insurance is still under the old lease agreement and is very inadequate to protect the town's interest.

Capt. Tilley said the issues involved paying for water and sewer, taking trash off site from the boats, and transfers of the slips.

Michael Cramer said the license agreement has gone out. What is now being presented are a few tweaks which we could make in time for the deadlines for having the licenses signed which is February 6th. If not, we can push that deadline back to March 6th and give them an extra 30 days. It's not a problem.

Ms. Fox said you are hearing a request from the Harbor Commission for a license agreement that the town council has previously approved and that after the approval and with the implementation we received additional comments from boat captains who were asked to enter that agreement.

Council agreed with the delay. Capt. Tilley will provide staff the list tomorrow morning.

Fred Grady said new members and others on the committee have not even looked at it and didn't know what the town was doing.

## 6. PUBLIC HEARINGS

- a. Text Amendment: Consider amending Chapter 40 Sec. 40-72, 40-150, 40-261, and 40-548 to prohibit aircraft takeoff and landings and address unlisted zoning land uses. Applicant: Town of Carolina Beach

*(Requested by Jeremy Hardison, Planning and Zoning)*

Mayor Wilcox said, in the interest of full disclosure, that he has a relationship with the owner of the helicopter company and some residents feel there is a conflict of interest. None of the text and code changes are related to an application or action on behalf of the applicant.

Noel Fox said both of the matters the mayor just stated before council are not applicant driven but town driven modifications and all helicopter operators or potential helicopter operators or potential touring companies are all going to be equally affected by the changes that this town council may or may not adopt tonight. North Carolina law imposes a duty on each of the members that you elect from this community to vote in matters even when they have strong feelings particularly for legislative matters which this is. This is not a quasi-judicial hearing. Each and every one of the members of council can have a biased opinion as long as they do not have a direct, substantial, readily identifiable financial impact from the vote that they will take. They do not have a conflict of interest and they do have a duty to vote. Mayor, unless you have a direct, substantial, readily identifiable financial impact then you do have a duty to vote.

Mayor Wilcox said he did not. He does understand the concerns. Council does not always get to choose which laws or rules we follow. The reason the law exists is to make sure everyone who comes here gets a fair process and the fair process would be disturbed if a person excuses themselves without cause thereby affecting the vote. So that's why the laws exist. I took an oath to follow the law. The town gave permission to the helicopter company for a special event which was allowed under the ordinance. They then requested a determination by the town manager as a result of a recently studied case law in November 2015 that changed the way councils have to look at zoning ordinances which said if it's not described in your ordinance, you have to find the closest use to that and that is what it would be under. Following that case law, the applicant requested the town manager to suggest that the helicopter activity would be similar to outdoor recreation. The town manager made a determination that was not accurate that it was more closely defined with carnivals and rides. The previous one, outdoor recreation, is a permitted right so his determination that it wasn't allowed makes it not a permitted right. His second determination that it was allowed as a carnival ride is a CUP so we push it into the CUP category. The applicant has not challenged the manager's decision, has not appealed the manager's decision, has not filed for a CUP and despite the fact that our ordinance won't change until after tonight and whatever activities were allowed before tonight, had been allowed since before this debate started, the applicant has chosen not to seek more special events. So none of this is a result of action by the applicant with regard to a request. We had a meeting in May at which High Tide Helicopters came to the presentation for the council and the public with a proposal. There was a lot of concern with the public. When that meeting was over apparently there were people under the impression that council had given staff direction to change the ordinance. That was never done. First of all we can't just give them direction, it has to go through the planning process. So we had another meeting where council unanimously asked staff to recognize the issues and go back and craft an ordinance and bring it back through the process which goes through TRC, Planning and Zoning and then council. Same process we follow for everything. The first time it went through P&Z there was language in what P&Z adopted that turns out to be inconsistent with federal regulations. So staff had to go back, resolve those conflicts, take it back to P&Z and bring it to council. Nothing

that is being done tonight is different than we do with everything that comes before this town. We can't just have a meeting where people come in and say we don't like this and council says change the ordinance. That's not how it works. This is the process.

Jeremy Hardison presented. This item addresses aircraft within the zoning ordinance. There is nothing in the ordinance or town code that mentions helicopters, airports or aircraft. So we did make the determination that it would be an amusement. No application was applied for the use. Currently anyone who wanted to open up a business could come in, apply and obtain a permit and operate 365 days a year. We discussed this at Planning and Zoning last month where they ultimately decided to prohibit aircraft. You can prohibit a use if you identify why that use is being prohibited within the zoning ordinance. We prohibited it based on it having a detrimental impact on the health and safety of the community. We have consequently addressed by crafting language regarding unlisted uses in the zoning ordinance. The School of Government has given direction on the issue saying you do not have to allow for every single use within your town but you do have to allow for similar such uses. We are proposing language for adoption for non-criteria on how to evaluate a use that is not listed within the zoning ordinance. Planning and Zoning's recommendation was to prohibit the zoning land use of this anywhere in town for a helicopter, aircraft, airport or anything defined as aircraft operation. What is before council is whether they want to prohibit the use of aircraft with the interpretation it still would stand, that aircraft are allowed, until town council takes action on that interpretation or specifically addresses it. It is currently allowed under a CUP.

Noel Fox said the use would be prohibited under the table of uses and adopting criteria for any future uses that are not in the table of uses so that a determination can be made as to where they fall in the existing uses listed.

Mayor Wilcox said he would like to have staff review the next item before opening public comment, and then vote individually for the two items, 6a. and b.

**Council Member Shuttleworth made a motion on Item 2154, Aircraft Zoning Allowance, to approve Ordinance 16-1033 based on the inconsistencies with the goals and objectives of the adopted Land Use Plan and/or long range planning documents that we list as a prohibited use aircraft and helicopters in the town zoning ordinance. Motion carried unanimously.**

- b. Text Amendment: Considering amending Chapter 14 Sec. 14-517 to address standards and limited allowances for aircraft takeoff and landing zones. Applicant: Town of Carolina Beach

*(Requested by Jeremy Hardison, Planning and Zoning)*

Jeremy Hardison said when P&Z prohibited the use within the zoning ordinance they also took into consideration some limited allowances or when are aircraft tolerated within the community or special circumstances. We wanted to address in our ordinance when can you land an aircraft within the town limits. Allowed aircraft operations were reviewed such as official government operation or emergency situation, related to public health and safety, in-flight emergency. Staff is proposing if anyone would want to do a commercial operation they would submit an application to town council for approval or denial or approval with conditions and 30 days prior to a meeting with a flight plan submitted for review, the fire department would review it safety regulations, written notification would have to be sent out to property owners, then a public hearing would be held by town council. Permits

would be issued on a first come, first served basis. Aircraft operations types and requirements were reviewed as well as allowable locations.

Council Member Shuttleworth asked why this allowance is being discussed if it is being denied as a zoning allowance.

Mayor Wilcox said we have a zoning piece and a code ordinance piece relative to the issue as is true for many other issues. What you are seeing tonight is what staff brought to P&Z. These items have to be voted for separately.

Noel Fox said they need to be two separate votes. They are two different issues - one is table of uses and one is more akin to a special event permit where you are not saying that a piece of property can be used day in and day out in a certain manner because it is not in accordance with the table of uses but you are saying under certain circumstances this use may take place. It is not a CUP because it is not a vested right. It is completely different than a CUP.

Ed Parvin said in the first presentation, your first vote, do you want aircraft allowance as a use where a property would be designated for takeoffs and landings as a land use. P&Z recommended prohibiting that use and addressed uses that are not specifically laid out in our code. This second presentation looks at Federal Point Shopping Center parking lot where they could land on a limited basis similar to a special event. Under this it is not a land use, they're still going to be operating as Federal Point Shopping Center but on a limited basis based on the single landing and single takeoff. What's represented in our language is you could do that three times a year in that parking lot. You could also do one time a year multiple takeoffs and landings.

Michael Cramer said what we're setting up is you can't have a business here run from property within the town limits because it would be zoned prohibited but you could do special landings and takeoffs by these standards just in highway business for the multiple and everything other than residential for the single.

Mayor Wilcox opened the public hearing.

Spoke against: 39 because of effects on property values, quality of life, wildlife, safety, noise issues.

Spoke for: 3 because of tourist benefits, ability to help with erosion evaluation and community safety issues, aviation profession and local business promotion.

A petition with 301 signatures was presented against the use of helicopters/aircraft.

Mayor Wilcox closed the public hearing.

Mayor Wilcox called for a 5 minute recess.

Mayor Wilcox called the meeting to order.

**Council Member Shuttleworth made a motion to not approve any exemptions as listed in the town code limited allowance.**

Council Member Shuttleworth said he asked the manager prior to the meeting about aircraft activities related to public health and safety and required landing due to an in

flight emergency and he has those emergency powers right now. No one is going to object to that.

**Motion carried unanimously.**

c. Public Hearing on Marina Repair

*(Requested by Michael Cramer, Town Manager's Office)*

Town Manager Michael Cramer presented the marina management improvement plan. Last meeting, council approved to do the emergency repairs on the west side of the marina, and you approved a reimbursement resolution so that we could finance that work. In order for us to get financing through the LGC, we have to have a public hearing about the project itself. I wanted to review what it is we are intending to do at the marina. We have broken the project up into three phases. We have had multiple meetings with the boat captains so they can have input into the project phasing and timing to try to eliminate any negative impact on the boat captains. The first phase is the emergency repair. Our milestones right now are, we are getting CAMA approval. We do have our major and minor permits for the repair and replacement of the bulkhead. We also have our minor permit for the sidewalk going behind the bulkhead. We expect that tomorrow, I will receive the final bid package from SEPI Engineering regarding that bid package and all the information that will go out requesting bids for the project. We intend on putting that out on the 17th of January, look for bid openings at the end of the month and for council to award the contract at the February 9, 2017 meeting. We would start construction soon thereafter. We expect that the emergency repairs will take about a month or two. That depends on what we find in the ground. We hope to have all the emergency repairs complete before the primary fishing season. We suggested that with the second phase, we just keep moving to the west side and get it complete. The boat captains were concerned that it would eat into their fishing season. They asked that we move that back to the fall which makes sense. We do have our permits for the general and minor. We are working on preliminary plans and those will come in the summer, then we would go out for bid in the early fall and start construction September/October. We expect it will take one to two months to complete that portion of the project. That would completely revamp the bulkhead on the western side of the marina. The third phase is to install floating docks and reposition the boats in a different configuration and put them on floating docks rather than having people climbing down steps or ladders on the side. That would entail having water services on those docks as well as electric services. We have planned on going out and doing a holistic marina plan for the southern side and the eastern side and using this western side as a template. The floating dock idea is not set in stone. We don't have plans for those. You approved \$400,000 for emergency repairs last month. We will come back to you again for phase 2 and also the floating dock budgets as we go along with the process.

Council Member Shuttleworth asked if staff had received the drawings that Captain Tilley sent.

Mr. Cramer said that he has received them and that he is currently focusing on the bulkhead repairs. We will have multiple discussions with the boat captains about that. Captain Tilley has some very intriguing ideas. They are very positive. We have given them to our engineers so we can have some conversation on that.

Mayor Wilcox opened the public hearing.

Robert Schoonmaker, 404 Fern Creek Road said that the captains would like to have more participation in the planning stage. I think you will have every captain in that

marina at the next Harbor Commission meeting. We all look forward to working with you. There are currently two boats down there that run outboards. Captain Tilley was proposing to put the smaller boats in the southwest corner of the marina but there is a concern that that has always been the public boat docking area for the harbor. He has problems with visiting boats parking in the slips close to that location now, so if you move them that will be more of a problem.

Mayor Wilcox closed the public hearing.

**Council Member Doetsch made a motion to continue with the path that staff is currently moving on. Motion carried unanimously.**

- d. Amend Chapter 40 Article V. - Off-Street Parking and Loading Requirements to include Driveway Standards

*(Requested by Abby Lorenzo, Planning and Zoning)*

Abby Lorenzo presented amendment. Driveways (apron) are defined as the portion located between the street and the property line. Currently there is no code or written requirements and only verbally enforce policy with DOT standards. Current policy was reviewed. The amendment to the town ordinance would be the written requirements of the DOT specs for residential areas. Driveways are to be included in the site plan which does not require a survey unless in a flood zone.

Council would like to include the number of surveys required for residential construction at a workshop discussion.

Driveway design, drainage requirements, inspection and maintenance requirements were reviewed. Planning and Zoning recommended the amendment to include the maximum width requirement for a driveway apron at a single family residence be changed from 18' to 36'.

Mayor Wilcox opened the public hearing.

No one spoke.

Mayor Wilcox closed the public hearing.

**Council Member Shuttleworth made a motion to approve Ordinance 17-1042 in accordance with the provisions of the NCGS 160A-383, the Town Council does hereby find and determine that the adoption of the following ordinance amendment is consistent with the goals and objectives of the adopted Land Use Plan and other long range plans. Motion carried unanimously.**

## 7. CONSENT AGENDA

**Mayor Wilcox made a motion to approve the consent agenda. Motion carried unanimously.**

The following items were approved under the consent agenda:

Adopt Resolution 17-2145 authorizing the Carolina Beach Police Department to provide assistance to other law enforcement agencies.

Approve contract for auditing services for year ending June 30, 2017.

Set a Public Hearing for February 14, 2016 at 7pm, or soon thereafter, to consider non-profit funding requests from the Room Occupancy Tax Fund.

Set a Public Hearing for February 14, 2016 at 7pm, or soon thereafter, to consider amending Chapter 40 Sec. 40-72, 40-150, 40-261 and 40-548 to allow for outdoor animal care in the I-1 and HB zoning districts with standards.

Set a Public Hearing for February 14, 2016 at 7pm, or soon thereafter, to consider amending the allowances for itinerant merchants under Chapter 14 of the Town Code.

Budget amendments and transfers as presented by the finance director.

Minutes from December 13, 2016 at 6:30 pm.

## 8. NEW BUSINESS

### a. Fire Boat Budget, Financing and Award

*(Requested by Michael Cramer, Town Manager's Office)*

Fire Chief Alan Griffin reviewed the winning bid made by Brown Helicopter, Inc. for a fire/rescue boat and presented a request for \$190,000 for the purchase of a boat and equipment and adopt Budget Ordinance 17-1041 and Reimbursement Resolution 17-2147 to finance the purchase. The boat can be moored at the state park marina at no cost to the town.

**Council Member Doetsch made a motion to adopt Budget Ordinance 17-1041 and Reimbursement Resolution 17-2147. Motion carried unanimously.**

### b. Boardwalk Budget Adjustment

*(Requested by Michael Cramer, Town Manager's Office)*

Michael Cramer said the northern extension for the boardwalk project base bid was \$715,000 for the entire project but did not include any contingency. Because of a survey error of the northern end made several years ago, construction changes were required as well as additional costs for landscaping. A budget adjustment request was made in the amount of \$56,065.

**Council Member Bridges made a motion to approve the budget adjustment in the amount \$56,065 for the northern boardwalk project. Motion carried unanimously.**

### c. Appointments to the Police Advisory Committee and Arts and Activities Committee

*(Requested by Kim Ward, Town Clerk)*

Council appointed Doug McCray to the Police Advisory Committee for a term expiring 6/30/2018 and Christina Schechtman to the Arts and Activities Committee for a term expiring 6/30/2018.

Below are the votes by written ballot:

Mayor Wilcox - Doug McCray (PAC) and Christina Schechtman (A&A)  
MPT Pierce - Doug McCray (PAC) and Christina Schechtman (A&A)  
Council Member Shuttleworth - Brad Bradley (PAC) and Christina Schechtman (A&A)  
Council Member Doetsch - Doug McCray (PAC) and Christina Schechtman (A&A)  
Council Member Bridges - Doug McCray (PAC) and Christina Schechtman (A&A)

## 9. NON-AGENDA ITEMS

Council Member Bridges said we still have the concern with the wedding house and urged council and staff to come up with a solution.

Michael Cramer said this is a follow-up item on the January 24th workshop with regard to fines and the noise ordinance.

**10. ADJOURNMENT**

**Mayor Wilcox made a motion to adjourn. Motion carried unanimously.**

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Kimberlee Ward, Town Clerk

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Date Approved