

**Town Council Minutes
Morehead City, North Carolina**

Monday, October 19, 2015

The Honorable Council of the Town of Morehead City met in Regular Session on Monday, October 19, 2015, at 5:30 p.m., in the Municipal Chambers located at 202 South 8th Street, Morehead City, North Carolina. Those in attendance were:

MAYOR: Gerald A. Jones, Jr.

MAYOR PRO-TEM: George W. Ballou

COUNCIL: William F. Taylor
Demus L. Thompson
Harvey N. Walker, Jr.

Diane C. Warrender

ACTING CITY MANAGER: Ellen Sewell

CITY CLERK: Jeanne M. Giblin

CITY ATTORNEY'S OFFICE: Derek Taylor, Mike Thomas

OTHERS: Corinne Geer; Tim Grimes; Jeremy Skinner; Keri

McCann; Jeff McCann; Jack McCann; Jolene McCann; Selena Beeke; Zachery Taylor; Bryan Dixon, Assistant Police Chief; Daniel Williams, Public Services Director; Graham Strother, Assistant Public Services Director; Doug Smith; Pattie Maxwell; Libby Eaton; Ray Tillery; Sylvia Rola; William Weinhold; Holly Fletcher; Michael Williams; Jacquelyn Williams; Devon Bolsteo; Cameron Willis; Paul Maxwell; Chuck Sewell; Jane Sewell; Anna Harvey, Reporter, THE CARTERET NEWS TIMES

1. Regular Meeting Call to Order, Invocation and Pledge of Allegiance

Mayor Jones called the meeting to order at 5:30 p.m., Councilman Thompson gave the invocation and all joined in The Pledge of Allegiance.

Mayor Jones introduced Finance Director Ellen Sewell, substituting for City Manager David Whitlow who was on vacation.

2. Adoption of the CONSENT AGENDA

2.A. Approval of Minutes: Tuesday, September 8, 2015 -- Regular Meeting

Approved the Minutes of Tuesday, September 8, 2015, Regular Meeting and dispensed with the reading.

2.B. Approve the Requests for Release of Overpayment of Ad Valorem Taxes for September 2015, in the amount of \$7,125.19; and Accept the Tax Collector and Finance Director Reports for September 2015

Approved the requests for release of overpayment of ad valorem taxes for September 2015, in the amount of \$7,125.19; and accepted the Tax Collector and Finance Director Reports for September 2015. [The Financial Reports are attached to and made a part of these minutes herein by reference.]

2.C. Adopt Budget Ordinance Amendment 2015-32 in the General Fund - Spooners Creek Dredging; Police Dept. Capital Assets/Police Station Repair; Water/Sewer Fund – Transfer of \$63,767 for AMR Meter DCU Upgrade and adopt Budget Ordinance Amendment 2015-33 in the Water Reuse Capital Project Fund to Recognize Transfer of \$63,767 for AMR Meter DCU Upgrade

The purpose of Budget Ordinance Amendment 2015-32 was to increase Restricted Intergovernmental Revenue for \$25,000 in Water Resources Development Project grant funds from NCDENR and \$25,000 in Miscellaneous Revenue for donation of matching funds to be received for Spooners Creek Dredging; to increase Miscellaneous Revenue from the sale of Police Department capital assets in the amount of \$3,395 and to increase Miscellaneous Revenue for the settlement of Police Station construction defects in the amount of \$100,000.

In the Water/Sewer Fund the purpose was to update the budget to recognize transfer from Water Reuse Capital Project Fund in the amount of \$63,767 and to increase capital outlay in the same amount related to the AMR Meter DCU upgrade.

The purpose of Budget Ordinance Amendment 2015-33 in the Water Reuse Capital Project Fund was to recognize investment earnings in the amount of \$4,233; to reduce the budget for expenditures in the amount of \$59,534; and to increase transfer of \$63,767 to the Water Sewer [Operating] Fund. The above transactions will allow the Capital Project Fund to be closed. The Finance and Administration Committee of the Council reviewed the proposed budget ordinance amendments and recommended adoption.

Adopted Budget Ordinance Amendment 2015-32 in the General Fund - Spooners Creek Dredging; Police Dept. Capital Assets/Police Station Repair; Water/Sewer Fund – Transfer of \$63,767 for AMR Meter DCU Upgrade and adopt Budget Ordinance Amendment 2015-33 in the Water Reuse Capital Project Fund to Recognize Transfer of \$63,767 for AMR Meter DCU Upgrade. [Budget Ordinance Amendments 2015-32 and 2015-33 are attached to Ordinance Book #7 in the vault.]

2.D. Award of Annual Sweeping Contract to Butler-Trieu, Inc., of Jacksonville, N.C., in the Amount of \$2,500/Month for FYE 6/30/2016

At the Public Works Committee Meeting on September 24, 2015, Public Services Director Daniel Williams presented a bid for street sweeping services from Butler Trieu Inc. of Jacksonville, N.C. A Request for Bids was initiated after terminating the contract with the previous vendor for failure to execute the contract as was written. The only bid received was from Butler Trieu Inc., however, their bid is lower than the current contract by approximately \$5 per curb mile. Butler Trieu Inc. has several trucks in operation so if one were to break down they could still fulfill their obligation to the Town. City staff recommended that the Committee approve the bid so that it can be placed on the Consent Agenda. The City can terminate the contract within thirty (30) days if Butler Trieu Inc. doesn't meet all of the bid request requirements or is not sweeping up to Town standards. The Public Works Committee of the Council recommended awarding the contract to Butler-Trieu, Inc.

Awarded the Annual Sweeping Contract to Butler-Trieu, Inc., of Jacksonville, N.C., in the amount of \$2,500/Month for FYE 6/30/2016.

2.E. Voluntary Contiguous Annexation Request from Afshin John Sarir for Property Located at 519 Maple Lane, PIN #6376-1155-4145-000, 1.03 Acres, Zoned R10 [Single Family Residential] District – Adopt Resolution 2015-43 Directing the Clerk to Investigate the Petition and Resolution 2015-44 Setting the Public Hearing for Tuesday, November 10, 2015 at 5:30 p.m.

The Parcel Identification Number under consideration for annexation (6376-1155-4145-000) is contiguous to the present City limits. The parcel contains approximately 1.03 acres and is zoned R10 (Single-Family Residential District). The site in question is part of the Morehead Gardens subdivision. The subdivision is currently fragmented in that a portion of Morehead Gardens is located in the corporate limits with the remainder being located in the extraterritorial jurisdiction (ETJ). The current tax value of the property is estimated to be \$50,000. Based on a 35-cent tax rate, \$175.00 in tax revenues would be generated. Water and sewer will be accessed from Maple Lane. All costs associated with extending the water/sewer service to the newly annexed property will be the responsibility of the owner.

Adopted Resolution 2015-43 Directing the Clerk to Investigate the Petition and Resolution 2015-44 Setting the Public Hearing for Tuesday, November 10, 2015 at 5:30 p.m. for the Voluntary Contiguous Annexation Request from Afshin John Sarir for property located at 519 Maple Lane, PIN #6376-1155-4145-000, 1.03 Acres, Zoned R10 [Single Family Residential] District. [Resolutions 2015-43 and 2015-44 are attached to and made a part of these minutes herein by reference.]

Councilman Thompson MOVED, seconded by Taylor and carried unanimously, to adopt the CONSENT AGENDA in one [1] motion.

3. Public Hearing: Request from Geer/Crystal Coast Fisheries to Consider Permanently Closing a Portion of the Easternmost North/South Alley located between Lots 2 and 3 in the 2400 Block of Bridges Street [Block 169] – Adopt Order of Closing 2015-31

Planning Director Staab reported that City staff reviewed the proposed alley closing and made the following findings:

1. According to the most recent property deed, Paul H. Geer, III and Corinne Geer own 2400 Bridges Street, which encompasses the property on the eastern and western sides of the alley requested to be closed.
2. The alley does not provide access to public waters, and therefore, would not deny public access to public waters.
3. Closing this alley will not deny convenient access to any other properties, as the remaining parcels within Block 169 have direct access onto public streets.
4. Policy #4 of the 1996 Alley Closing Policy states, "Closing a portion of an alley will be considered only in a block in which all properties adjoining the affected alley are zoned or developed for commercial, professional or industrial uses and purposes." The Planning Committee found the proposal to be consistent with this policy in that the abutting property to the north is under the ownership of the Town, and although zoned Residential (R5), is used for non-residential purposes and is the location of a city well; the abutting residentially zoned property to the north has direct access to public streets via Fisher Street and North 23rd Street and therefore, the "affected" property in this case only includes the abutting property which will remain under the Town's ownership in perpetuity.
5. Per Public Services, there are no water or sewer utilities within the portion of the alley proposed for closure.

On a question from Councilman Ballou, Planning Director Staab demonstrated on the map the closure of the specific alley with ingress and egress capabilities.

Mayor Jones opened the public hearing.

Jack Cox, owner of Crystal Coast Fisheries/Blue Ocean Market stated that his company is in the process of acquiring the property from the Geer Family with the intention of constructing a new fish market on the site.

Mayor Jones closed the public hearing.

Councilman Thompson MOVED, seconded Councilman Taylor and carried unanimously, to adopt Order of Closing 2015-31 granting the request from Geer/Crystal Coast Fisheries to permanently close a portion of the easternmost North/South Alley located between Lots 2 and 3 in the 2400 Block of Bridges Street [Block 169]. [Order of Closing 2015-31 is attached to Ordinance Book #7 in the vault.]

4. Citizen Requests/Comments:

Holly Fletcher, 209 North 20th Street, Morehead City addressed the Council saying that she voted for each of them, but is disappointed in the actions the City has taken with regards to Jacks Waterfront Bar. She stated that the McCanns have been paying taxes on the dock which is attached to the western side of their building since they purchased the property. She felt that the City was fighting this business every step of the way and that the decision on the dock is stopping the completion of the new second story addition.

Ray Tillery, 1209 Bridges Street, Morehead City stated he was at the September 8th Council meeting. He commented that the McCanns have paid taxes on this property. He continued that the citizens are asking for the truth about the City's agenda for the property.

Tim Grimes, speaking on behalf of his mother who lives in Eklessia stated he was with Outer Banks Marine Construction and does a lot of work in the downtown area. He talked about survey lines on land and riparian rights over the water. He felt that the intended disposition of the western dock was for the use of the McCann property.

Mayor Jones questioned the audience on how and where they were obtaining their information regarding this project. The only person who can make a determination of the building code was a licensed building inspector. The only people who can overrule the building code were the North Carolina Council of Insurance. The Morehead City Planning Department has been helping the McCanns to construct their project under the legal requirements and the Council cannot overrule any determination of the building code. The

Council does encourage business growth in Morehead City especially on the waterfront. Most of the City investments these past years have been on the waterfront.

Major Jones continued that as far as the ownership of the dock, the former owners of the property, Lucky International, leased the property from the City. The current owners have been offered an opportunity to lease this property. If it is public property the City is charged to be stewards of public property and cannot give it away. The Council would like to see Jack's finished and become successful. The original plans showed the stairs on the east side of the building.

Jeff McCann, owner of Jacks Waterfront Bar recited background information regarding the contract when the waterfront wall was constructed. He referred to Deed Book 18, Page 118 wherein he felt ownership was determined

City Attorney Derek Taylor, explained to the McCanns that that instrument does not give them the right to ownership of the street ends. That is a riparian right of the town. He offered that the McCanns should lease the dock from the City.

Keri McCann commented that the situation of Jack's Waterfront Bar with the issuance of the building permit will not be settled until the dock issue is settled and that they did not want to rent property they felt they owned. She stated there were decades of deeds testifying to this and that former owners, Lucky International, were probably coerced into the lease agreement with the City. She felt that no one in City Hall was trying to help their situation.

Councilman Ballou reported that every member of the Council went to visit the site and spoke with the owners.

Jeff McCann commented that everything is up to code and they were waiting for the permit.

Councilman Ballou commented that the first permit had the stairs on the east side of their building and why was this changed.

Keri McCann explained that they would then have to fireproof the entire east wall of the building. That would have put the costs over their allotted amount for reconstruction of their building according for FEMA. The stairs were then moved inside, but that did not work out either.

Councilman Ballou commented that he was concerned that the City Council was being attacked by the public on this issue. This Council has made many decisions to invest in acquiring property and to improve the infrastructure and amenities in the downtown area of the City.

Upon a question from Jeff McCann, City Attorney Derek Taylor explained that because the McCanns have hired an attorney, he must speak through their attorney.

Keri McCann commented that they were denied the original building permit because they would not give up the dock. She contended that the McCanns own the dock.

Mayor Jones commented that the City does not want to fight anyone over the ownership of the dock and riparian rights either.

The McCanns stated their deed includes the street end and dock.

Keri McCann stated that the people here know us and feel for us. They don't think we are getting the respect we deserve. Everyone is not being treated fairly.

Councilman Taylor stated that all recognized that the McCanns have a long history of contributing to Morehead City. This Council also has a long history of doing the best for the betterment of the City. This situation is an ownership issue of the dock.

Keri McCann claimed that prior to Lucky International owning the site, the Davis Fishhouse never leased the western side of the building.

Discussion ensued about the placement of the stairs.

Upon a question from Councilman Walker, Planning Director Staab explained that riparian rights are a 90 degree angle from the water. This matter is complicated further because the building is over the water and optimal access for fire safety must be maintained. She further explained that the cap on the costs of the construction from FEMA is \$201,000, and that approximately \$170,000 has been spent thus far, however, this needs clarification from the appraiser.

Keri McCann stated that they did not feel like they were being helped by the City and that they have lost a whole season of business.

Mayor Jones commented that the benefit of the City owning the street end is public water access.

City Attorney Derek Taylor stated that the McCanns are not just claiming ownership of the dock, they contend ownership of half the street.

Councilman Thompson stated that he was told early on that the McCanns did not own the property. The Council has not talked about the situation because of legal implications. He offered concern about the McCanns losing business over the season.

It was ascertained that the first fish house was built in 1946 by Puck O'Neal and was replaced in the same footprint when the initial building burnt down.

Keri McCann commented that the situation is not clear cut.

City Attorney Taylor asked the McCanns to clarify that they still want half way to Sixth Street.

Jeff McCann replied that they want the dock.

Mayor Jones commented that everyone is trying to resolve this situation and that the City cannot give away public property.

5. Council Requests/Comments:

Councilman Ballou thanked all for their efforts regarding this year's North Carolina Seafood Festival. He stated that all did their best under an extremely difficult situation.

Mayor Jones commented that all appreciated the Fishermens' Village being hosted by Jacks Waterfront Bar.

6. Adjournment

There being no further business, the meeting was adjourned at 6:50 p.m.

Gerald A. Jones, Jr., Mayor

Attest:

Jeanne M. Giblin, City Clerk