



TOWN OF SURFSIDE BEACH ♦ TOWN COUNCIL CHAMBERS

February 5, 2009 ♦ 6:30 P.M.

TOWN COUNCIL SPECIAL WORKSHOP MEETING MINUTES

1. CALL TO ORDER

Mayor Deaton called the workshop meeting to order at 5:00 p.m. Mayor Deaton, Mayor Pro Tem Truett and Councilmembers Blair, Martin, Samples and Childs were present. Councilman Johnson arrived late due to previous engagement. A quorum was present. Staff present: Administrator Booth; Clerk Pinnell, Building, Planning & Zoning Director Donevnat, Inspector O'Quinn, Public Works Director Taylor, Grounds Supervisor Newell and Police Chief Christenson. Attorney Mr. Smith and Judge Blanton were also present.

2. INFRACTIONS OFFICER ORDINANCE

Mr. Booth stated that the infraction ordinance has been passed and now up for discussion is the infractions hearing officer. Mr. Booth stated that the issue brought up was whether the town could make it a second tier type of ordinance having it go from a civil infraction to a warrant for not paying. Mr. Booth explained if a ticket is not paid an individual does not automatically go before a hearings officer the only time they go before the hearing officer is if an individual were to appeal the ticket. Mr. Booth stated that the Supreme Court was very specific when it comes to smoking in that it could only be an infraction. Mr. Booth stated that he would now need the intent of the council pertaining to this ordinance. Mayor Deaton stated that in this meeting format council would vote by consensus and adding that one person's intent is not the council's intent and when they leave this evening the direction that is given will be from the agreed consensus of council.

Mr. Martin stated that since he requested that this go to workshop asked if he should open with comments. Mr. Martin stated that there were a couple paragraphs in particular that bothered him about the ordinance and they were paragraphs G and H on page 5 and 6. Mr. Martin stated that what bothers him is that it changes an infraction into a criminal offense. Mr. Martin stated that he had a conversation with Judge Blanton in the past and it was his understanding that this was not proper and this is the focus of his concern and would like to hear comments from the Judge and other councilmembers. Judge Blanton stated that he stated that he had concerns when he read the ordinance and had spoken to Bob McCurry and others from the Court Administration regarding civil infractions. Judge Blanton stated that drug paraphernalia has a \$500 fine but an individual cannot be jailed for this offense because it is a civil matter and is not considered criminal adding that he does not have bench warrant power to place someone in jail for not paying this and this is his concern. Judge Blanton stated that he is also concerned with civil liability for the town. Judge Blanton stated that administrative procedures can be placed such as not renewing a business license but as far as placing someone in jail he does not feel, in his opinion, that this is possible adding that this is, however, all new order and believes that perhaps an opinion from the Attorney General would be the way to go. Judge Blanton stated that he knows that the Chief Justice is watching all this and is concerned as to where it is all heading. Judge Blanton stated that another concern he has is could another court be created properly without a legislative statute and that is why he feels that it would be beneficial to get an opinion from the Attorney General. Judge Blanton stated that the Greenville case has set out many new issues and there are still questions as to how it should be approached. Mr. Booth stated that the town is not looking at

53 this as an infractions court but as an administrative officer who would listen to the
54 appeals of the individual. Judge Blanton corrected himself stating that he should not
55 have used court but should have used administrative hearing adding that most
56 administrative hearings there is no jury trial and is regulatory matter that rules on a fine
57 and individuals are entitled to appeal and with the Administrative Procedures Act of
58 South Carolina an individual could appeal directly to the circuit court.

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60 Attorney Mr. Smith explained the initial start of the infractions stating that when towns
61 first implemented the smoking ban and the Supreme Court rendered their opinion stating
62 that it could not be a criminal act it became apparent that there was a problem in small
63 towns because municipal judges have no civil authority, only criminal authority. The
64 town of Surfside Beach is unique in that Judge Blanton is a magistrate and had both civil
65 and criminal authority adding that Judge Blanton could sit as magistrate and impose his
66 civil authority on a smoking ban but it would not work because Court Administration
67 would collect part of the revenues and the Judge would be responsible adding that there
68 are all sorts of constraints. Mr. Smith stated that the Supreme Court said if the town was
69 to have a smoking ban then it could but the municipal judge would not be able to hear it,
70 which leaves only one alternative, which is to create an infractions hearing officer. Mr.
71 Smith stated that the town is not suggesting to move this infraction to a criminal court
72 because someone did not pay an infraction fine; it is their failure to appear to answer to
73 the charge adding that there is no debtors prison in the United States; it is the failure to
74 appear to answer coupled with the failure to pay that makes it a contempt charge.

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76 Mayor Deaton asked Judge Blanton if his concern was that the town might be going to
77 far by attempting to pull it into a criminal offense. Judge Blanton stated that this does
78 concern him adding that having separate infractions entity would be fine but as far as
79 trying to make it criminal or placing a bench warrant on someone he feels that the town
80 cannot do this. Mr. Booth stated that individuals who do not pay their tickets are not
81 failing to appear they are just not paying their tickets and he would like to impose a more
82 strict of a procedure of booting or towing someone who does not pay their parking
83 tickets. It was confirmed that this was reasonable and a bench warrant would be out of
84 the question. The debt set off through the Municipal Association was brought up as a
85 good way to collect unpaid funds for individuals in the State. Mayor Deaton stated that
86 he feels this is a good procedure and where we may be getting in trouble is attempting to
87 push infraction into another level.

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89 Mr. Samples stated that since none of this has been determined getting an opinion from
90 The Attorney General may have merit. Mr. Samples stated that he wants to understand
91 the scope and asked what civil crimes are and what other categories are there. Mr. Smith
92 stated that it was his understanding that the town wanted to move other offenses into
93 civil matters such as littering and added that he would need confirmation on this from
94 council to see if this was their intent but other civil infractions would be parking and
95 smoking. Mr. Samples asked about building and zoning and Mr. Smith stated that he
96 would need to look into that. Mr. Samples stated that part of the issue is what recourse
97 the town has with respect to civil penalties adding that part of the reason it began was
98 that some of council did not want individuals to have the ability to "thumb their nose" at
99 the ordinance with no recourse. Mayor Deaton stated that he is not sure if that was the
100 general consensus of council at any point in time. Mr. Samples stated that some of
101 council did feel this way. Mayor Deaton stated that now there is the impression out

102 there that council wants to turn these civil infractions into criminal offenses and he does
103 not feel that it is acceptable according to legal opinion on the Supreme Court basis. Mr.
104 Smith agreed with Mayor Deaton adding that he and Judge Blanton are both on
105 agreement to this. Mayor Deaton asked council's opinion on whether their intent was to
106 move an infraction to a criminal action and go beyond what the statute of the Supreme
107 Court and the legal opinions and interpretation given. It was consensus of council not to
108 move an infraction to a criminal offense. Mr. Samples stated that his point is what is the
109 purpose of having the ordinance in the first place if it cannot be enforced. Mayor Deaton
110 stated that the town should set the ordinance according to what Myrtle Beach and
111 Greenville as set forth and what had been adopted by the Supreme Court adding that he
112 does not want to see the town "push that envelope".
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114 Mr. Booth stated that there are other procedures that the town can put in place to enforce
115 the ordinances; they can tow r boot cars and take licenses from bars and restaurants if
116 they continue to ignore the towns smoking ordinance. Mr. Booth stated that he has been
117 receiving calls about enforcement issues and he has to inform people that the town does
118 not currently have enforcement procedures in place but they will and once they do he
119 will personally go around to all of the restaurants and give a warning order instructing
120 them that if the town gets complaints going forward they will not be blown off. Mr.
121 Samples stated that the reason they started down this path was because of the
122 enforcement issue and they were it could not be enforced because it was written criminal
123 and then it was written as civil and has no teeth. Mr. Booth stated that they can enforce
124 restaurants but the beach is another issue and those individuals will be issued a ticket.
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126 Mr. Truett stated that Mr. Samples is right and council initially wanted to see teeth in the
127 ordinance and now perhaps it has gone to far with suggesting individual be put in jail but
128 all they were trying to do was trying to get people to pay a fine without discarding it.
129 Mr. Truett stated that the town is getting new pay stations and repeat offenders were
130 discussed and to him repeat is twice and would like to see this enforced. Mr. Booth
131 stated that the town has ways to track this with a spreadsheet. Mr. Truett stated that he
132 would like to see a sign "if you do not purchase a ticket you will be subject to a \$25
133 parking fine and a \$40 booting fine" adding that it should solve the problem one time
134 adding that it is his opinion that if an individual refuses to pay \$2 or \$3 to park and
135 choose the fine then the town is entitled to get that fine amount. Mr. Booth stated that
136 we already have this in the plan. Mayor Deaton stated that this would all be addressed in
137 the parking ordinance. Mr. Booth stated that the parking ordinance has been drafted and
138 would be presented at the next meeting. Mayor Deaton stated that there is a consensus
139 of council to not move this ordinance to a criminal offense. Judge Blanton stated that he
140 is not here to say whether it is unconstitutional or not because he truly does not know
141 and suggested again that the town get an advisory opinion from the Attorney General if
142 they still were not sure what way to go. Mr. Truett asked if the town rewrote sections G
143 and H would it be necessary for the town to get an opinion from the Attorney General
144 and Judge Blanton stated that it is not for him to say but someone down the road could
145 challenge the town and the court could find it unconstitutional adding that it' new
146 territory and no one knows where it will end up. Mr. Truett stated that an opinion form
147 the Attorney General would more than likely benefit the town and help with any issues
148 that may come up. Mr. Smith stated that the opinion from the Attorney General includes
149 extensive research and once the town gets an opinion back it will include all law
150 opinions they have on the matter and the town would get the beginnings to either defend

151 the town's position or to change the position. Mr. Smith stated he would encourage an
152 Attorney General's opinion but as for the Town of Surfside Beach once the town passed
153 the smoking ban ordinance it created an infraction and before that littering was a
154 criminal penalty and now the town has a situation where the infraction cannot be heard
155 by the municipal judge but could be heard by the magistrate but if the magistrate does
156 not hear it because of the reasons previously discussed then the town must have an
157 infractions hearing officer. Mayor Deaton stated that the town only has so much capital
158 and his concern is that we already went to the Attorney General regarding the smoking
159 ban and the question is does the town go back to the Attorney General again in such a
160 short period of time; on something that already seems clear upon the Supreme Court
161 ruling on infractions; someone needs to hear these cases. Mayor Deaton asked for
162 consensus of council on asking for an opinion from the Attorney General. Judge
163 Blanton stated that the town could collect full assessments on parking tickets. There was
164 some additional discussion regarding infractions and legal interpretations. Judge
165 Blanton stated that the town could still charge littering under State fines adding that the
166 law is tough; it is about \$470 plus the Judge needs to order to 15 hours of community
167 service. Mr. Smith stated that this would be the way to handle littering and if the town
168 hires part time people to code enforce issues such as tickets, smoking and littering then
169 they would not be able to charge littering as state offense only an officer could write a
170 ticket under state littering offenses. A code enforcement officer could write an
171 infraction ticket for something like throwing a cigarette butt on the beach. Mr. Smith
172 clarified that the offense of not paying a parking ticket would be to get booted or towed;
173 the offense of smoking the business could lose their business license and littering he will
174 address with council to see how to impose that as an infraction.

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176 Ms. Blair asked for clarification on people out of State since we can collect with the debt
177 set off on in State individuals. Mr. Smith stated that if an individual did not pay a
178 parking ticket the town would need to wait until they came back into the jurisdiction in
179 order to be able to impose a boot or tow adding that right now a person gets a \$25
180 parking ticket and after a certain amount of days it escalates to \$75 and the town is
181 considering a \$75 threshold. The town could boot or town at that point. Mr. Smith
182 stated that the business license would be affected regarding the smoking ban but there
183 would be no recourse for individuals smoking on the beach. Chief Christenson stated
184 that the beach patrol would be out on the beach informing people that they cannot smoke
185 on the beach adding that 99.9 percent of the town people will oblige. Ms. Blair brought
186 up educating the public and how important that was. Mr. Martin stated that if the town
187 moved away from sections G and H he does not feel that council needs an opinion from
188 the Attorney General. There was consensus of council to redraft sections G and H to
189 civil infractions and to not get an opinion from the Attorney General. Mr. Samples
190 asked what the scope of civil and Mayor Deaton stated that this is the question and does
191 not feel that the attorney or judge are prepared to answer this and asked Mr. Samples to
192 call them to discuss. Mr. Samples asked if we could limit the ordinance to smoking,
193 parking and littering. There was some discussion regarding littering and the offense
194 would be determined by who issued the ticket.

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196 Mr. Childs suggested that going forward if anyone has any amendments or discussion on
197 ordinances that it would be brought up at a workshop rather than at a meeting. Mayor
198 Deaton stated that decisions should be made at business meetings and workshops are for
199 discussion adding that there will be another workshop on February 24th.

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3. TREE ORDINANCE

Mr. Booth stated that there was already a workshop on the tree ordinance but apologized for not getting the direct intent from council regarding this ordinance. Mr. Booth stated that he would ask council to specify their intentions. Mayor Deaton suggested that they go around the table for council to relay their concerns with drafted ordinance. Mr. Truett stated that he had two concerns and went to Ms. Donevant who clarified them for him. He was concerned about people getting a certificate of occupancy where the ordinance stated that they could not be exempt from the ordinance but someone going for a CO in January or February and being told they are 3 trees short; you cannot plant a tree in these months and expect them to live. It was confirmed that when they bring in plan surveys they pay into a fund and if they are short trees they can use that money later to plant the trees during the right time. Mr. Martin stated that it was his concern as well and there is a section that states that the trees would need to be planted in 6 months with one extension and a 6 month extension would allow them to fall into the right time of year. Ms. Donevant stated that she wants to clear up the ordinance to read 6 months with an extension of 6 months and this would allow them a year to plant. There was some additional conversation about informing people from the beginning of the planning process so that they are not surprised at some points. Mayor Deaton stated that this should be addressed in all of the town's permitting process; no matter who comes in for a permit the town needs to make sure they get all of the information up front and before they leave the office.

Mayor Deaton stated that he wanted to discuss where 8 inches constitutes a tree; it was confirmed 8 inches in diameter. Mayor Deaton stated that the question is what constitutes a tree. The ordinance states that a replacement tree could be 2 inches and Mayor Deaton stated that he is confused as to what constitutes a tree and that it has been diminished down from 8 inches to a replacement tree of 2 inches. Mayor Deaton stated that an 8 inch tree is an expensive tree but a 2 inch replacement does not make sense to him. Mayor Deaton gave an example where on Cedar Drive four Hickorys were removed illegally and they were fined and they were allowed to replace them with 12 two inch River Birch trees and today only one River Birch tree still exists the others did not survive. Mayor Deaton stated that this does not constitute a fair replacement. Mr. Booth asked if it was the intent of council for every tree that is cut down must be mitigated or paid for. Mr. Samples stated that it is not his intent and Mayor Deaton stated that it was his intent. Mr. Samples stated that the buildable areas should be excluded. Mayor Deaton stated that he would like to see inch per inch with no net loss of trees at all. Mayor Deaton added that if someone took 50 inches of trees they would need to replace 50 inches of trees somewhere. There was discussion regarding a tree bank to place funds for replacement of trees. Mr. Samples asked for confirmation from the Mayor on what he was suggesting. It was confirmed that if a house were to be built and trees were removed where the footprint of the home was to go then trees would either need to be planted somewhere else or money would need to go into a tree bank for trees to be planted somewhere else in town at a later date. New development would be replaced inch per inch or funds would be placed into a tree bank, Mayor Deaton stated that Myrtle Beach, Hilton Head, Charleston and Somerville have tree banks; anyone who is a tree city has this and Surfside Beach is not a tree city. Mr. Samples asked if someone who added trees and who are over the requirements in R-1, and at a later date they wanted to remove a tree they added that is now breaking up their driveway would

249 they have to put into the tree bank. Mayor Deaton stated that in his opinion what
250 currently exists is the town's current existing urban forest. Mr. Samples stated that
251 arborists and foresters recommend thinning and if someone does thin would they need to
252 pay the town. It was confirmed that this is a question that needs to be addressed. Mr
253 Booth stated that he has many people who want to remove trees because they are
254 breaking up sidewalks, too close to other trees, ready to fall on the house and there are
255 some people who have more trees than others and there are some people who say they
256 planted the tree and now want to take it out; all of these questions need to be addressed
257 for the ordinance and Mr. Booth added that he needs to know the intent of council.
258 Mayor Deaton stated that he cannot speak for everyone but if he planted 5 additional
259 trees would it be unreasonable to ask the town for a credit and it was agreed by Mr.
260 Booth, the Mayor and council that this would be an "administrative nightmare". Mayor
261 Deaton stated that the question is if council's intent is to protect the town's urban forest,
262 is it trying to create a tree city, where do they want to go. Mr. Samples suggested that
263 they get a consensus of council if the intent is to have a developer pay into the town tree
264 fund the replacement of trees within the footprint of a house. Mayor Deaton stated inch
265 per inch is already written in the ordinance and Mr. Samples stated that it could be
266 interpreted at least two ways; one could be that every tree taken down would need to be
267 replaced per caliber inch. Ms. Donevant stated that section 17-367.4 states that all
268 replacement trees shall be planted to replace existing protected trees, specimen trees and
269 any trees when the number of trees on a parcel falls below the minimum required for the
270 district in which the lot is located; as long as they keep 10 trees on the lot they meet
271 requirements. Mayor Deaton stated that he does not agree with this and this ordinance
272 still allows that. Mr. Johnson stated that his biggest concern is if a majestic tree, one that
273 is 200 or 300 years old and if it is in the footprint of a home that is being built could they
274 take it out and replace it. Mr. Booth stated that this is not currently in the ordinance and
275 he has been in other places where these trees are considered Grand Trees, they are over
276 100 years old and majestic and used the area on 3rd Avenue as an example stating that
277 there is a lot where majestic oaks sit and if the town declares that unbuildable then the
278 town needs to purchase it because what the town is doing then is they are taking it by
279 making it unbuildable. The town would need to pay market value for this property. Mr.
280 Booth stated that the protection of grand trees could be added to the ordinance and if an
281 individual could figure out a way to build around it then perhaps the town would allow
282 it. Ms. Donevant handed out a plan of a house on 10th Avenue where trees were recently
283 removed. Mayor Deaton stated that the current ordinance reads that the total
284 replacement necessary was only 50 percent and the town lost half of the trees during the
285 construction of this development and in his mind this is unacceptable. He would like to
286 see trees added to somewhere else in town. Mayor Deaton stated that if the town does
287 not do this then the first paragraphs of the ordinance should be taken out. Mayor Deaton
288 stated that there are many trees that could have easily remained during the construction
289 and once a mature tree is removed it will never be replaced in our lifetime. Mayor Deatn
290 stated that he would like to have the ordinance read where the town creates and keeps an
291 urban forest and that the town is a tree city. Clerk Ms. Pinnell read the 2nd paragraph of
292 the tree ordinance and Mayor Deaton asked if this was the intent of council because if it
293 was not then the paragraph should be removed.

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295 Mr. Truett stated that perhaps variances could be granted where someone could move a
296 house 2 feet into the setback in order to save a landmark tree. Mr. Truett stated that he
297 feels that if someone purchases a lot in Surfside Beach that they should be able to cut the

298 footprint out and include the 10 feet from the house and anything outside of the footprint
299 and the 10 feet should not be allowed and they should pay into a tree bank. Mr. Truett
300 stated that it is hard for him to justify telling someone that they must pay for all of the
301 trees removed in the footprint of the house plan. Mr. Martin asked how other towns that
302 have stricter ordinances handle this. Mayor Deaton stated that he is not familiar with the
303 enforcement of the other towns. Mr. Booth stated that he has been in tree city
304 communities adding that the trees are measured 4 feet up and that is where one gets the
305 diameter and trees that are declared a grand tree after a survey has been performed must
306 either be built around the tree or if building was not possible then the town would be
307 considered as taking the property and the owner would need to petition for the town to
308 purchase it at fair market price. Mr. Booth stated that if you do not allow people to build
309 then you take it.

310
311 Mr. Childs stated that not long ago if a variance was given the town could have saved a
312 tree and the owner stated that if he was not allowed to build on the setback then he
313 would need to remove a large tree; the tree was never brought into the variance request
314 and it should have been adding that this is something that the town needs to make
315 acceptances for. Mayor Deaton stated that he knows of a house in Folly Beach that was
316 designed and built around a tree. Mr. Samples stated that in this instance no matter
317 where they moved the house a tree was going to be in the footprint. Mayor Deaton
318 questioned council having no problem with someone removing 30 trees to build a house
319 and not replace them. Mr. Truett stated that it is a hazard of construction on a lot. Mr.
320 Samples stated that he feels that it is extreme to place someone in a position where they
321 would be required to replace inch per inch adding that he feels that it makes it
322 unaffordable for someone to build. Mr. Samples stated that some of the trees they are
323 talking about are priceless adding that the cedar that recently came down is
324 irreplaceable; there is not enough money to buy it but added that the town needs to
325 balance it where it makes sense adding that trees were taken down where they all
326 currently live and no one paid into any tree bank. He would like to be reasonable in how
327 this is applied. Mayor Deaton stated that Surfside Beach is not the same place it was 30
328 years ago and feels that council is stewards of the future of Surfside Beach and at one
329 point a previous mayor stated that the town had more trees than Sherwood Forest adding
330 that Sherwood Forest is clear cut and has less than 200 acres of trees left out of 15,000
331 and he feels that this needs to be addressed. He would like to see trees that are removed
332 are restored somewhere else within the community.

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334 Ms. Blair stated that this is a tough subject adding that the second paragraph in the
335 ordinance is certainly worthwhile adding that trees are an essential resource but does not
336 know if that means that the town can keep every single tree and keep people from
337 building. Mayor Deaton stated that he is suggesting replacement and does not want to
338 stop people from building. Mr. Childs stated that perhaps the town could approve the
339 removal of smaller trees within the footprint but when it comes to the larger trees then
340 they would need to contribute into the tree bank; give them leeway just in the footprint.
341 Mr. Truett stated that he agrees with Mr. Samples in that council needs to figure out
342 some middle ground adding that he would like to see if there was a way to encourage
343 people to place a house on a lot and not remove the large trees. Mayor Deaton stated
344 that council would need to have vision and look at the big picture of the entire
345 community and not look at just one developed lot. Mayor Deaton stated that he feels
346 that if someone takes trees they should give back trees. Mayor Deaton stated that the

347 tree is a zoning ordinance and would need to go to Planning & Zoning Committee, they
348 will have a 30 day period to get back to council with any recommendations.
349

350 Mr. Johnson stated that he loves trees but has a problem telling someone who wants to
351 buy a house that they must replace or make restitution on a tree that is going to be in the
352 footprint of the house they plan on building. Mr. Johnson stated that he would like to
353 make some concessions that if individuals take trees outside of the footprint then they
354 need to pay. Mayor Deaton stated that this is a valid option adding that he believes that
355 council will find out during the stormwater workshop that there are impervious areas and
356 environmental impact adding that the entire footprint of a house is impervious; it affects
357 water absorption and other elements. Mayor Deaton stated that all trees are essential to
358 the town's water quality and environment. Mayor Deaton stated that council needs to
359 take into consideration the health of the community and not for the health of the
360 developer or homebuilder. Mayor Deaton stated that the stormwater workshop would be
361 held on February 24th from 3 PM to 5 PM. Mr. Samples stated that he has some
362 technical questions regarding the way the ordinance is written. Mr. Martin stated that he
363 council had previously reviewed and changed the tree ordinance adding that he feels that
364 the ordinance is still weak and the reason that it is as weak as it is was because the town
365 was placing themselves in the position of taking. Mr. Martin stated that he would like to
366 see the town purchase every single lot that has beautiful heritage trees on it but the town
367 cannot afford to. Mr. Martin stated that he does not know what the answer is but he is
368 sure that if the town told an individual they had to replace every tree within the footprint
369 of their planned home then they would bring the town to court with the argument that the
370 town made it impossible for them to build on the lot. Mayor Deaton asked for the
371 opinion of Mr. Smith on Mr. Martin's statement. Mr. Smith stated that it would be
372 difficult to say it would depend on the size of the trees and the cost of the replacement
373 adding that court cost a lot of money and would it be more affordable to pay for the
374 replacement of the trees than to take it to court, it would all depend. Mr. Smith stated
375 that Mr. Martin is correct that if you put someone in a position where they cannot build
376 then you in effect have taken their lot and there are constitutional issues on taking. Mr.
377 Smith stated that it would not necessarily be the appraised value they could make an
378 argument that the value should be greater. Mr. Booth stated that currently there is not
379 issue because there is not much building going on. Mayor Deaton stated that he does not
380 feel that grand trees are the big issue he feels that footprint trees and restitution is the
381 subject at hand. Mr. Booth stated that all of the empty lots in town are currently full of
382 trees. Mr. Truett stated that the town had tried to purchase the lot on 3rd and Willow and
383 he would like the town to contact them again to see if they could negotiate something.
384 Mayor Deaton stated that this lot was the original location of the ARK which was the
385 original plantation house and South Carolina University did a research project on it
386 adding that there were also a couple slave cabins there and a slave cemetery on the 6th
387 Avenue triangle which is hard to document but it is there. Mayor Deaton stated that,
388 according to the Sun News, there is an ability to list trees as historical valued areas and
389 would like to see the town pursue that.

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391 Mr. Samples stated that he has two questions and asked Ms. Donevant if the town is
392 requiring to replace caliper inches then we should say so, so there is not doubt in
393 interpretation, it currently does not say that. Mr. Booth stated that another question is
394 does the council want to establish a bank with a separate fund for tree replacement. Mr.
395 Johnson asked what the funds would go towards. It was confirmed that it should go

396 towards trees to be place in other parts of town. Mr. Newell stated that the money from
397 the fund should also go towards a nutrient program to help the trees, especially those that
398 have been neglected over the course of ten or fifteen years. Mr. Samples stated that
399 council would need to determine the definition of what a live tree is adding that the
400 current definition includes only trees that are 8 inches are live trees. Mr. Samples stated
401 that 8 inch trees are over 24 inches in circumference. Mr. Samples stated that where
402 does this leave Hollies. Mr. Booth stated that he would also need direction on palm trees
403 and if they would be considered as a replacement.

404
405 There was some discussion regarding what constitutes a tree and the replacement of a
406 tree. There was some discussion regarding affordability on replacements. Mayor
407 Deaton asked Mr. Newell what he considered to be a healthy tree as a replacement given
408 it's survival rate in the area. Mr. Newell stated that it would depend on species but the
409 average replacement should between 4 and 8 inches. Ms. Donevant stated that we need
410 to keep in mind that there are only 5 foot setbacks. Mr. Martin stated that maintenance
411 is an issue that should also be addressed. He had brought in an arborist after he
412 purchased his home and he was told that construction is very hard on trees and not only
413 does the town need to concentrate on protecting them but they must concentrate on
414 maintenance as well. Mayor Deaton stated that the town experienced a rapid
415 development and many root systems of trees were destroyed and feels that it is the
416 responsibility of the town to make sure this does not happen. Mr. Booth stated that there
417 20 percent of the town has empty lots and about 15 percent can be developed. Mr.
418 Johnson stated that he does not feel that a Palmetto Palm should have ever been placed
419 on the replacement list. There was some additional discussion regarding the Palmetto
420 Palm.

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422 Mr. Samples stated that he would support the replacement of inch per inch if it were an
423 arbitrary taking of a tree but he does not agree with replacing trees on the footprint of a
424 home or ten feet from footprint. There was consensus of council that the tree was
425 defined as replacement to be 4 inches and removal would be 4 inches. Mr. Newell stated
426 that he would want to make sure that trees were not placed in the wrong location where
427 it could cause problems in the future. Mayor Deaton stated that his intent is to protect
428 the urban forest in town. There was discussion regarding replacement costs to be paid
429 into the tree bank. Mr. Booth stated that council would need to come up with a
430 replacement cost. Ms. Donevant stated that Conway uses the current nursery rates. Mr.
431 Samples questioned how a nursery could come up with a replacement price on a 24 inch
432 oak tree. Ms. Donevant stated that the town could get these. There was consensus of
433 council to remove Palmetto Palm from replacement trees. There was consensus of
434 council to add a maintenance program to the bank fund. It was determined that
435 maintenance would be required for the life of the tree. Mr. Truett stated that pine trees
436 are not currently on the list and people are taking them down all of the time and perhaps
437 they should be required to replace the pine with something on the tree replacement list.
438 Mr. Booth asked if pine trees would be considered trees. Mr. Smith stated that it is his
439 understanding that if someone takes down a pine tree then they have to replace it with
440 another tree. Mr. Truett stated that he would like to see pine trees specified in ordinance
441 so people know they need to replace them. Mr. Booth asked council if someone wanted
442 to remove two pine trees because they did not like them would this be allowed. Mayor
443 Deaton stated that they would need to replace them inch per inch or pay into the bank.
444 The amount paid would be the market price at the time for that tree. Mr. Johnson asked

445 about tree replacement and if everyone chose the less expensive tree then there would be
446 a dominant tree in Surfside. Ms. Donevant stated that a builder would not be allowed to
447 replace with all the same tree; it is in the ordinance. Mr. Samples asked if Mr. Smith
448 could add of caliper inches after the number and Mr. Smith stated that he already had it.
449 Mr. Martin asked what would happen if Mother Nature took down a tree. Mayor Deaton
450 stated that the town can not regulate that. Ms. Donevant asked about the minimum
451 number of trees on the lot was still required. It was agreed that the minimum amount of
452 required trees is still in effect. Mayor Deaton stated that he does not feel that council
453 will resolve the footprint issue and council would now be referring the ordinance to
454 Planning & Zoning. Mr. Johnson asked about permits required for pruning and topping
455 of trees that were 4 inches in diameter and feels that it should be changed to 6 inches
456 adding that he does not feel that pruning and topping have been big issues in the past.
457 Mayor Deaton asked Mr. Newell his thoughts on this. Mr. Newell stated that it would
458 depend on the tree itself. Mr. Booth stated that this ordinance is being referred to
459 Planning & Zoning and a Public Hearing is also required. Mr. Smith stated that this
460 ordinance can be presented to Planning and Zoning and they have 30 days to amend it or
461 adjust it in any way they see fit and then they can hold a public hearing and bring it back
462 to council; since this has already had a first reading it can also be given to Planning &
463 Zoning with the understanding that council has reviewed it and request some input and
464 at the appropriate time a hearing can be held at a council meeting then council could
465 have a second reading. It was determined the main issue of the house footprint was not
466 addressed and would need to be addressed at Planning & Zoning. There was consensus
467 of council to let Planning & Zoning hold a public hearing and make recommendations to
468 council. There was some discussion regarding educating the public as well. Mr. Smith
469 stated that if Planning & Zoning makes significant changes to the ordinance he would
470 recommend council to hold another first reading and a second reading. There was a
471 discussion regarding the tree moratorium.

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4. **PIER COMMITTEE**

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Mr. Booth stated that staff is currently overwhelmed; they are going through ordinances and there are committees that also give staff a lot of work adding that the town is in the process of establishing a recreation committee which keeps getting pushed back due to everything else going on. Mr. Booth stated that his concern is if another committee were put into place staff would certainly be overwhelmed. Mr. Truett stated that he feels that the pier committee should be incorporated into the recreation committee. Mr. Truett added that he agrees that it is already hard enough to find people to volunteer for committees. There was consensus of council to have the one committee to include the pier. Mr. Samples suggested that the town ask the Myrtle Beach Chamber to participate adding that they could give the town free publicity. It was agreed to have 5 members with an ex-officio non-voting member of the chamber of commerce. It was confirmed that the committee would be recreation, parks and special events. There was consensus of council to place a non-voting officio member of council on the committee. Mr. Truett was appointed by council to be on this committee.

Mayor Deaton stated that there would be a website discussion at a later date.

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5. ADJOURNMENT

Mr. Truett made a motion to adjourn. Mr. Martin seconded the motion. **All voted in favor. MOTION CARRIED.** The meeting was adjourned at 6:50 PM.

Approved: February 24, 2009

Sharon Pinnell, Town Clerk

K. Allen Deaton, Mayor

Joseph P. Martin, Town Council

Vicki W. Blair, Town Council

James S. Truett, Mayor Pro Tem

Douglas F. Samples, Town Council

Mark L. Johnson, Town Council

Robert F. Childs, III, Town Council

Clerk's Note: This document constitutes minutes of the meeting, which was audio taped. In accordance with FOIA, meeting notice and the agenda were faxed and/or emailed to local media and interested parties. A complete list is on file in the clerk's office. The agenda was posted on bulletin boards outside Council chambers and in the town hall reception area. Meeting notice was also posted on the town marquee.