

MINUTES OF THE REGULAR MEETING
OF THE EMERALD ISLE BOARD OF COMMISSIONERS
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- 1 • Police Educating the Public (PEP) – Tuesday, October 18 – 10 am – Town Board
- 2 Meeting Room
- 3 • Bike and Ped Committee Meeting – Wednesday, October 19 – 9 am – Community
- 4 Center
- 5 • Comprehensive Plan / Land Use Plan Steering Committee – Wed, October 19 – 3 pm –
- 6 Town Board Meeting Room
- 7 • Benefit Concert for Mark Odom and Tom Duty – Wednesday, October 19 – 7 pm –
- 8 Chapel By The Sea
- 9 • One Stop Voting – Thursday, October 20 – Saturday, November 5 (no Sundays) –
- 10 Western Park
- 11 • American Red Cross Blood Drive – Friday, October 21 – 2 pm – 7 pm – Community
- 12 Center
- 13 • Rally Point Volleyball Tourney (benefit Odom and Duty) – Sat, Oct 22 – 8 am –
- 14 Western Ocean Regional Access
- 15 • Planning Board Regular Meeting – Monday, October 24 - 6 pm – Town Board Meeting
- 16 Room
- 17 • Coffee With A Cop – Thursday, October 27 – 9 am – Emerald Grill
- 18 • Reception for Chief Waters – Thursday, October 27 – 6 pm – 8 pm – Community Center
- 19 • Halloween Carnival – Friday, October 28 – 6 pm – 8 pm – Community Center
- 20 • EMS Pancake Breakfast – Sat, October 29 – 7 am – 11 am – EMS Station
- 21 • Trick or Treat – Monday, October 31 – 6 pm – 8:30 pm
- 22 • Election Day – Tuesday, November 8 – 6:30 pm – 8:30 pm
- 23 • Board of Commissioners Regular Meeting – Tuesday, November 8 – 6 pm – Town
- 24 Board Meeting Room
- 25 • 13th Annual EI Christmas Parade – Saturday, November 26 – 3 pm – NC 58

26
27 Clerks Note: A copy of Proclamation 16-10-11/P1 as noted above is incorporated herein by reference and
28 hereby made a part of these minutes.

29
30 **7. Special Presentation – Resolution Honoring Russell Overman, Retiring Carteret County**
31 **Manager**

32
33 ***Motion was made by Commissioner Messer to adopt the Resolution Honoring Russell***
34 ***Overman, Retiring Carteret County Manager. The Board voted unanimously 5-0 in favor.***
35 ***Motion carried.***

36
37 Mayor Barber presented retiring Carteret County Manager Russell Overman with a plaque
38 honoring his service in local government for more than 34 years, serving Carteret County from
39 June 2011 through November 2016.

40

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1 Mr. Overman said it had been an honor and pleasure to serve the citizens of Emerald Isle and
2 all of Carteret County, and he was honored by the recognition.

3

4 **8. Public Comment**

5

6 **Brief Summary:** The public will have the opportunity to address the Board about any items of
7 concern not on the agenda.

8

9 There were no comments from the public.

10

11 **9. Consent Agenda**

12

13 a. Tax Releases

14 b. Minutes – August 9, 2016 Regular Meeting

15

16 ***Motion was made by Commissioner Normile to approve the items on the Consent Agenda.***

17 ***The Board voted unanimously 5-0 in favor. Motion carried.***

18

19 **Clerks Note:** A copy of Consent Agenda Items as noted above are all incorporated herein by reference and
20 hereby made a part of these minutes.

21

22 **10. Proposed Rezoning – Bogue Banks Water Corporation – from R-2 and RMF to**
23 **Government (701 Emerald Drive, 7000 Emerald Drive, 7412 Emerald Drive, 9204 Coast Guard**
24 **Road)**

25

26 a. Public Hearing

27 b. Consideration of Proposed Rezoning

28

29 Town Planner Josh Edmondson addressed the Board concerning this Agenda item. The
30 following excerpt from his memo to the Town Manager is provided for additional background:

31

32 Over the last several months, staff has been reviewing the zoning map to ensure that all Town owned properties are
33 or have been zoned to the Government district. Currently, all parcels which the Town owns are in this district with
34 the final handful being approved by the Commissioners in June 2016. The Government district is intended to allow
35 a variety of governmental and public uses. We typically include utilities in this category and have properties owned
36 by Bogue Banks Water Corporation (BBWC) and Carteret Craven EMC that have been zoned Government district. As
37 we did the exercise rezoning the remaining Town properties to Government to ensure map consistency as we work
38 through the Land Use Plan update, staff has found inconsistencies with the zoning classification for many of the
39 BBWC properties. Currently, eleven BBWC properties remain zoned either (R2) Single/Dual Family Residential or
40 (RMF) Residential Multi-Family. Staff has approached BBWC and the President of the Corporation as given the Town
41 the ok with rezoning these properties to Government. Again, this is being done for map consistency purposes.

42

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1 For this particular hearing staff is presenting four of these properties for rezoning. The remaining 7 properties will
 2 be presented to the Planning Board at their regularly scheduled October meeting for review and recommendation
 3 to the Commissioners. The following are the four properties being presented to the Commissioners for rezoning:
 4

ADDRESS	PIN	ZONING CLASS	USE	ACERAGE
701 Emerald Dr.	632410456539000	R2	Elevated Tank	.309
7000 Emerald Dr.	539420705564000	R2	Well Site	.602
7412 Emerald Dr.	539306392796000	R2	Office/Elevated Tank	1.338
9204 Coast Guard Rd.	538310261911000	RMF	Well Site	1.061

5
 6
 7 All adjacent parcels are zoned (R2) Single/Dual Family Residential, (RMF) Residential Multi-Family or (G)
 8 Government. The Government (G) zoning district allows the following uses:
 9

- 10 • assembly halls, coliseums, gymnasiums
- 11 • government uses
- 12 • open air games and sports, community centers (non-profit)
- 13 • health clinics and hospitals
- 14 • libraries, museums, art galleries
- 15 • parks
- 16 • Police and Fire stations
- 17 • utility lines, utility facilities
- 18 • Post Office
- 19 • public utility storage yards
- 20 • theaters
- 21 • yacht basins, boat ramps, etc.
- 22 • athletic facilities
- 23 • musical, dance, drama programs (indoor and outdoor)
- 24 • government buildings
- 25 • racquetball and tennis facilities
- 26 • day care centers
- 27 • fishing piers
- 28 • parking lots and garages
- 29 • printing and publishing establishments
- 30 • wireless telecommunication towers (special use only)
- 31 • accessory uses
- 32 • solar panels

33
 34 The use of each (4) four of these parcels is expected to remain as its current use. Any changes of use to any parcel
 35 would have to conform to the list of uses above. As currently used, these parcels are compatible with the
 36 surrounding uses of land. The Planning Board recommended approval of rezoning based on the following:
 37

- 38 • the proposed rezoning is consistent with the goals and policies of the Town’s Land Use Plan, and

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- 1 • while the parcels are smaller tracts, the current uses on the property are sited in a way that minimizes
2 impacts on adjacent property owners, and
- 3 • the uses of the parcels currently are compatible with neighboring properties, and
- 4 • the Town is seeking to standardize the zoning of all public utility properties to Government zoning district
5 to maintain consistency, and
- 6 • the proposed rezoning is consistent with the community's overall interest in maintaining a small-town
7 atmosphere.

8
9 Attached to this memorandum is an excerpt from the Town's Zoning Map which shows the zoning of adjacent and
10 nearby parcels and an adjacent neighbors list with the mailing affidavit. Also attached is an amended zoning map
11 for each property and the record of zoning amendment. I look forward to discussing this issue with the
12 Commissioners at is October meeting. Please let me know if you have any questions regarding the foregoing
13 information.

14
15 Town Planner Edmondson said they had been working to clean up the zoning map over the last
16 several months as they moved forward with the Land Use Plan update for consistency. Mr.
17 Edmondson spoke of the four properties owned by Bogue Banks Water Corporation that were
18 being considered tonight for rezoning from Single/Dual Family Residential (R2) and Residential
19 Multi-Family (RMF) to Government (G) as outlined above. Mr. Edmondson said that Bogue Banks
20 Water Corporation's Chairman agreed with the Town proceeding with the rezoning request.
21 Town Planner Edmondson pointed out the uses allowed in a governmental zoning. Mr.
22 Edmondson noted that the Planning Board had recommended approval at their September
23 meeting based on their findings as outlined in Town Planner Edmondson's memo above.

24
25 ***Motion was made by Commissioner Wright to open the Public Hearing. The Board voted***
26 ***unanimously 5-0 in favor. Motion carried.***

27
28 Lawrence Spell, President of Bogue Banks Water Corporation, stated that everyone owned those
29 sites because it was a non-profit public corporation and everyone who had a meter was part
30 owner of Bogue Banks Water Corporation. Mr. Spell said the rezoning was fine with them with
31 the only question being the name of the zoning as Governmental.

32
33 Town Manager Rush said that the intent behind the district was to accommodate governmental
34 uses, public utility type uses, and those sorts of uses and it was just the title given to that zone
35 when it was created.

36
37 ***Motion was made by Commissioner Wright to close the Public Hearing. The Board voted***
38 ***unanimously 5-0 in favor. Motion carried.***

39

1 ***Motion was made by Commissioner Normile to approve the rezoning of 701 Emerald Drive,***
2 ***7000 Emerald Drive, 7412 Emerald Drive, and 9204 Coast Guard Road from Residential-2 and***
3 ***Residential Multi-Family to Government. The Board voted unanimously 5-0 in favor. Motion***
4 ***carried.***

5
6 **11. Closing, Redesignation, and Improvement of Crew Drive Between Emerald Landing Drive**
7 **and Emerald Plantation Shopping Center**

- 8
9 a. **Public Hearing**
10 b. **Road Easement Agreement – To Replace Crew Drive Segment with New Public Road**
11 **Easement**
12 c. **Road Improvement / Maintenance – To Improve Former Crew Drive**
13 d. **Order Closing Crew Drive Between Emerald Landing Drive and Emerald Plantation**
14 **Shopping Center**

15
16 Town Manager Frank Rush addressed the Board concerning this Agenda item. The following
17 excerpt from his memo to the Board is provided for additional background:

18
19 The Board of Commissioners is scheduled to consider the formal legal closure and associated redesignation and
20 improvement of a segment of Crew Drive at the October 11 meeting. The Board will first conduct a public hearing,
21 and then consider 3 items that would change the legal status of this segment of Crew Drive, but that would retain
22 the public's right to use the roadway in perpetuity, with significant road improvements. It is important for the
23 Board and the public to note that the proposed actions are primarily a legal exercise, and from a practical
24 standpoint, the roadway would continue to function in the same historical manner. The proposed actions will NOT
25 prevent vehicles or pedestrians from using this road segment to access areas to the east and west of this segment
26 of Crew Drive.

27
28 An excerpt from the Town's 2015 Powell Bill (official street) map is attached, and identifies this segment of Crew
29 Drive, which is located between Emerald Landing Drive and Emerald Plantation Shopping Center. This segment of
30 Crew Drive is approximately 510 linear feet, includes a 60 ft. public right of way, and the existing asphalt road
31 surface is generally 20 - 23 feet wide, with grassy shoulders. This segment of Crew Drive provides ingress and
32 egress for the directly adjacent properties (4 parcels that total ~ 6 acres) that are the site of a proposed new
33 grocery store, and also serves as a secondary entrance and exit for Emerald Plantation Shopping Center to the
34 east. I have attached a letter from C4 Emerald Isle LLC, the developer of the proposed new grocery store, formally
35 communicating their request to close Crew Drive, and 4 exhibits illustrating the proposed site plan for the new
36 grocery store project, the properties to be acquired, the recombination plat showing the location of the
37 replacement street easement, and a survey of the existing Crew Drive street right of way.

38
39 As noted, if this segment of Crew Drive is legally closed, C4 Emerald Isle LLC is proposing to replace it with a new
40 public road easement that would be dedicated to the Town and that would allow vehicular and pedestrian use in
41 perpetuity. A copy of the road easement agreement is attached, and has been reviewed by Town Attorney Richard
42 Stanley to insure that the public will continue to have unrestricted, perpetual use of the roadway in the future. C4
43 Emerald Isle LLC proposes to construct the new roadway in essentially the same location. The proposed new
44 roadway will be approximately 28 feet wide with new asphalt surface, and will also include curb & gutter, a new 5
45 ft. wide sidewalk, and attractive landscaping. The new roadway will serve the new grocery store and will also
46 continue to provide a secondary entrance and exit for Emerald Plantation Shopping Center. The new roadway

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1 would be maintained by C4 Emerald Isle LLC (or their successors or assigns), as outlined in the attached road
2 improvement / maintenance agreement. The attached agreement formalizes C4 Emerald Isle LLC's commitments
3 to provide the new easement, finance and construct the road, and maintain the road in the future. This
4 agreement has also been reviewed by Town Attorney Richard Stanley to protect the Town's interests in the future.
5 The Board should note that the agreement requires the new roadway improvements to be constructed by
6 December 31, 2018, and requires C4 Emerald Isle LLC to post a letter of credit for the completion of the
7 improvements in the event they are not completed by January 1, 2019. The estimated cost of the improvements is
8 approximately \$114,000, and the agreement requires a letter of credit equal to 1.5 times this amount, or
9 approximately \$171,000. The Board should also note that the agreement includes a provision whereby the Town
10 has the authority to complete required maintenance of the roadway in the future if C4 Emerald Isle LLC (or their
11 successors or assigns) fails to do so, with reimbursement to the Town for such expense. Additionally, in order to
12 address concerns expressed by Emerald Plantation Shopping Center (see attached letter from Emerald Plantation
13 attorney), the agreement also now includes a provision whereby the Town may at any time in the future fully
14 assume maintenance responsibilities for the roadway. I envision that the Town would only exercise this option if
15 C4 Emerald Isle LLC (or their successors or assigns) fails to maintain the road adequately in the future.
16

17 C4 Emerald Isle LLC is requesting the legal closure of this segment of Crew Drive in order to achieve the desired site
18 layout for the proposed new grocery store. C4 Emerald Isle LLC seeks to locate the new grocery store in the same
19 general line with the adjacent Emerald Plantation Shopping Center building, and seeks to utilize a preferred
20 location for the wastewater treatment system to achieve a more desirable parking configuration and maintain a
21 wider, natural buffer on the north side of the new grocery store abutting the Emerald Landing subdivision. In
22 addition to the proposed site plan for the new grocery store, I have also attached an alternative site plan for the
23 new grocery store that maintains the current legal status of Crew Drive. As indicated on the alternative site plan,
24 the new grocery store would be required to meet a building setback from Crew Drive, which would require the
25 building to be located farther north and would decrease the width of the natural buffer. The alternative site plan
26 also includes a vehicle travel lane along the rear of the building, along with placement of the loading dock and
27 emergency generators along the rear. The drain field for the wastewater treatment system would also be adjusted
28 to meet the required setbacks from Crew Drive, and would result in a different configuration for the proposed
29 parking lots.
30

31 The formal street closing procedure is outlined in NC General Statutes 160A-299 (copy attached). As noted in NCGS
32 160A-299, when the Town legally closes a street, the land area occupied by the street is returned to the directly
33 adjacent property owners, with half of the street area returned to the property owners on one side, and the other
34 half returned to the property owners on the other side. In this case, the entire street area would become part of
35 new, recombined parcels, and a portion of this area will be the area of the replacement road easement. In order
36 to legally close a public street, the Board of Commissioners must make two determinations: 1) that the closing of
37 the street is not contrary to the public interest, and 2) that no individual owning property in the vicinity of the
38 street would be deprived of reasonable ingress and egress to his / her property. In this case, because C4 Emerald
39 Isle LLC is proposing a new public street easement and roadway improvements that will continue to function in the
40 historical manner, and perhaps better, the Board of Commissioners would appear to have the ability to make the
41 necessary determinations, if desired.
42

43 The Board should note that this is the same legal procedure utilized by the Town to close a portion of Woodpecker
44 Lane in October 2015. This same legal procedure was also utilized in November 2001 to close the Reed Drive
45 Extension (current location of Bell Cove Village Shopping Center and Bell Cove Village residential subdivision). In
46 January 2005, the Town utilized an alternate legal procedure to abandon any claims to a portion of the Yaupon
47 Drive street right of way between Reed Drive and NC 58 that had not been improved (current location of a single-
48 family residential unit). In all 3 previous cases, these actions were taken by the Town to promote and foster new,
49 quality development in Emerald Isle. In all 3 previous cases, the Town did not receive any replacement easements
50 or other public improvements in conjunction with the legal street closures.

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1
2 As you know, the Board of Commissioners approved a Resolution of Intent for these actions at the August 9
3 meeting, and originally scheduled a formal public hearing for September 13. After the August 9 meeting, Town
4 staff advertised the potential road closure and public hearing, posted multiple signs along this segment of Crew
5 Drive, and mailed notices to the immediately adjacent property owners to inform them about the potential road
6 closure and September 13 public hearing. At the September 13 meeting, an attorney representing Emerald
7 Plantation Shopping Center asserted that his client had not received sufficient notice of the potential road closure
8 and public hearing, and the Board of Commissioners prudently continued the public hearing until the October 11
9 meeting. Although likely not legally required, Town staff have re-advertised the potential road closure and public
10 hearing, have posted amended signs along this segment of Crew Drive, and have again mailed notices to the
11 immediately adjacent property owners (also including Food Lion, a tenant in the Emerald Plantation Shopping
12 Center). Documentation of these efforts is attached for the Board's review.
13

14 After the October 11 public hearing, the Board may formally consider the following items:

- 15
- 16 • a formal road easement agreement between the Town and C4 Emerald Isle LLC to delineate the
17 boundaries of the new easement and safeguard the public's right to use the roadway in
18 perpetuity,
19
- 20 • a formal road improvement / maintenance agreement between the Town and C4 Emerald Isle
21 LLC to establish C4's responsibilities for financing, constructing, and maintaining the roadway
22 improvements, and
23
- 24 • a formal Order Closing Crew Drive Between Emerald Landing Drive and Emerald Plantation
25 Shopping Center.
26

27 The Board should note that the formal Order is expressly contingent upon the associated road improvement /
28 maintenance agreement, and directs the Town Manager and Town Attorney to delay the recording of this Order
29 until all conditions outlined in the associated road improvement / maintenance agreement have been satisfied.
30

31 The Board of Commissioners will formally consider other actions associated with the proposed new grocery store
32 as separate agenda items at the October 11 meeting.
33

34 Richard Stanley and I look forward to discussing this issue with the Board at the October 11 meeting.
35

36 Town Manager Frank Rush noted that the following 3 items were all associated with the
37 proposed grocery store project with the first item for consideration being Item 11. Mr. Rush
38 noted that this item involved three different actions for the Board's consideration requested by
39 the developer of the proposed Egret Landing Shopping Center. Mr. Rush said the Board would
40 first consider a formal order to close a segment of Crew Drive located between Emerald
41 Landing / Mallard Drive and the Emerald Plantation Shopping Center. Mr. Rush said that prior
42 to considering the formal order and in conjunction with the developer's request there were two
43 other agreements – 1) a road easement agreement that would replace the public segment of
44 Crew Drive with a new public road easement, and 2) a new road improvement maintenance
45 agreement that would call for various improvements to the section of Crew Drive. Mr. Rush
46 said that essentially the developer, in order to achieve the desired site layout for the shopping
47 center, was proposing that the Town formally, legally closed the street but replace it with a

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1 replacement public street easement. Mr. Rush stressed that the road easement agreement and
2 the road improvement maintenance agreement would result in a new roadway that was
3 improved over the current roadway and would absolutely continue to allow the public to use
4 the roadway in the same manner it had historically. Mr. Rush explained the significant
5 improvements proposed as part of the development plan included in the agreements to be
6 considered by the Board. Mr. Rush noted that they had discussed this issue slightly over the
7 last couple of meetings and had initially scheduled these issues for the Board's September 13
8 meeting. Mr. Rush said that concerns were raised about the notice requirements and whether
9 or not all of those had been met and he assured the Board that they had repeated all of the
10 notice requirements – additional advertisements in the newspaper for four successive weeks,
11 mailed notices to all adjacent property owners, and posted signs on the street right-of-way;
12 essentially the ads had been in the newspaper for 8 weeks and the signs had been posted for 8
13 weeks.

14
15 Mr. Rush reviewed the nuts and bolts of the process with the Board for closing a public street
16 noting the process had been used as recently as the past October when they closed a section of
17 Woodpecker Lane. Mr. Rush said the Board had to conduct a public hearing and then consider
18 the request, making two determinations – 1) that the closing of the street is not contrary to the
19 public interest, and 2) that no individual owning property in the vicinity of the street would be
20 deprived of reasonable ingress and egress to their property. Mr. Rush stated that in this
21 particular case the developer was proposing the new professional public street easement, and
22 the improvements that the developer would go over in further detail. Mr. Rush said that the
23 developer would show options for the layout of the grocery store, the proposed layout as
24 included in Item 13, as well as an alternative site layout, along with his rationale as to why he
25 believed the actions by the Board would be beneficial for the community at large and for the
26 adjacent property owners. Mr. Rush outlined key provisions in the agreements as outlined in
27 his memo above including changes made following the September 13 meeting and as reviewed
28 by Town Attorney Richard Stanley in an attempt to address everyone's concerns.

29
30 Mr. Rush stated that it was not uncommon for a community or even Emerald Isle to consider
31 actions like this to promote new development, and the Town of Emerald Isle had done it in the
32 past noting for example the Bell Cove Village Shopping Center where there was a street closed
33 to accommodate that in 2001, last year Woodpecker Lane was closed to accommodate future
34 development being considered for that site. Mr. Rush also pointed out there had been grocery
35 store developers researching sites in Emerald Isle for the last couple of years. Mr. Rush
36 described the three locations that developers had considered and had discussion with town
37 staff– one being this Egret Landing site, the Waterboggan site, and also Lighthouse Mini-Golf,
38 and in both of those cases there were conversations about basically the same street closure
39 and re-designation and improvements that the Board was now considering. Additionally, the
40 third location was the Woodpecker Lane property and ultimately the Board decided to close
41 that road last October to prepare it for future commercial development. Mr. Rush said that his

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1 point was that what was being proposed and considered was not unusual or uncommon, and
2 ultimately the Board would need to consider whether the actions presented for their
3 consideration tonight resulted in a better plan for the grocery store project.
4

5 Austin Williams, C4 Emerald Isle LLC, provided PowerPoint slides of the proposed project and
6 site plan. Mr. Williams commented that they had rented the Town Board Meeting Room the
7 previous week which gave them an opportunity to hear concerns and clear up some
8 misinformation for citizens with facts. Mr. Williams noted that the folks most concerned about
9 projects like this were those who were closest to it and he said that their earliest and most
10 frequent conversations had been with those who literally backed up to the project.
11

12 Mr. Williams said that their first meeting onsite was to walk the property with a number of the
13 neighbors in Emerald Landing, as well as Town Manager Rush, Town Planner Edmondson, and
14 staff along with Sara Schweitzer with the Wildlife Resources Commission, Head of the Water
15 Bird Division. Mr. Williams said one of the very vocal immediate concerns was that there were
16 a lot of birds that roost in the area of the canal and that was a huge concern. In viewing those
17 areas, they came to the conclusion of where they needed to stop their limits in order to
18 preserve the roosting areas, and at the end of that process and relative to their current plan it
19 was noted by Mr. Williams that Sara Schweitzer was on board and agreed they had done what
20 they could. Mr. Williams said that with the canal not being jurisdictional waterways of the
21 federal government they actually had the right to remove all existing vegetation and plant new
22 landscaping that met current Town ordinances; their intent has been to not disturb those areas.
23

24 Mr. Williams pointed out the back of the grocery store and one side had no activity but for a
25 required egress as required by the Fire Marshall to meet safety code with an emergency door.
26 Mr. Williams said in that same regard they had enclosed all of the utility and service areas
27 which would include the emergency generators, trash compactor, truck loading areas and local
28 deliveries all occurring surrounded by a 35-foot screen concrete wall. Mr. Williams said that
29 the engineers designed that to limit sounds, lights, noise, disturbances that could disturb their
30 neighbors on the canal. Mr. Williams said they had also introduced pedestrian connectivity. In
31 addition, due to concerns of a safe area for children to wait for school buses with potential
32 increase of traffic, they added a concrete bus stop area with a bench as included on their plans
33 submitted for consideration. Mr. Williams spoke of the truck turn around area they created to
34 be sure they had an area for vehicles that needed to back in so they didn't intrude or cross over
35 onto private property. Mr. Williams also pointed out the property lines and noted that when
36 they created their plan they realized that they had more than met the requirements for green
37 space even if they didn't own the more than half of the canal so following sessions with the
38 property owners in Emerald Landing offered to essentially donate that to them or to the
39 conservation entity of their choice to make sure they knew they didn't control that area and
40 there would never be any disturbance on their side of the canal.
41

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1 Mr. Williams turned the discussion to Crew Drive, the section between Emerald Landing Drive
2 and Emerald Plantation Shopping Center, noting that as shown it was the exact same alignment
3 as it was currently but it was improved, widened, more pedestrian connectivity. Mr. Williams
4 said the single reason for their request for the "closure of Crew Drive" was that Crew Drive in its
5 current public condition, being 23-foot wide roadway, had a 60-foot right-of-way, with a 40-
6 foot building setback on either side of the right-of-way. Mr. Williams said that in order to live
7 true to their promises to the community to limit the impacts on the north side of the building
8 along the canal, containing the utility areas in front of the building, those promises would be
9 hard, if not impossible to keep if they had to push the building back 40 feet. Mr. Williams said
10 there was no financial benefit for them in owning the road; they didn't desire to pay taxes on it
11 but they would have to if it was private, they didn't desire to be the sole financier of any
12 improvements but would be if it was private, but it made the plan work and be significantly
13 better for the community.

14
15 Mr. Williams showed a contrasting site layout with Crew Drive being private versus not private
16 and noted the following statements if Crew Drive was privatized. First - Crew Drive would
17 remain continuously and permanently open to the public including all vehicles, golf carts,
18 pedestrians, and bicycles; second - Crew Drive would remain continuously and permanently
19 open for customers and commercial vehicles accessing Emerald Landing, Food Lion Shopping
20 Center, including during the construction period; their documents with the Town legally bound
21 them to provide Food Lion and their commercial vehicles continuous professional access even
22 during construction so there was no opportunity to be in default with their agreements with
23 the Town. Mr. Williams said the third statement was that the subject property was zoned
24 properly and legally to build a grocery store and they would build a 31,000 square foot grocery
25 store in 2017, as they were committed to move forward with or without the road closure, they
26 just strongly preferred and respectfully asked that the road be privatized so they could move
27 forward with the plan that was much better and more suitable in their opinion. Mr. Williams
28 noted that if privatized Crew Drive would be widened with curb and gutters, sidewalks, multi-
29 use pedestrian connections, new school bus stop at the cost of the developer. Mr. Williams
30 note that the south face of the planned grocery building would be located 40 feet closer to
31 Crew Drive, minimizing impacts to the canal buffer and water bird roosting areas, and Emerald
32 Landing residents on the north side if Crew Drive was privatized. Mr. Williams said the loading
33 equipment areas would be easily contained to the south side away from the canal and the
34 Emerald Landing residences in the privatization scenario. Mr. Williams stated that the
35 developer / owner would be permanently financially responsible for the maintenance of Crew
36 Drive and the Emerald Isle taxpayers would have no financial responsibility for the maintenance
37 of Crew Drive if privatized.

38
39 Mr. Williams showed in a slide how the property would need to be developed if Crew Drive was
40 not privatized and the changes that would need to be made to the store site layout different
41 from the preferred plan. Mr. Williams also presented the building elevations down to the exact

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1 spec of brick and felt confident they would provide a very nice project with or without the road
2 closure tonight. Mr. Williams said that if the Board did not vote to privatize the road they
3 would have something architecturally very similar but in regards to the functions around the
4 building, how it worked, and its impacts on the canal, they couldn't honor a number of those
5 components.

6

7 ***Motion was made by Commissioner Messer to open the Public Hearing. The Board voted***
8 ***unanimously 5-0 in favor. Motion carried.***

9

10 Nelson Harris, Attorney representing Emerald Plantation Partners, LLC, the owners of Emerald
11 Plantation Shopping Center, stated that Emerald Plantation Shopping Center fronted Emerald
12 Drive / NC 58 and had public vehicular access in two ways; from the east off Emerald Plantation
13 Drive, and from the west off Crew Drive. Mr. Harris said that the access off Emerald Plantation
14 Drive was through three curb cuts only two of which were usable for entry, the third was not
15 usable for entry because of the traffic island at Emerald Plantation Drive although it was usable
16 to exit. Mr. Harris said that access off Crew Drive led directly into the parking lot adjacent to
17 the west end of the shopping center and vehicles could not move from one end of the shopping
18 center on the back side of the shopping center as vehicular traffic behind the shopping center
19 was blocked by the canal. Mr. Harris stated that Food Lion was on the west side of the
20 shopping center and its trucks and vendor trucks accessed the loading dock on the back of the
21 shopping center by coming off of Crew Drive and making turn from the right lane onto the road
22 that led to a large parking area in the back of the shopping center. Mr. Harris said as a practical
23 matter Food Lion's trucks must access the loading dock from Crew Drive, the layout of Emerald
24 Plantation Drive into the shopping center was such that it was physically impossible for the
25 large trucks to make a turn off Emerald Plantation Drive and come into the back and service the
26 Food Lion loading dock. Mr. Harris noted that in season Food Lion had 4 large trucks and 3-5
27 vendor trucks accessing the loading dock every day and they could presume there would be a
28 similar number accessing Publix loading dock. Mr. Harris said if there was a delay in accessing
29 their loading dock with 2-3 trucks stacking up there was plenty of room behind the Food Lion
30 portion of their shopping center for them to park.

31

32 Mr. Harris stated that C4 Emerald Isle, the developer had contracted to purchase the 4 parcels
33 along Crew Drive, three owned by LRH Trust and one owned by the Lawrence Spell and Family.
34 Mr. Harris said that C4 did not own any of those properties and said undoubtedly its contract
35 with the Trust and Spell provided that it need not close if it did not get site plan approval for its
36 proposed development, it didn't secure Publix needs, and it did not get financing. Mr. Harris
37 said it also probably had a free look period such that it could walk away and forfeit or not
38 forfeit some of its earnest money. Mr. Harris said that even if not committed to close there
39 was no real remedy if it did not, and C4 appeared to be an LLC created just for this project and
40 its assets probably consisted of just the two contracts plus just enough money in its checking
41 account to keep it open. Mr. Harris stated that C4 had proposed that the Town close Crew

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1 Drive on condition that C4 give a road easement agreement to provide public access and a road
2 improvement maintenance agreement. Mr. Harris said that the road maintenance agreement
3 pre-supposed that the agreement was signed before the Town considered the ordinance before
4 the Board today, and he expected that had not been done. Mr. Harris noted that the 4
5 properties that C4 proposed to purchase could be developed for a Publix without closing Crew
6 Drive, and C4 had generated and shown two proposed site plans; one without Crew Drive being
7 closed and the other with Crew Drive being closed; both of the site plans showing a 31,568
8 square foot proposed grocery store. Mr. Harris said that the developer had said they didn't get
9 anything out of this except all of these good things they were going to give to the Town if the
10 Board agreed to close Crew Drive, and he said that was not in fact the case. Mr. Harris stated
11 that if you looked at the proposed plans, one closing Crew Drive and one not closing Crew
12 Drive, there was a huge difference being they got an outparcel if the Board permitted them to
13 close Crew Drive. Mr. Harris said that the primary thing going on with respect to the closure of
14 Crew Drive was that they got to avoid the setbacks, move more of their parking across the
15 street, and by juggling around the parking they got a future development outparcel which it
16 appeared from the letter sent by NCDOT that it was going to be used for something with a
17 drive-through. Mr. Harris said it looked like a fast food restaurant outparcel to him and if the
18 plan they gave to DOT said they were going to add a possible drive-through that suggested that
19 the plan for the outparcel was in fact a fast food restaurant, maybe a bank. Mr. Harris said that
20 the applicants were getting an expensive outparcel they could sell or develop. Mr. Harris said
21 again to be clear, that the Town would be closing Crew Drive so that the developer could get an
22 outparcel and his client was going to be stuck with dealing with the problems that arose.

23
24 Mr. Harris stated that a secondary difference between the two proposed site plans were the
25 trucks, and he presumed Publix would have 7-10 trucks per day just like Food Lion and they
26 would come in off Emerald Landing Drive, go down Crew Drive and turn into the turnaround
27 and back up to the one loading dock across the street. Mr. Harris said they would probably not
28 be able to do that if Crew Drive remained a public road, backing up tractor trailers across a
29 public road was generally a no-no but presuming it was not they would still be doing that 7-10
30 times per day. Mr. Harris said there may be space across from the turnaround for two trucks
31 but the angles were such that they could only fit one there; so when the third truck showed up
32 it would queue right there on Crew Drive on the right hand side, not being a problem in the
33 winter but in the summer it would be a problem with the traffic as there were already problems
34 at the entrance into the Emerald Plantation Shopping Center, and just what they needed were
35 tractor trailers sitting there while Food Lion's trucks were trying to maneuver around and get
36 into the parking lot behind the Food Lion. Mr. Harris said the Food Lion was blessed with plenty
37 of space for its trucks to stack up. Mr. Harris also noted that looking at the proposed site plan it
38 did not have internal connectivity of the parking lot on the south side and was something that
39 DOT noted in their letter as a problem that needed to be addressed; and he referred to the
40 developer's response that they had dealt with the issue in other places with no problem. Mr.
41 Harris said the problem was that if you went into the parking lot on the south side and looked

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1 for a parking space you had to come back out on Crew Drive if you couldn't find one so
2 effectively they were making Crew Drive part of their parking lot because people searching for
3 parking spaces were not going to have the internal connectivity that DOT thought was required.
4 Mr. Harris said they were functionally making that part of Crew Drive part of their parking lot.
5 Mr. Harris said they talked about the things they were giving up such as the piece of land on the
6 other side of the canal, they couldn't develop that and the worse thing would be they were
7 forced to maintain it, so giving it up was a blessing to them. Mr. Harris said they could get a
8 Publix and probably a loading dock around back if they moved it forward a little bit without
9 closing Crew Drive.

10
11 Mr. Harris stated with respect to legal issues that he didn't see anything in the statutes or case
12 law that permitted the Board to sign a conditional road closure order, and the way they
13 attempted to deal with it didn't seem appropriate. Mr. Harris said what they were intending to
14 do to deal with the fact that C4 didn't own the land and may never close on it was just to pass
15 the ordinance and then not record it. Mr. Harris said he would respectfully assert that the
16 statute as it was designed made it so that when the ordinance passed it passed and recording
17 was simply an administrative act. Mr. Harris felt you could put all the conditions you wanted on
18 the site plan approval based on statutes and case law but he didn't see anything that existed
19 regarding conditions on road closures. Mr. Harris said that the road maintenance agreement
20 presupposed that the agreement had been executed before they were considering the
21 ordinance had passed, and he felt that was not the one in front of them today.

22
23 Mr. Harris stated that it would be the shopping center's contention that irrespective of
24 anything else exchanging access over a public road for access over an easement particularly one
25 to be maintained by the competitor was not reasonable as a matter of law and that was their
26 position.

27
28 Mr. Harris said with respect to the road maintenance agreement itself there was a question,
29 even if C4 closed and built the road, whether they would maintain it in the future. Mr. Harris
30 said there were two questions, the will question and the other the ability question.

31
32 Mr. Harris provided a copy of his full notes to the Town Clerk for the record.

33
34 Jane Gordon, Attorney representing Food Lion stated that she had 3 representatives from Food
35 Lion in addition to herself, to talk about the negative impact that the road closure would have
36 on Food Lion, and she asked they be allowed to speak. Ms. Gordon noted that one of the
37 things the Board had to determine under the statute was whether anybody was denied
38 reasonable ingress and egress, and the representatives could testify as business people exactly
39 how the road closure would negatively impact Food Lion's ingress and egress and why it was
40 critical that Crew Drive remain a public road. Ms. Gordon said they wanted ample time and

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1 opportunity for the entities that were going to be negatively impacted by this proposed action
2 the opportunity to get their position on the record.

3
4 Ms. Gordon stated that she thought the Board could not meet the statutory standard for
5 closing the road as it was not in the public interest to close Crew Drive, it was only in the
6 interest of Publix and the developer. Ms. Gordon said it would deny reasonable ingress and
7 egress to Food Lion and other tenants of Emerald Plantation. Ms. Gordon noted that Food Lion
8 was prepared to compete with Publix or whatever competition may go there as that was the
9 way the market worked, so they were not asking that the Board not approve this so Publix
10 couldn't go in there but they were there to make sure it was a level playing field. Ms. Gordon
11 said when you close a public street so that the developer didn't have to meet the setbacks and
12 other requirements of the zoning ordinance that everybody else had to comply with; that didn't
13 create a level playing field and enabled Publix to put its store closer to Emerald Drive which
14 made it easier to see than it would be to see Food Lion, it was more than just about the birds.

15
16 Ms. Gordon felt that trying to fit the square peg into a round hole which was essentially what
17 they were trying to do with their proposed site plan was a violation of the zoning ordinance in
18 and of itself because they were allowing the developer to avoid the setbacks. Ms. Gordon said
19 she looked at the law to try to find similar situations where either Emerald Isle had done this
20 kind of thing or anybody else where there was a road closure pursuant to this statute and you
21 turned around and essentially made it a public road again. Ms. Gordon said what the Town was
22 doing was bargaining away the Town of Emerald Isle's responsibility and governmental function
23 to maintain Crew Drive, and she said that was unlawful as a matter of law. Ms. Gordon said
24 that Mr. Rush and the developers had stated that it was just a legal distinction, not a real
25 closure but she said you were either closing the road or you were not. Ms. Gordon said that if
26 you gave the road to the developer you gave them control over the road, even though they said
27 they would give an easement back, but felt by putting control of the road in the hand of the
28 developer and Publix felt there was no way that can't harm the tenants in the shopping center.
29 Ms. Gordon said that it was Publix and the developer that would control what was likely to be a
30 bottle-neck there.

31
32 Ms. Gordon said that the statute said you had to deed the property that was the road to the
33 adjacent landowners and under this proposed closing they were deeding it to the developer
34 which planned to close on both sides of Crew Drive but Emerald Plantation was an adjacent
35 landowner and she hadn't seen anything that indicated they had considered including them.
36 Ms. Gordon said the bottom line was that Food Lion had to use Crew Drive for its trucks to get
37 to the store, stressing that Crew Drive was the only public access in addition to being the only
38 practical access that Food Lion had for its trucks to make deliveries to the store. Ms. Gordon
39 said that Emerald Plantation Drive at the other end of the shopping center, in addition to being
40 completely unworkable for Food Lion's trucks to get in for deliveries, was a private road. Ms.
41 Gordon said if you closed Crew Drive you had stuck Food Lion with a situation where it had no

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1 public access to its store which she thought would be a violation of the statute also. Ms.
2 Gordon said that the grocery business was such that you had to have the trucks get in there in a
3 timely manner. Ms. Gordon said they couldn't tolerate any delays in delivery. Ms. Gordon said
4 she believed there were plenty of ways the proposed store could be configured to avoid
5 bumping up further north against the birds and closer to the canal, make a store that would
6 work for Publix, and meet the setbacks. Ms. Gordon said the zoning ordinance was there for a
7 reason, the setbacks were there for a reason, and to do what was essentially a slight of hand to
8 do away with those requirements for this developer created an un-level and unlawful playing
9 field. Ms. Gordon said she was prepared to recommend to her client if the Board approved the
10 road closure tonight that they appeal because she felt the Food Lion would be aggrieved as she
11 had articulated a number of bases and grounds for appeal and that they would be successful in
12 that appeal.

13
14 James Newcomb, Food Lion store manager, noted the area where the trucks proposed to back
15 up, and said during the summer they had 45-55 trucks a week to come into the back of their
16 shopping center, and with the extra traffic coming through he felt that would restrict customers
17 from getting to his store with their trucks trying to back in and would double the amount of
18 trucks coming in and out and there would be an obstruction there. Mr. Newcomb thanked
19 everyone for shopping Food Lion.

20
21 Ms. Gordon mentioned in regards to maintenance requirements that if they had a private entity
22 in charge of this road and the development didn't succeed then there was no incentive for that
23 developer to continue to maintain that road. Ms. Gordon said that put Food Lion at risk. Ms.
24 Gordon said if there was debris in the way then Publix would clear the debris so their trucks
25 could get in there but they would not necessarily be as quick to clear debris so customers and
26 trucks could get through to the Food Lion shopping center. Ms. Gordon noted in a snow event
27 there was nothing that prevented the plows from piling the snow up on the edge of Emerald
28 Plantation Shopping Center so that the Food Lion trucks couldn't get through; the Town on the
29 other hand had an affirmative obligation to keep a public road clear. Ms. Gordon noted the
30 provisions included about going in after 30 days' notice and taking the road back over, but
31 stated that one day of obstructed access would be harmful to Food Lion and she thought it
32 required them to deny this proposal because they couldn't meet the statutes.

33
34 Town Manager Frank Rush said there was a provision in the agreement in Board packets for
35 September 13, in the section that gave the Town the right to maintain the street if the owner of
36 the shopping center did not. Mr. Rush said initially there was a requirement for a 30-day notice
37 and that was changed to a 5-day notice so in that scenario if there was a problem with the
38 street the Town would give them 5 days to fix it, if they didn't fix it the Town would go in and fix
39 it and bill them for the expenses. Mr. Rush said there was a new provision that said at some
40 point in the future if the Town wanted to assume maintenance of the street permanently the

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1 Board could make that decision at any time but would just have to give 30 days' notice to the
2 owner of the shopping center before the Board would consider that provision.

3
4 Steve Wilson, Senior Real Estate representative for Food Lion, said his primary duty was site
5 selection priority for Food Lion stores as well as purchase and lease negotiations which included
6 cross access agreement negotiations. Mr. Wilson said two of the most important things when
7 they did site selection for a new Food Lion was actually access into the sites, not only for
8 customers but for truck deliveries. Mr. Wilson stated that the delivery to their store here in
9 Emerald Isle using Crew Drive was the lifeline to their store to service their customers and if
10 they had any obstruction, impediment or delay they could not get product to their customers
11 and serve them then that could potentially shut their store down. Mr. Wilson felt if the Town
12 privatized Crew Drive it would be impossible for them not to be obstructed, delayed or
13 impeded using that as their store delivery street. Mr. Wilson said he had been with Food Lion
14 for about 5 years, and doing retail site selection work for 25 years for big box retailers as well as
15 for Food Lion. Mr. Wilson noted as mentioned earlier about the rear of the Food Lion store
16 there was only one way in and one way out and that was to the left of their store in that they
17 didn't have a driveway completely behind the shopping center to egress the site. Mr. Wilson
18 said they had a good store here in Emerald Isle, a good location for Food Lion, but only access
19 deliveries from Crew Drive around the rear of the store again was the only way they could get
20 product to their store to serve their customers. Mr. Wilson said it was essential that deliveries
21 got to their store every day and any delay even for a day could cause them to potentially shut
22 their business down. Mr. Wilson stated that the road maintenance agreement allowed the
23 Town to take action on the road after 30 days and Food Lion could be out of business by then if
24 they had to wait that long. Mr. Wilson said they intended to stay strong in Emerald Isle but
25 were concerned if for whatever reason the project next door didn't succeed in the long run
26 there would be no vested interest in maintaining that road, in addition to relying on a private
27 party to preserve their access would place their store at great risk. Mr. Wilson said that they
28 dealt with engineers, architects, or construction people every week and it was not unusual or
29 unheard of in the grocery business to make your store fit the site you are looking at if you want
30 to do the project. Mr. Wilson noted they were in the grocery business and not the road
31 maintenance business and as far as he knew so was the proposed grocer, and maintaining the
32 road beyond where they needed to get their customers and trucks would not be a priority for
33 that proposed grocery store.

34
35 Layne Adams, Manager of Store Planning and Engineering for Food Lion, said he had been with
36 Food Lion for about 5 years and in the retail / design business for 20 years. Mr. Adams said that
37 a lot of points had been made about the essential nature of Crew Drive and he wanted to also
38 point out the fact that using the Emerald Plantation Shopping Center entrance was not only
39 tough or impossible for maneuverability by trucks but was also a safety concern. Mr. Adams
40 said if there was any inclination for a truck driver to want to take that alternate route it
41 presented a risk for customers at the shopping center as well as employees. Mr. Adams said as

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1 pointed out there were 45-55 trucks delivering each week relying on timing, ability to get in and
2 out quickly so Crew Drive was essential. Mr. Adams said that even a 5-day time to cure on a
3 road maintenance agreement would be devastating on their business and ability to serve their
4 customers. Mr. Adams said that with privatization of the road if there were any traffic conflicts
5 they felt they would be resolved in favor of Publix and not Food Lion. Mr. Adams said that Food
6 Lion dealt on a regular basis with adapting to certain site constraints and setbacks and you had
7 to make concessions in your store to make it fit and while it may not be ideal you could make
8 your store meet a configuration. Mr. Adams said Food Lion had taken many sites that hadn't
9 been their prototype configuration over the years. Mr. Adams reiterated the concerns of
10 relying on a private party to serve their access would be a great risk to their customers and
11 business.

12
13 Jane Gordon stated again that closing Crew Drive even though the Town had taken great pains
14 to say that they were not really closing Crew Drive would deny reasonable ingress and egress to
15 Food Lion and other tenants of Emerald Plantation Shopping Center and they would ask that
16 the Board deny the request to close the road.

17
18 Clint Routson, Attorney representing the owner of the property LRH Properties, and also an
19 Emerald Isle resident, stated that he had been involved with this property for over 25 years and
20 he understood the concerns people had about the new development. Mr. Routson said they all
21 had concerns whenever something new came along and they weren't certain what was going to
22 happen. Mr. Routson said he also believed that once you looked at the benefits the new
23 development would provide to the community and the citizens that it was truly a win-win
24 situation. Mr. Routson said with respect to Food Lion's concern about access, they were valid
25 concerns, but there was an easement just like all their customers access the property through a
26 private easement to get to the shopping center itself so would their trucks, it wouldn't stop
27 their access it would just be under a different name, public versus private. Mr. Routson said
28 the access easement was established to give the Town the benefit to take care of any problems
29 that arose and just because a road was public did not mean that the Town would run out when
30 they had a pothole and fix it, however, the way this development was set up Publix had an
31 incentive to make certain the road was always in good condition because that was where their
32 trucks would travel also. Mr. Routson said they didn't stop at the beginning but went all the
33 way to the end. Mr. Routson said the developer was about to spend \$114,000 improving Crew
34 Drive and last year based on the CAMA Land Use Plan Update information the Town only
35 received about \$150,000 from the Powell Bill funds to maintain 45 miles of public roads so the
36 amount of money being spent on Crew Drive was considerable when you looked at the amount
37 of money the Town had to maintain roads, and which we all paid for out of those funds. Mr.
38 Routson stated that although the access may be termed private the fact of the matter was it
39 would be a public traffic pattern as would the property in front of the Food Lion, although that
40 was private that roadway was used as most of us have by driving through both ways. Mr.
41 Routson said even though that was privately owned we had not had any problem with making

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1 that access and neither would Food Lion. Mr. Routson said that Food Lion's only issue was with
2 the one turn there at the end where the current design was for the truck bay for the new store.

3
4 Mr. Routson noted some of the other benefits they should look at was that there would be a
5 benefit to the developer but the main benefit was to the community behind when they moved
6 the store forward which allowed the large strip of property to be maintained as a natural
7 vegetation pushing the store about 150 feet from the northern edge of the canal and all of
8 those houses along the way had about a 25-foot setback already providing an additional buffer
9 for those residents. Mr. Routson said the developer had shifted the building over to the right
10 so that when you came into Emerald Landing you wouldn't be looking at a large structure but a
11 landscaped area. Mr. Routson said there were landscape buffers throughout the parking area
12 which helped with the aesthetic view. Mr. Routson said that the donation of property to the
13 Emerald Landing Property Owners Association was a very nice benefit and something you didn't
14 normally see but they were offering to give that to the community. Mr. Routson stated
15 although there had been a statement that nothing was being given regulations changed day to
16 day and what was permitted today may not be permitted tomorrow and so by allowing the
17 Association to take control of that property it was a tremendous benefit.

18
19 Mr. Routson noted that the roadway itself would be increased in width from its current 20-23
20 feet to 28 feet wide and that was a public benefit to everyone because it provided a wider path,
21 and in addition they were putting in a sidewalk and also providing a connection to the bike
22 path. Mr. Routson said this would continue to establish more connectivity between the whole
23 island and community. Mr. Routson said the landscaping in the parking area would be visually
24 appealing and would continue to make the aesthetics pleasing as you entered. Mr. Routson
25 said the building was over where the other buildings were similar to what you would hope. Mr.
26 Routson said that with respect to storm water right now the storm water from Crew Drive
27 probably drains right through the back northern left corner of the property into the canal. Mr.
28 Routson noted that the developer was proposing to install an underground storm water system
29 under the parking area at a tremendous cost that would handle the storm water. Mr. Routson
30 said the developer also became responsible for taking care of the storm water in the road, if it
31 were a public road they would not have to but by making it private they would be responsible
32 for it. Mr. Routson said the plan indicated a natural area of 26.7%; while the Town's ordinance
33 only required 15% so they were only 3% from doubling the Town requirement. Mr. Routson
34 said all of that was a benefit to citizens of Emerald Isle and the equipment for the development
35 had been placed to the side and shielded the Emerald Landing residents from the noise and the
36 rest of the shopping center. Mr. Routson noted that the light poles in the parking lot would be
37 25 feet versus the standard taller light poles and that would help reduce light pollution that you
38 see in many places.

39
40 Mr. Routson said that this development would be a tremendous expense and that would boost
41 Emerald Isle's tax base and as that property was improved our tax values with the county would

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1 go up and that should help the Town tax-wise. Mr. Routson said the Town was very fortunate
2 to have the 2nd lowest tax rate of the beachfront communities in North Carolina and
3 developments like this helped by paying a large portion of the burden that would otherwise be
4 need to be covered if they didn't have improvements of this nature. Mr. Routson said that also
5 helped Carteret County tax rates also. Mr. Routson said this development had no additional
6 cost to the Town; garbage and road cost handled by the developer. Mr. Routson said that the
7 second largest income stream to the Town was from sales tax and this store would generate a
8 lot of sales and that sales tax flowed into the coffers of Emerald Isle and Carteret County which
9 would help reduce property taxes. Mr. Routson noted that this would also provide full-time
10 employment to some of their citizens and part-time employment for a lot of their citizens and
11 that was something they needed for the community to be vibrant. Mr. Routson said the Town
12 would also benefit by the cost of building permits and other fees to construct the building.
13

14 Mr. Routson said that the owner had received various inquiries over the years as far as
15 purchasing and selling their property to other developers and when LRH came along they
16 looked at them and realized they had the ability, the knowledge, and the funding to do a good
17 project. Mr. Routson noted that the cost for a project like this were exorbitant, and to make
18 the development as aesthetically pleasing and environmentally friendly required someone with
19 a deep pocket, and this developer had the ability to do the project and had indicated they
20 would. Mr. Routson said that in addition to paying taxes on the other property they would also
21 pay taxes on the road that everyone could drive on. Mr. Routson said with respect to public or
22 private that a lot of those attending lived in subdivisions that had private roads and they didn't
23 worry about having access to them because they knew they would; the easement agreement
24 was there and said if Food Lion and the owner of the shopping center were interested in
25 entering into a cross access agreement so that customers of both sides could go through he was
26 sure the developer would be interested in talking with them. Mr. Routson said this was no
27 different than any of the other stores in the Food Lion shopping center as they all had to access
28 the property through an unowned piece of property – that driveway in front of all the shopping
29 center. Mr. Routson said the fact that the main road coming in Emerald Plantation Drive was
30 private showed that was not a problem for that development. Mr. Routson understood that
31 they would like Crew Drive to remain public but what was best for the community in general
32 and not just Food Lion. Mr. Routson stated that Food Lion was a good citizen and had been
33 very good to Emerald Isle, no doubt about that, but they didn't get to say what happened to the
34 community as far as allowing others coming in, they had to have that ability, and this project
35 provided that with a good development, taxes incoming, improvements to the roads. Mr.
36 Routson said they felt this was a quality development and they supported it.
37

38 Mr. Routson also mentioned the issue of roundabouts as they had discussed with NCDOT, and
39 one of the proposed plans was to put a roundabout at the Emerald Landing/Mallard Drive
40 intersection and his thought as a citizen was this would be a good time to see what would
41 happen if they had a roundabout in Emerald Isle. Mr. Routson felt that in that location it would

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1 work good, NCDOT was pushing for a roundabout, and he felt all of that helped to have a better
2 community and they supported it.

3
4 John Slayton, NC representing LRH Properties one of the owners of the parcel said it was his
5 understanding that the property had been zoned commercial since at least 1971 as on the deed
6 books and they as the manager of LRH had received a lot of offers of interest in purchasing over
7 the years and they had just been waiting as they had other properties that adjoined or nearby
8 and basically wanted a first class development. Mr. Slayton said when Crosland approached
9 them they looked at their other projects, one in Cary and one in New Bern, and they thought
10 they proposed a very first class operation and it would be a credit to the island.

11
12 Art Schools, 106 Indigo Drive, a resident of Emerald Isle working with Crosland Southeast to
13 help bring a quality development to Emerald Isle. Mr. Schools said he was working on this
14 development because he thought it was in the best interest of the citizens and visitors to
15 Emerald Isle. Mr. Schools said some argued that the Town should not give away property, that
16 was fair enough, but this was not a giveaway as the Town got a forever easement to use a much
17 improved street as the developer was spending close to \$500,000 on infrastructure
18 improvements, paid all future maintenance on the street, would pay taxes both town and
19 county. Mr. Schools stated in his 23 years in Emerald Isle no other developer had ever offered
20 to pay for town infrastructure. Mr. Schools said that the developer had presented cause for
21 Crew Drive to be converted to private ownership with a permanent easement to the Town for
22 use by the public with considerable improvements to be done by the developer. Mr. Schools
23 said by doing this they could locate the loading dock, generators, and trash compactor away
24 from the adjoining property, and without this road conversion the developer would resubmit
25 plans to build the project with the road as is, the loading dock, generator and trash compactors
26 would be located on the side of the building next to the adjoining neighborhood. Mr. Schools
27 felt it would still be a quality project but not nearly as good as the current submission. Mr.
28 Schools said the property had been zoned commercial for decades and would be developed for
29 commercial use by someone; it was highly unlikely that another developer would be as
30 sensitive to community concerns as Crosland Southeast had been. Mr. Schools encouraged the
31 Board to approve the road conversion and the rest of the approvals necessary to bring quality
32 development to Emerald Isle.

33
34 Jim Askins, 8808 Soundview Court, said he was speaking as a citizen who lived in Emerald
35 Landing. Mr. Askins said they had just moved here in July and they were really concerned
36 about the zoning and why it was zoned commercial so close to an established residential area.
37 Mr. Askins said he was not only worried about the Publix site but also about future
38 development issue and everything west of Crew Drive. Mr. Askins said they were opposed to
39 the closing of Crew Drive and thought it set a precedent for the rest of Crew Drive and the
40 future expansion of other stores. Mr. Askins said they would be in a little section where you

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1 would go from NC 58 right into Emerald Landing and so urged the Board to vote no on the
2 privatization of Crew Drive.

3
4 Bobby Raines, Sound of the Sea, said he had been coming here since some of those attending
5 were small children, and had developed residential but never commercial but it was a perfect
6 example of the commercial tail wagging the residential dog. Mr. Raines said he was not
7 opposed to development what he was opposed to was the negative impact on safety. Mr.
8 Raines said he could die at Rucker John's and Monday could come get him before the rescue
9 squad and that there were problems. Mr. Raines said that control should be in the hands of the
10 city council not a developer and the Board had a chance to do the right thing and not give away
11 what the citizens had paid for and owned. Mr. Raines said the Board was responsible for
12 looking after everybody not just commercial, he felt it would create more problems than it
13 would solve. Mr. Raines said the people who spoke positive had \$100 bills floating around in
14 their heads thinking of all the positive things in their pockets which was fine, he was not
15 opposed to growth but he was opposed to negative safety issues and asked the Board to please
16 not give away the street, to keep control. Mr. Raines felt the developer could do everything
17 they planned and needed to do without owning the street. Mr. Raines asked if they had talked
18 with the rescue or police department, he felt they weren't happy losing control of that street.
19 Mr. Raines noted that he had also served on a city council and the Board had a job to do and
20 either way someone would not be happy but they should be representing a majority, noting the
21 subdivision in two areas that weren't happy about this either but thought it was not a positive
22 impact on the residential community, helpful possibly, but the negatives went beyond the
23 return. Mr. Raines mentioned the comments about all the money it would generate but that
24 was a skeptical thing, not in the bank, and he didn't think the Board should give away control of
25 a primary street, primary access, primary safety area. Mr. Raines said then the Town was in
26 control and didn't need to spend 30 days trying to get control back. Mr. Raines said in
27 subdivisions he had developed the first thing he did was look to see if there were easements
28 and never bought a piece of property with easements unless they were utility easements.

29
30 Charles Pake, 8901 Dune Ridge Court, said that the project was completely different from
31 anything that they talked about in Emerald Isle for the next 20 years, this was just a huge box
32 store and never mentioned in the meeting where everyone was putting blue dots on what they
33 were for in this town. Mr. Pake stated that he didn't agree with giving the road away. Mr. Pake
34 said he lived in Emerald Landing and the developer said he came and talked to everybody in
35 Emerald Landing. Mr. Pake said he talked to three guys that walked around and looked at it but
36 he never came to everybody in the subdivision to see what they thought. Mr. Pake said they
37 said they thought they should take it because if they didn't it would be the other way, which he
38 felt were strong arm tactics. Mr. Pake said his wife was on the homeowner's association but
39 she was never contacted. Mr. Pake felt the people who lived on the back of the canal, there
40 was one lady who the developer never contacted. Mr. Pake noted as the lawyer said there was
41 money involved, that corner lot was a huge advantage to them by getting the street. Mr. Pake

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1 said if the Town negotiated right they should trade the street for the corner lot and there was
2 your new dog park. He felt giving away that much commercial property was crazy as everyone
3 would want the same thing and it would negatively impact their subdivision because the next
4 thing would be someone doing it on the other side and then they had Myrtle Beach from one
5 end to the other. Mr. Pake said when he moved to Emerald Landing he never saw a
6 development this big coming there and commented about their pumping sewage to their place
7 across the street but there was no other place in town where sewage was pumped under a
8 town street.

9
10 Town Manager Rush said the Town was not involved in permitting wastewater treatment
11 systems as that was a county and state function.

12
13 Mr. Pake said if they were that concerned with how much forestry was in the back of the
14 building they could just narrow it out and it could still be done. Mr. Pake said they had a huge
15 number of small children going to Food Lion or the movies and they would all be going there
16 with trucks backing up to unload and he felt that was not a good idea. Mr. Pake said he loved
17 Art Schools and would when this was over but he didn't think this would have gotten anywhere
18 this far if not for Art and that it was brilliant that the developer had hired him.

19
20 Commissioner Messer took exception to that statement and said that was incorrect and
21 because Art Schools was a former Mayor had nothing to do with it.

22
23 Mr. Pake felt just because the Town had done a lot of work on a bad idea he didn't think it
24 should be passed.

25
26 Judy Whatley, 1210 Timber Trail, said that she and her husband had visited the new Publix in
27 New Bern and left very excited about the possibility of Publix in Emerald Isle. Ms. Whatley said
28 it was the perfect grocery store for a beach community. Ms. Whatley said the bakery had
29 beautiful breads, gorgeous desserts, fresh seafood with an amazing variety, lots of delicious
30 looking ready-made items, and the friendliest staff ever. Ms. Whatley felt Publix gave the
31 flexibility to do as much or as little cooking as you want. She felt the store would draw locals
32 from Cedar Point, Cape Carteret, and even Swansboro during the off-season in addition to their
33 visitors in the summer. Ms. Whatley said they welcomed the variety two grocery stores would
34 provide and they could count on her family's support for this project.

35
36 Steve Hamlin, 8809 Edgewater Court, pointed out on the map on screen the location of his
37 home located on the canal and said he was one of the few property owners that neighbored
38 the property and as such he felt he had as much to lose as anyone in this debate and nothing to
39 gain. Mr. Hamlin said he lived here with his wife and two boys and the boys every day used
40 that area for their bus stop and at least once a week traversed Crew Drive on their way to the
41 Plantation to see movies or other stores. Mr. Hamlin had no bones to pick with Food Lion and

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1 in a perfect world he wished there was no development going there at all and those woods
2 would stay natural forever but they were beyond that point and were simply here to decide
3 does Crew Drive get transferred to the developer. Mr. Hamlin said he was in favor of that
4 because everything the developer had shown and communicated to him from early on in the
5 process they were trying to do the right thing by the neighborhood and the community in
6 general. Mr. Hamlin noted everything from the sidewalk, the bus stop area, and especially
7 important the buffer to the canal, adding if anyone had not seen the egrets roosting at night he
8 encouraged them to do so as there were hundreds roosting there at night. Mr. Hamlin
9 applauded their efforts to maintain a maximum buffer to those egrets and not disturb them,
10 and he applauded their efforts not to put any of the industrial functions on the back of the
11 store; no loading docks, generators, trash compactors, which they would be forced to do if they
12 were not granted the transfer of Crew Drive. Mr. Hamlin said that he had heard a lot of
13 arguments about the safety and the traffic along Crew Drive his point would simply be that they
14 were under contract to purchase and develop the property, whether they got Crew Drive
15 transferred or not the same traffic and safety patterns would be there and their plan was to
16 widen it from 22 feet to 28 feet so in his mind it would get better not worse by transferring
17 Crew Drive.

18
19 Jim Hackett, 6410 Ocean Drive, stated to Mr. Newcomb, Food Lion store manager that his
20 comments had nothing to do with the wonderful job he and his employees did at the store, but
21 he was in favor of all 3 items (11, 12, and 13) but wanted to make a point that years ago when
22 he went to Atlantic Beach he saw the Food Lion gone and all of a sudden it was over on the
23 other side and he realized that Food Lion had a great idea and had realized that their store was
24 not big enough to service Atlantic Beach so they went to the other side and it seemed like the
25 store was twice as big and for 5-10 years the store was vacant but look at it now. Mr. Hackett
26 felt Food Lion dropped the ball in Emerald Isle because he hardly went there in the summer on
27 Friday, Saturday, Sunday, and Monday, having to go over to Lowe's off the island and soon he
28 might have to go to Walmart in Swansboro because it was too small of a store. Mr. Hackett
29 said they don't have the products, using an example of trying to buy a gallon of organic milk for
30 his grandson and couldn't get it at Food Lion and had to go across the bridge because Food Lion
31 just did not have the space. Mr. Hackett felt the Town had grown, tourists came in the
32 summertime and if they went to Food Lion it was a mess trying to park, lines to the back of the
33 store, not against Food Lion but it was just too small. Mr. Hackett said the Publix stores had a
34 lot more things to offer and maybe when Food Lion looked at that store they could alter what
35 they sell and they could both get along and service the needs of all the residents and thousands
36 of visitors who came and generated jobs and income for people who lived here. Mr. Hackett
37 said there was a constant battle between the folks who lived here and the tourists who came
38 and provided the income and it was a very delicate balancing act and he thought this Town
39 Council would make the right decision, and he thought the right decision was they should take
40 the risk and go with these plans.

41

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1 Steve Hagerty, 8902 Sound View Court, said he had been a full-time resident in Emerald Isle for
2 23 years mentioned when they saw the surveying going on and had all gotten involved to see
3 what was going on and had sent out a message to everyone from our Emerald Landing HOA for
4 whoever wanted to show up that was where they would be so he and two other folks from
5 HOA actually walked the road with the developer along with a representative from NC Wildlife
6 Resources who was there to talk about wildlife issues. Mr. Hagerty referenced Mr. Pake, a
7 former resident, earlier asking for a show of hands for those for the development, and Mr.
8 Hamlin said he was not for the development, it was too big and not what they wanted as far its
9 location, but this was they had and this was what this competition and market side of
10 capitalization was about and the lawyers would come up and say Food Lion was fighting for
11 their very survival. Mr. Hagerty said this was about the road closure and it didn't matter if you
12 raised your hand if you were for or against the development, this was about closing Crew Drive
13 and was it the right thing to do. Mr. Hagerty said if you looked at the decision matrix that C4
14 representative, Mr. Williams provided – item 4 said if you give them the road they would build
15 it and if you didn't give them the road they were going to build it. Mr. Hagerty asked what was
16 in the Town of Emerald Isle's best interest – what did you want - the good plan which looked
17 good or the other plan which didn't look so good. Mr. Hagerty said that was the question
18 tonight – if they give them the road you got a good plan and if not you got a bad plan. Mr.
19 Hagerty said whether or not it affected Food Lion, and he loved Food Lion, or not, no one was
20 closing the road, the road would be open. Mr. Hagerty said he had asked Mr. Williams during
21 C4's informational meeting whether his client was going to back out if they didn't close Crew
22 Drive, and he stated no. Mr. Hagerty felt that some people in the room might believe that if
23 they didn't give the developer the road they were not going to build the project, and according
24 to the developer they were going to build anyway and he would like them to build something
25 nice in Emerald Isle that they can all use properly. Mr. Hagerty said the grocery stores could
26 compete with each other and Food Lion could step up and they would have two nice grocery
27 stores but either way regardless of who was successful and who was not they would have a nice
28 environment versus something not as nice as their primary vision with Crew Drive in their
29 possession.

30
31 Tony Martignetti, 10540 Wyndtree Drive, stated that he respected Mr. Hagerty who just spoke
32 but didn't agree that this was a done deal. Mr. Martignetti said there was a boycott, they could
33 make it difficult for Publix, and it did not need to be a done deal. Mr. Martignetti said there
34 were alternatives and this project did not have to be completed and they could make it difficult
35 for Publix so that they on their own decided that this is not the right place for them to be and
36 one way to do that was to not be conceding everything they were asking for in terms of large
37 signage and privatization of Crew Drive. Mr. Martignetti noted that Mr. Hagerty said the
38 developers said they would do the project anyway, of course the developer would say that, that
39 was their hold card, they wouldn't reveal that they won't do the project under certain
40 circumstances. Mr. Martignetti said that was a private matter between the developer and their
41 client, they would hold that to their vest. Mr. Martignetti said there were a lot of people who

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1 didn't like this and were just accepting it because it was the best thing that came along but it
2 didn't have to be that way. Mr. Martignetti said for 20 years they had been driving 3 miles off
3 island to get everything they need between Food Lion and Lowes and that had not been a
4 major inconvenience and wouldn't become an any greater convenience if a Publix was there,
5 they could continue to use Food Lion and Lowes just the way they had for 20 years, and it
6 hasn't hurt them. Mr. Martignetti said the negative was considerable when they talk about
7 their clients in Emerald Plantation Shopping Center – those were the coffee shop, the nail salon,
8 the shoe store, the hoodie and t-shirt store, the restaurants; all small independent businesses
9 and Food Lion was an anchor for them and the likelihood of Food Lion surviving alongside a
10 Publix was quite small. Mr. Martignetti said if Food Lion were to go all the independent locally
11 owned businesses would go too because Food Lion was the anchor.

12
13 Pete Carey, 109 Coquina, said he had vacationed here since 1974 and lived here for 18 years,
14 and he had a question as to whether a third option might be to give them a variance for their
15 setback.

16
17 Town Manager Rush said that a variance was judged by the Board of Adjustment a separate
18 board appointed by the Board of Commissioners, and an applicant could request a variance and
19 there were certain legal standards that had to be met for the Board of Adjustment to grant a
20 variance and he wasn't sure if they could meet the legal standards but ultimately the Board of
21 Adjustment would have to make that decision. Mr. Carey thought the Town granted a lot of
22 variances in Emerald Isle to which Mr. Rush responded no, that actually the Board of
23 Adjustment had not met in more than 5 years so variances being granted were rare, they were
24 certainly granted at times but there were legal standards to be met and the developer and any
25 property owner could request a variance.

26
27 Mr. Carey said that was an option then that the developer could apply for a variance of that
28 setback to be able to build that store right on the road where they had it and also offer in good
29 grace to keep the road bigger and do all the improvements they said they would do but he was
30 concerned about the two outparcels and that they now had the privilege to develop those later.

31
32 Town Manager Rush said it was an option but there were legal requirements that had to be met
33 and it was certainly not a done deal and was very tough to secure a variance.

34
35 Mark Reese, 204 Holly Court, asked about the one area where trucks can turn around and you
36 have 55 trucks going to Food Lion, and the other stores would have 55 trucks as well, so you
37 could have 200 trucks going in and out of there over the course of a week, half of them will be
38 backing up and he felt there were a lot of safety problems there. He said if there were trucks
39 backing up they were going to run people over, they had in the past and it would happen again.
40 Mr. Reese said it was the Town's job to make sure they were all safe and there were people in
41 the summer who were not looking.

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1
2 Tammy Lyons, 436 Emerald Circle, a business owner at Emerald Plantation, said she was totally
3 opposed to this. She said she understood that they want to develop the area but felt the only
4 way they got two grocery stores was by giving up Crew Drive. Ms. Lyons said the developer
5 would build it anyway but would put the trash next to the neighborhoods, take out the bird
6 sanctuary, and do all these horrible things if you don't give us Crew Drive. Ms. Lyons said they
7 should not give them Crew Drive as it would shut off the temptation. Ms. Lyons felt the
8 overflow parking if there was any would go into Emerald Plantation and they already had
9 enough parking problems. Mr. Lyons said she was only allowed so many spaces for her
10 business and she thought if this was done Food Lion could potentially disappear and then she as
11 a small business would be left with nothing because they were an anchor store. She thought
12 they should put the shopping center further down the island where they needed something.
13

14 Joy Brownlow, 7506 Sound Drive, said her question was not about whether one had the right to
15 build a grocery store on their land but it was about fairness and historical precedent. Ms.
16 Brownlow said she was not sure we were turning over public land in order to meet a
17 developer's setback request and solve its negative externalities such as the home to wildlife
18 and increased traffic. Ms. Brownlow said historically other businesses and property owners had
19 solved their problems independently, built within the limits of their land without special
20 requests, and they had also been able to protect the wildlife that should be protected. Ms.
21 Brownlow wondered if compromises could be made by the developer to work within the land if
22 purchased without receiving the additional favors. Ms. Brownlow asked how the proposed
23 privatization of public land fair to the other local businesses and property owners if they don't
24 receive the same concessions that were being requested here.
25

26 ***Motion was made by Commissioner Messer to close the Public Hearing. The Board voted***
27 ***unanimously 5-0 in favor. Motion carried.***
28

29 Commissioner Messer asked Town Attorney Stanley if there was an appeal of the decision as
30 had been threatened who would they appeal to, and Town Attorney Stanley stated they would
31 have to file a lawsuit with the Superior Court.
32

33 Commissioner Normile commented that it was not a question of whether they were going to
34 build or not build but in theory it was commercial land destined for a commercial project, so
35 the biggest question he had tonight was the road scenario. Commissioner Normile appreciated
36 hearing everyone's concerns and comments and asked Town Attorney Stanley and Town
37 Manager Rush, of the concerns generated tonight in regards to the road if the road were
38 closed, had they missed absolutely anything in the agreement that failed to address the
39 concerns, whether it was the amount of days for road maintenance, and so on. Town Attorney
40 Stanley stated that if the Board voted tonight to adopt the order it was not effective until a
41 number of things occurred. Attorney Stanley stated that the road maintenance agreement and

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1 easement had to be signed, the plat had to be recorded, the letter of credit had to be put up; so
2 the order was not effective until there was assurance that everything was going to happen.
3 Town Manager Rush added that they certainly tried hard at the staff level to address whatever
4 concerns were presented and several provisions were included because of concerns expressed.
5 Mr. Rush felt they went above and beyond and reached out to see what other property owners'
6 concerns were and would always try to address concerns shared with them because they
7 wanted to come up with a good quality project, and be sure to mitigate impacts on adjacent
8 property owners. Commissioner Normile felt personally if the project was going to be done he
9 would prefer the building be south as depicted and not backed directly against those
10 properties.

11
12 Commissioner Dooley asked Mr. Williams, C4 Emerald Isle LLC, how many trucks they
13 anticipated coming in and out on a daily basis in peak season. Mr. Williams responded they
14 expected 1-2 tractor trailers. Commissioner Dooley also asked with the concerns proposed
15 tonight about safety with the trucks backing up whether they had addressed that issue with
16 anyone, not relying on just the truck driver to watch for pedestrians. Mr. Williams responded
17 that their grocery client was very used to working in beach environments and in beach
18 environments particularly during peak season they tried to do their deliveries during off peak
19 shopping hours, and they ran it like air traffic control, everything was just in time. Mr. Williams
20 said they didn't have a warehouse in the store which was why they could go to less trucks with
21 very high technology. Mr. Williams said they knew when the trucks were coming and they
22 don't show up at the same time.

23
24 ***Motion was made by Commissioner Messer to approve the Road Easement Agreement – To***
25 ***Replace Crew Drive Segment with New Public Road Easement. The Board voted unanimously***
26 ***5-0 in favor. Motion carried.***

27
28 ***Motion was made by Commissioner Normile to approve the Road Improvement /***
29 ***Maintenance Agreement – To Improve Former Crew Drive. The Board voted unanimously 5-0***
30 ***in favor. Motion carried.***

31
32 ***Motion was made by Commissioner Finch to approve Order Closing Crew Drive Between***
33 ***Emerald Landing Drive and Emerald Plantation Shopping Center, contingent upon satisfaction***
34 ***of all conditions outlined in the Road Improvement / Maintenance Agreement. The Board***
35 ***voted unanimously 5-0 in favor. Motion carried.***

36
37 **Clerks Note:** A copy of Road Easement Agreement, Road Improvement / Maintenance Agreement, Order
38 Closing Crew Drive as noted above are all incorporated herein by reference and hereby made a part of these
39 minutes.

40
41 Mayor Barber called for a 5-minute recess.
42

1
2 **12. Ordinance Amending Chapter 6 – Development Standards – of the Unified Development**
3 **Ordinance to Provide an Alternative Sign Area Formula for Individual Businesses with Large**
4 **Street Frontage (16-10-11/01)**

- 5
6 **a. Public Hearing**
7 **b. Consideration of Ordinance**
8

9 Town Planner Josh Edmondson addressed the Board concerning this Agenda item. The
10 following excerpt from his memo to the Town Manager is provided for additional background:

11
12 A request has been submitted by C4 Emerald Isle LLC, for an ordinance amendment for alternate sign area allowance.
13 The ordinance amendment has been attached for your review. Please note that the ordinance would only apply to
14 individual businesses that have at least 150 linear feet of street frontage either public or private. The business could
15 be located in its own building or could be located within a strip commercial center, but in either case the individual
16 business would need to have at least 150 linear feet of street frontage. The ordinance enables the use of this
17 alternative formula by qualifying businesses, with administrative approval by staff. This amendment would apply to
18 both new and existing businesses.
19

20 The ordinance establishes a formula whereby the maximum sign area is equal to the amount of linear feet of street
21 frontage times 0.50 (one-half). For example, an individual business with 160 ft. of street frontage could have a
22 maximum sign area of 80 square feet. The ordinance does allow a business that fronts on more than one street to
23 have a maximum of two signs, with no more than one sign per frontage and calculated according to this same
24 formula for each side of the business. Using the same above example, a business with 160 ft. of street frontage
25 could have a maximum sign area of 80 square feet. If it has frontage along another street using the example of 60
26 linear feet of frontage the total square feet of the other could be no more the 30 square feet.
27

28 Staff feels the typical storefront in Emerald Isle has about 50 linear feet of frontage and with the current allowance
29 of 32 square feet of signage, the ratio is about 0.64. Thus the attached amendment would actually allow less sign
30 area than would otherwise be allowed if a large building was divided into small storefronts. An example would be,
31 under current ordinance a 150 linear ft. building with 3 businesses that each have 50 linear ft. of frontage are allowed
32 a total of 96 sq. ft. of sign (3 times 32 sq. ft.), whereas the formula in the sign ordinance amendment would only
33 allow the one business to have 75 sq. ft. of sign.
34

35 By staff analysis using GIS, we believe the attached amendment would potentially be available to any new or existing
36 business with 150 linear feet or more of street frontage. The existing businesses that are believed to be eligible for
37 this alternative are:

- 38
39 - Pacific, with 150 linear feet on NC 58 and Reed Drive, and 75 linear feet on Loon (ordinance would allow
40 signs on only 2 of the 3 street frontages)
- 41 - CVS, with 150 linear feet on NC 58 and 80 linear feet on Mangrove
- 42 - Wings, with 160 linear feet on Bogue Inlet Drive and 50 linear feet on NC 58
- 43 - Bogue Inlet Motel, with 260 linear feet on Bogue Inlet Drive
- 44 - Oceanview Inn, with 260 linear feet on Fairview Drive and 35 feet on Bogue Inlet Drive

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- 1 - Islander Suites, with 160 linear feet on Islander Drive
- 2 - Bert's Surf Shop, with 160 linear feet on NC 58 and Crew Drive, and 60 linear feet on Islander Drive (would
3 allow sign on only 2 of the 3 street frontages)
- 4 - Food Lion, with 190 linear feet on NC 58

5
6 If this ordinance is applied to the proposed new grocery store, which has 230 linear feet of frontage along NC 58
7 and 170 linear feet of frontage on Emerald Landing Drive, it would be allowed on sign up to 115 sq. ft. on the NC
8 58 frontage and on sign up to 85 sq. ft. on the Emerald Landing frontage. The applicant has proposed signs with 75
9 sq. ft. on each street frontage.

10
11 The Planning Board recommend approval of the text amendment to the Commissioners as presented. I look
12 forward to discussing this with the Commissioners at their October 11, 2016 meeting.

13 Town Planner Josh Edmondson outlined the proposed sign ordinance amendment as detailed in
14 his memo as provided above. Mr. Edmondson noted that the ordinance amendment as
15 requested by the developer of the new grocery store would enable the proposed new grocery
16 store (230 linear feet by 170 linear feet) to utilize desired wall signs that were 75 sq. ft. in area.
17 Mr. Edmondson also listed existing businesses that would be eligible under the proposed
18 amendment.

19
20 ***Motion was made by Commissioner Messer to open the Public Hearing. The Board voted***
21 ***unanimously 5-0 in favor. Motion carried.***

22
23 Jane Gordon, Attorney representing Food Lion, asked if the amendment to the ordinance
24 passed whether it would permit Food Lion to have a bigger sign, and the reason for her
25 question was that Food Lion was in a shopping center with a number of stores and she was
26 unclear reading the proposed amendments that they be considered one building in terms of
27 frontage they would be assigned for purposes of the size of sign allowed. Ms. Gordon wanted
28 to be sure if Food Lion wanted to put a bigger sign there they would be permitted to do that
29 because again that went to the level playing field in terms of competition.

30
31 Town Planner Josh Edmondson responded that the proposed amendment would apply to Food
32 Lion. Mr. Edmondson clarified that even if there were multi-tenant buildings it would apply to
33 those with 150 linear feet or greater so in Food Lion's case even though they were part of the
34 shopping center there if they wished to put a larger sign they could take advantage of the
35 proposed formula.

36
37 Austin Williams, C4 Emerald Isle LLC, representing developer of Egret Landing Shopping Center,
38 stated their request was for a prototypical sign for their client which was the smallest of five of
39 the prototypical signs that their client typically used. Mr. Williams said there were a lot of
40 people who don't come here on a regular basis and didn't know where the retailers were. Mr.

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1 Williams felt given the investments that were made that it would be a shame to have literally a
2 lot of folks, particularly the older demographic, that may not be able to see the name of the
3 store driving by so they felt it was also a safety issue. Mr. Williams said they were happy that
4 Food Lion or any other retailers would have that right as well.

5
6 ***Motion was made by Commissioner Messer to close the Public Hearing. The Board voted***
7 ***unanimously 5-0 in favor. Motion carried.***

8
9 Town Manager Frank Rush noted that the image on the screen for the audience was a
10 rendering of the proposed grocery store signs under the current ordinance which allowed a
11 total of 32 square feet on one side and 16 square feet on the other side and that had been the
12 ordinance for many years. Mr. Rush pointed out the other rendering which showed the
13 proposed 75 sq. ft. signs requested by the developer of the grocery store, 0.50 square foot of
14 sign area per linear foot of frontage regardless of whether it was in a strip center or a stand-
15 alone building.

16
17 ***Motion was made by Commissioner Wright to approve the Ordinance Amending Chapter 6 –***
18 ***Development Standards – of the Unified Development Ordinance to provide an Alternative***
19 ***Sign Area Formula for Individual Businesses with Large Street Frontage. The Board voted***
20 ***unanimously 5-0 in favor. Motion carried.***

21
22 **Clerks Note: A copy of Ordinance 16-10-11/O1 as noted above is incorporated herein by reference and**
23 **hereby made a part of these minutes.**

24
25 **13. Proposed Egret Landing Shopping Center**

26
27 **a. Commercial Review**

28 **b. Proposed New Traffic Signal or New Roundabout – Emerald Drive / Mallard Drive**
29 **Intersection**

30
31 Town Planner Josh Edmondson addressed the Board concerning this Agenda item. The
32 following excerpt from his memo to the Town Manager is provided for additional background:

33
34 A request has been submitted by C4 Emerald Isle LLC, for the Commercial Review for the proposed Egret Landing
35 Shopping Center. The location of the proposed shopping center is on the northeast corner of Mallard Drive and
36 Emerald Drive. Currently, there are two parcels zoned Business (B) and the proposed Grocery Store is a permitted
37 use in the Business (B) Zoning District. The small out parcel is addressed as 8810 Emerald Drive and the Grocery
38 Store will have the address of 8808 Emerald Drive. This numbering follows the Town's addressing policy. The
39 applicant is proposing to construct a 31,568 square foot grocery store on this one parcel of land containing
40 approximately 5.2 acres. There is a smaller outparcel of land located on the corner of Mallard Drive and Emerald
41 Drive containing approximately .58 of an acre. The developer is gifting a .567 of an acre parcel to the Emerald
42 Landing Homeowners Association from about the middle of Archers Creek to the southern lot lines of those parcels
43 in Emerald Landing Subdivision.
44

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1 At the August 9, 2016 Commissioners meeting, a request to close 510 linear feet was present to the Board and a
2 public hearing scheduled for the September 13, 2016 Commissioners meeting and continued to the October 11,
3 2016 meeting. In accordance with General Statute 160A-299 the required public hearing for the requested street
4 closure was scheduled and will have taken place before Board of Commissioners consideration of the grocery store
5 project. The proposal submitted has been reviewed and approved by the Planning Board as if this section of Crew
6 Drive is closed. If the street closure is denied, major revisions would have to be submitted and reviewed by staff
7 and the Planning Board then brought back to the Commissioners.
8

9 The building will be accessed via an improved private road segment off of Emerald Landing Drive that will contain
10 one entrance and exit lane. A one lane entrance and exit lane will also be available on the western property
11 boundary abutting the Emerald Plantation Shopping Center. Because NC 58 is a controlled access through this point
12 of Emerald Isle no driveway will be allowed to directly access NC 58 at this site.
13

14 You will find several items attached to this memorandum. These include a copy of the site plan and supporting plans
15 for the project; proposed building elevations including colors; a lighting plan with details on the light to be installed;
16 and, details on the two proposed signs for the project. The following site plan sheets address the following:
17

- 18 Sheet C-1 Cover Sheet
- 19 Sheet C-2 Site Plan
- 20 Sheet C-3 Utility/Stormwater Plan
- 21 Sheet C-4 Grading and Drainage Plan
- 22 Sheet LA-1 Landscaping Plan
- 23 Sheet PS-1.0 Photometric Site Plan
- 24 Sheet PS-2.0 Fixture Cut Sheets
- 25 Sheet S-1 Topographic Survey

26
27 Sheet C-2, C-3, LA-1 and PS-1.0 of the plan set shows most of the required information relative to how the site will
28 be developed.
29

30 The Town's Unified Development Ordinance (UDO) requires that the proposed commercial development be
31 screened from the adjacent residential properties. The applicants will have a minimum 6-foot height natural
32 vegetative opaque screening to meet this requirement. In many cases it is 35 ft. to 60 ft. in width. This can be seen
33 on Sheet LA-1 of the landscaping plan. The proposed grocery store contains 31,568 square feet of gross floor area
34 and is required to have 1 space for each 300 square feet of gross retail area, plus 1 space for each employee. Please
35 note that the developer is providing 139 spaces including 6 handicap spaces which exceeds the Towns minimum
36 requirements. The UDO requires a natural area of 15% for all commercial development in the Business Zoning
37 District which may include the septic area. The applicants are proposing that a minimum 64,400 square feet of
38 natural area (26.7%) will be provided which will meet the requirement set forth in the UDO.
39

40 The applicants are proposing to install 28 monopole light fixtures in the parking lot areas. The industry standard
41 for the poles are 33' in height but the actual height poles proposed for this project are 25'. Note that all fixtures
42 are "full cutoff" design, meaning that there is no light emitted upward or horizontally. The bulbs are shielded from
43 horizontal vantage point. There are two wall mount fixtures proposed in the docking area and no other wall
44 mount fixtures are proposed. The applicants are proposing a trash compactor to be located in the loading dock
45 area for solid waste collection and disposal. Based on the location of this along with other mechanical features
46 and landscape plantings; the collection and disposal system will be adequately screened from public view.
47

48 The UDO (Section 6.1.3(4)(B)) requires that the exterior wall faces of commercial buildings that are viewable from a
49 street have a visual break every 20 feet. Please note on the elevation sheets the south and west wall faces are
50 visible from the street. The applicant is proposing numerous design features that more than meet the Town's

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1 visual break requirement. Also, note on the elevation sheets the exterior color schemes. I will provide samples of
2 these colors and materials at the meeting. Staff believes the colors depicted meet the neutral, earth tone
3 requirement set forth in Section 6.1.3 of the UDO.
4

5 Staff has reviewed the Traffic Impact Analysis (TIA) submitted as required by the project. Being we do not have an
6 engineer on staff and improvements are called for along the NCDOT NC 58, they assisted the Town in our review.
7 A copy of the TIA is included for your review. NCDOT has concluded that the TIA meets the standards of analysis
8 and agrees with the recommendation of either a traffic signal or round-a-bout at the Emerald and Mallard Drive
9 intersection. NCDOT has recommended that the installation of a round-a-bout would be more efficient than a
10 signalized intersection at this location. More comments and suggestions can be found on the attached letter from
11 NCDOT and the developers have honored many of these suggestions.
12

13 The Town's Technical Review Committee (TRC) reviewed the project at its meeting held on August 3, 2016.
14 Following that meeting, Town staff requested a few slight revisions to the plan and additional information. Since
15 our that TRC meeting an updated set of plans and response letter was received with these requested revisions by
16 staff and the NCDOT. The consultant's response letter has been included for your review. Staff and the Planning
17 Board had the chance to review these revisions and agree that staff and NCDOT concerns have been addressed.
18 The Town's consulting stormwater engineer has not reviewed these revisions but based on the consultant's
19 response to a few minor questions, staff expects stormwater approval soon. The applicant and their consulting
20 engineers are working with the State and County for onsite waste water disposal approval which is still in review at
21 this time. In addition, since the proposed development will disturb more than one (1) acre or land, then a State
22 Erosion and Sedimentation Control Permit will be required and to date, no permit has been received. This permit
23 will be received before any land disturbance occurs.
24

25 The Planning Board recommended approval of the commercial review to the Board of Commissioners with the
26 following conditions:
27

- 28 1. Approval from the Town's consulting engineer that the stormwater plan prepared for the project is
29 consistent with the Town's stormwater regulations.
- 30 2. Approval and recordation of survey combining parcels and gifting parcel to Emerald Landing Homeowners
31 Association
- 32 3. Approval and recordation of Crew Drive closure and recordation of the perpetual public easement
- 33 4. Copy of authorization to construct the onsite septic system from the Carteret County Health Department
- 34 5. Copy of permit from NCDEQ for installing new public water mains creating a looped system
- 35 6. Copy of the Erosion and Sedimentation Control Permit issued by the State

36
37 A condition the Planning Board did not discuss but the Commissioners may consider adding is a condition that the
38 developer is responsible for the improvements at the intersection of NC 58 and Mallard Drive by installation of a
39 traffic round-a-bout as recommended by NCDOT.
40

41 I look forward to discussing this with the Commissioners at their October 11, 2016 meeting.

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1 Town Planner Josh Edmondson provided an overview of the proposed Egret Landing Shopping
2 Center's site plan, building elevations, and lighting plan as outlined in detail in the above memo.
3 Town Planner Edmondson noted that staff had reviewed the traffic impact analysis with input
4 from NCDOT and they had concluded that the TIA met standards of analysis and agreed with
5 the recommendation of either a traffic signal or roundabout at the Emerald and Mallard Drive
6 intersection. Mr. Edmondson said that the developer would bear the burden of the cost of
7 either a traffic signal or roundabout depending upon the direction of the Board, and NCDOT
8 supported a roundabout at that location if that was the Board's choice. Mr. Edmondson noted
9 that the Planning Board recommended approval of the commercial site plan review with
10 several conditions as included in the memo above. Mr. Edmondson pointed out one condition
11 not discussed by the Planning Board that the Board may consider adding was that the
12 developer was responsible for the improvements at the intersection of NC 58 and Mallard Drive
13 by installation of a traffic roundabout as recommended by NCDOT.

14 ***Motion was made by Commissioner Wright to approve the site plan, building elevations, and***
15 ***lighting plan for the proposed Egret Landing Shopping Center, subject to the following***
16 ***conditions:***

- 17 - ***Approval of the storm water management plan by the Town's engineer***
- 18 - ***Approval and recordation of recombination survey and gift to Emerald Landing***
19 ***Homeowners Association***
- 20 - ***Approval and recordation of Crew Drive closure and new perpetual road easement***
- 21 - ***Approval of wastewater permit by Carteret County Health Department***
- 22 - ***Approval of new public water mains by NC Department of Environmental Quality***
- 23 - ***Approval of erosion and sedimentation control permit by NC Department of***
24 ***Environmental Quality***
- 25 - ***Commitment to finance either a traffic signal or roundabout as determined by the***
26 ***Board and NCDOT***

27 ***The Board voted unanimously 5-0 in favor. Motion carried.***

28 Town Manager Rush stated that the question for the Board as discussed by Town Planner
29 Edmondson was whether the Board would prefer a traffic signal at the location of Hwy 58 and
30 Emerald Landing/Mallard Drive or would they prefer a traffic roundabout. Mr. Rush said the
31 developer had indicated they were willing to finance and construct either option, NCDOT had
32 reviewed the Traffic Impact Analysis and had determined that either option would be effective
33 in addressing traffic concerns associated with the project. NCDOT had indicated a preference
34 for a roundabout at that location but ultimately would concur with the Board of Commissioners

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1 decision on the issue. Mr. Rush said if the Board was to prepared to vote that issue tonight
2 then he would suggest if they expressed a preference for one or the other that they would then
3 work with the developer and NCDOT to come back to the Board with a specific design for
4 approval at a later meeting.

5 Commissioner Messer stated that a couple of months ago they had NCDOT present doing three
6 roundabouts where the stoplights were, and there were people in favor and opposed.
7 Commissioner Messer felt this would be an excellent opportunity to try a roundabout so he
8 would support a roundabout.

9 ***Motion was made by Commissioner Finch to address the roundabout in lieu of traffic signals.***
10 ***The Board voted unanimously 5-0 in favor. Motion carried.***

11 **14. Special Use Permit Request – Wireless Telecommunications Tower (100 ft. monopole) –**
12 **9202 Coast Guard Road**

- 13
14 **a. Public Hearing**
15 **b. Consideration of Special Use Permit**

16
17 Town Planner Josh Edmondson addressed the Board concerning this Agenda item. The
18 following excerpt from his memo to the Town Manager is provided for additional background:

19
20 A request has been submitted by Carteret Craven Electric 100' above ground galvanized steel monopole within the
21 existing substation located at the above address. The proposed 100' pole will replace an existing 65' pole within the
22 substation. The current pole supports an antenna which allows the cooperative headquarters to communicate with
23 the electrical equipment operating within the substation. This communications path provides the electrical data
24 necessary for the cooperative to efficiently operate the electrical grid. Recent weather conditions and seasonal
25 patterns have cause this communication to intermittent or interrupted. In order to improve the quality of this
26 communication, the cooperative plans to install the 100' monopole and use it to both improve substation
27 communications and to support the smart grid initiatives of the cooperative. The smart grid initiative will improve
28 electrical infrastructure reliability and modernize the electrical grid by communicating with smart grid devices
29 deployed in Emerald Isle and the surround areas. The monopole will only be used to support the cooperative's utility
30 infrastructure not to provide private telecommunications service. Additional information is included on the smart
31 grid and its benefits in the application attached.

32
33 We considered permitting this project as an electrical utility rather than a wireless telecommunication support
34 structure (WTSS). However, after discussion between staff and the cooperative we determined that to be consistent
35 with the ordinance that this request should comply with the standards set forth in Chapter 4.2.5 Wireless
36 Communications Towers and Chapter 11 of the Unified Development Ordinance. This requires the issuance of a
37 special use permit by the Board of Commissioners after a public hearing on the matter. The following are
38 requirements outlined in the UDO of Chapter 4.2.5 that shall be submitted as part of the application which I will
39 discuss under each section.

40
41
42

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1 (2)

2 **General Requirements**

3 (A)

4 **Certification of Need**

5 Any applicant(s) requesting a new WTA or WTSS or any modification to an existing WTA or
6 WTSS shall be required to provide substantial evidence of need for such structures both in
7 terms of coverage and capacity. **On pages 2-3 of application**

8 (B)

9 **Co-location**

10 WTA placement on an existing structure (either AASS or WTSS) is required unless the
11 applicant(s) can clearly demonstrate with substantial, clear and convincing evidence that all
12 co-location opportunities have been exhausted. The Town will attempt to maintain by its own
13 efforts or through its agents an up-to-date inventory of buildings and structures suitable for
14 WTA installations. Maps are available showing these locations, as well as relative flood zones
15 and flight approach vectors to neighboring airfields. **On pages 3-4 of application**

16 (C)

17 **New Construction Provision for Co-location**

18 All new WTSS shall be constructed to permit a minimum of two (2) new WTA. The owner(s) of
19 the new WTSS shall submit a notarized letter to the Town declaring that these additional sites
20 shall be available to new tenants and shall be negotiated in good faith at reasonable terms to
21 other providers, and that if good faith negotiations fail, both parties may be subject to
22 commercial arbitration. They shall further state that as a condition of sale or transfer of the
23 proposed structure to any new owner(s), operator(s), or agent(s) that a statement of intent to
24 provide for shared use of tower shall be required of any new owner(s), operator(s), or agent(s)
25 and shall be delivered to the Town prior to closing. **On page 4 of application**

26 (D)

27 **Federal Certification**

28 Any new WTA or WTSS, or any modification to an existing structure that would effect an
29 increase in height shall require certification in writing by the Federal Aviation Administration
30 that such addition or modification constitutes "No Hazard" to air navigation both by its
31 physical structure and by its potential for radiofrequency interference with aviation
32 communication signals. The proposed structure shall also satisfy all TOWAIR requirements. If
33 operator(s) of the proposed structure can reasonably show that the Federal Aviation
34 Administration cannot produce such certification, then certification of "No Hazard" to air
35 navigation from a certified private agency shall suffice. **On page 4 of application and Exhibit B**

36 (E)

37 **Certification of Compliance with FCC's Implementation of National Environmental Policy Act**
38 **of 1969 (NEPA)**

39 The applicant(s) for any new WTA or WTSS or modification to any existing WTA or WTSS are
40 required to file with the FCC if the structure location is within any definition provided in
41 section 1.1307 of the NEPA. If the structure is located in any area defined by this Act, full
42 compliance with the Act's requirements for environmental assessments (EA) shall be required.
43 **On page 4 of application**

44 (F)

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1 **Radiofrequency**
2 Radiofrequency exposure levels shall not exceed the lesser of FCC and ANSI exposure
3 standards at any potential point of exposure to the general public. The owner(s) and
4 operator(s) of all WTA shall make all reasonable attempts by design, fencing, signage, and the
5 like to limit the public's exposure. An engineer prepared and sealed document attesting to the
6 fact that the calculated and proposed radiofrequency levels shall remain at the lesser of the
7 FCC and ANSI standards is required. This letter shall be required following completion of the
8 structure's construction, and before a certificate of occupancy is issued. **On page 4 of**
9 **application and Exhibit C**

10 (G)
11 **Structural Integrity**
12 An engineer's prepared and sealed complete site plan document that denotes compliance with
13 all technical specifications provided in federal, state, and Town Code, and a certification that
14 the proposed structure and all proposed and potential occupant structures are stable and
15 capable of withstanding a 50-year hurricane is required. **On page 4 of application and Exhibit**
16 **D**

17 (H)
18 **Insurance Requirements**
19 A minimum of one million dollars (\$1,000,000.00) general liability insurance with a letter from
20 the insurer attesting to this fact shall be required prior to receipt of a certificate of occupancy.
21 This same letter shall acknowledge that the insurer shall notify the Town thirty (30) days prior
22 to cancellation of this insurance. **See Exhibit E**

23 (3)
24 **New Construction or Modification of Wireless Telecommunication Support Structures (WTSS)**

25 (A)
26 **Statement of Financial Responsibility**
27 The owner(s), and their representative(s) shall be required to provide proof of financial
28 responsibility for all wireless telecommunication structures constructed or maintained within
29 the Town. This statement shall be completed upon initial application, and renewed each year.
30 If full financial responsibility cannot clearly be demonstrated to the full satisfaction of the
31 Town, a surety bond for one hundred ten (110) percent of the total cost of all structure(s)
32 removal and associated cleanup may be required by the Town. The owner(s) and their
33 representative(s) shall be fully responsible for all maintenance, and continued assurance that
34 the structure(s) continually remain in compliance with Town Code. **Provided on Page 5 of the**
35 **attached application.**

36 (B)
37 **Special Use Permit Required**
38 Construction of any new, or modification of any existing WTSS shall require a special use
39 permit. Exemptions to this requirement shall include, but shall not be limited to, co-location of
40 new WTA on an existing WTSS, reductions in height or size of a WTSS, or any issues of routine
41 maintenance to either the WTA or WTSS.

42 (C)
43 **Demonstration of Need**

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1 Applicants shall provide substantial evidence as to the current need for the proposed WTSS
2 both in terms of coverage area and capacity, and must demonstrate why all currently available
3 WTSS and AASS co-location opportunities can not provide adequate coverage and capacity.
4 **Provided on pages 1-3 of the application**

5 (D)

6 **Demonstration of Lack of Suitable Co-location Opportunities**

7 New WTSS shall be permitted only after clear demonstration that all potential opportunities
8 for co-location have been exhausted, and that no suitable existing support structures exist
9 within the coverage area that may be used, including all WTSS and AASS. The applicant(s) shall
10 identify and assess all potential opportunities for co-location within a 5,000-foot radius around
11 the proposed point of construction for the new WTSS. An engineer's prepared and sealed
12 letter shall be required, attesting to the fact that it is technically impossible to co-locate on any
13 existing WTSS and all other AASS within the search area, with a map showing all potential sites,
14 and stating why each is technically unfeasible. A notarized letter from the applicant(s) shall be
15 required listing all technically feasible sites, noting for each site that the applicant(s)
16 attempted, in good faith, to negotiate terms of co-location with the owner(s) of the potential
17 site, and negotiation has failed. **Provided on page 3 of the application**

18 (E)

19 **Requirement of Notification**

20 Applicants shall be required to notify, by certified mail with return receipt requested, all
21 property owners within five hundred (500) feet and all adjacent property owners of their
22 application for construction of a new, or modification of an existing WTSS. Exceptions to this
23 requirement shall include, but shall not be limited to, co-location of new WTA on an existing
24 WTSS, reductions in height or size of the WTSS, or any issues of routine maintenance to either
25 the WTA or WTSS. **See Exhibit F of application**

26 (F)

27 **Minimum Lot Area**

28 Parcels used for placement of new or modified WTSS shall be the greater of a minimum of ten
29 thousand (10,000) square feet, or shall be capable of meeting the minimum lot size necessary
30 to accommodate the minimum setback requirements defined below. **See Exhibit D of**
31 **application**

32 (G)

33 **Minimum Setback Requirements**

34 When the proposed structure is located adjacent to any church, school, public facility, or
35 residential zone, the center of the support structure shall be located a distance from the
36 nearest property line a minimum of one and one-quarter (1.25) times the greatest height of
37 the structure including any WTA or devices that would add to the total height of the structure.
38 The engineer's site plan for the tower shall indicate that the fall radius for the tower lies within
39 the tower site, and that the fall radius zone does not include any of the aforementioned
40 structures or zones. Otherwise, the center of structure shall be located as close as possible to
41 then the geometric center of the property, with minimum setbacks from all sides of fifty (50)
42 feet. **See Exhibit D of the application; Requirement met if the Bogue Banks Water property**
43 **located at 9204 Coast Guard Road is rezoned, map attached**

44

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1 (H)

2 **Support Structure Type**

3 Only camouflaged or "stealth" WTSS or monopole support structures shall be used. Structures
4 involving the use of guy wires for either internal or external bracing and support, or lattice
5 type structures, or any other type of support structure shall be prohibited. [On page 5 of](#)
6 [application](#)

7 (I)

8 **Permitted Height**

9 The WTSS may not exceed the minimum height necessary to accomplish the technical
10 objectives of the primary WTA and the required number of additional WTAs, and shall be the
11 lesser of the demonstrated minimum required for the technology employed plus the minimum
12 required for all proposed additional occupants. No WTSS shall be constructed that has any
13 component of its structure more than seventy-five (75) feet above the average adjacent tree
14 or building lines. No combination of WTA and WTSS may exceed one hundred (100) feet. An
15 engineer's sealed letter describing the proposed WTSSs adherence to this provision shall be
16 required. [On page 5 of application](#)

17 (J)

18 **Illumination**

19 No WTSS or WTA shall be illuminated unless specifically directed by the Federal Aviation
20 Administration or other federal agency. If required, lighting must be to the minimum specified
21 by a federal agency. Strobe lights shall be prohibited unless specifically required. When strobe
22 lights are required by the specifying agency, they shall be dual strobes, with white strobes for
23 daytime use, and red strobes for nighttime use. All lighting shall be directed toward the
24 structure, and upward and outward from any public areas. A copy of the Federal Aviation
25 Administration lighting requirements letter shall be submitted with the application. [On page 5](#)
26 [of application](#)

27 (K)

28 **Color**

29 Unless otherwise specified by a federal agency, all WTSS shall be painted a flat gray color. [See](#)
30 [attached Pole Visualization](#)

31 (L)

32 **Limited to Applicant**

33 Every special use permit for freestanding WTSS shall be limited to the applicant(s). Any
34 assignment or transfer of the special use permit or any of the rights under the permit may be
35 made only upon the approval of the Town.

36 (M)

37 **Complete Application**

38 The requirements for a complete application for a WTSS are provided in Appendix I. [See](#)
39 [application and attached Exhibits](#)

40

41 All proper public hearing notices have been advertised, posted and sent to adjacent property owners.

42 Special use permits must be considered using a quasi-judicial process. Under this process, the Board will consider

43 the evidence presented during the public hearing, and must base its decision to grant or deny the special use permit

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1 on the evidence presented during that hearing. Individuals interested in testifying must be sworn in by the Town
2 Clerk. The Board may approve the special use permit as presented, deny the special use permit, or approve the
3 special use permit with conditions. In approving a special use permit (with or without conditions), the Board must
4 determine that:

- 5
6 1. the proposed wireless telecommunication support structure will not materially endanger the public
7 health or safety if located where proposed and if developed according to the plan approved,
- 8
9 2. the proposed wireless telecommunication support structure meets all conditions and specifications
10 required by the Unified Development Ordinance (UDO) and other applicable Town, County, State,
11 and Federal laws and regulations,
- 12
13 3. the proposed wireless telecommunication support structure will not substantially injure the value
14 of abutting or adjoining property, or that the use is a public necessity,
- 15
16 4. the proposed wireless telecommunication support structure, if developed according to the plan
17 approved, will be in harmony with the area in which it is to be located and in general conformity
18 with the Town's land use plan.

19 The Board may impose any conditions on the approval of the special use permit intended to aid in making the 4
20 determinations above. Attached to this memorandum is the application and supporting documentation submitted
21 by Carteret Craven EMC, the adjacent property owner list and mailing affidavit and adjacent property zoning map.
22 I look forward to discussing this issue with the Commissioners at their October 11, 2016 meeting.
23

24 Town Attorney Richard Stanley outlined the procedures and requirements for a Special Use
25 Request for Wireless Telecommunications Tower (100 ft. monopole) on the Carteret Craven
26 Electric site located at 9202 Coast Guard Road.

27
28 All individuals wishing to testify were sworn in by the Town Clerk.

29
30 ***Motion was made by Commissioner to open the Public Hearing. The Board voted***
31 ***unanimously 5-0 in favor. Motion carried.***

32
33 Town Planner Josh Edmondson stated that he had been contacted by Carteret Craven Electric
34 Cooperative about the replacement of a 65 ft. wooden monopole with a 100 ft. above ground
35 galvanized steel monopole within the existing substation. Mr. Edmondson said the current pole
36 supported an antenna which allowed the Coop headquarters to communicate with the
37 electrical equipment operated in the substation. Mr. Edmondson stated that the
38 communication path provided electrical data necessary for the coop to efficiently operate the
39 electrical grid, noting they had recent issues causing communication problems. Mr.
40 Edmondson said the request for the 100 ft. monopole was to improve communication. Mr.
41 Edmondson said they also would improve the electrical infrastructure reliability and modernize

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1 the electric grid by communicating smart grid devices in Emerald Isle and surrounding areas.
2 Mr. Edmondson said he had initially issued Carteret Craven a building permit outright after
3 review thinking this was an electrical utility not a communication device; following a concern
4 from a citizen and after further discussion it was determined that this was a communication
5 tower, not in the typical sense, but still met our definition of a wireless telecommunications
6 support structure.

7
8 Town Planner Edmondson discussed the requirements in our ordinance that had been met as
9 outlined in detail in his above memo.

10
11 Town Planner Edmondson spoke to two of the 4 determinations that the Board must consider
12 with this request, and Jake Joplin, Carteret Craven Electric Cooperative, would speak to the
13 remaining two. Mr. Edmondson stated that:

- 14 - the use meets all conditions and specifications required by the UDO and other
- 15 applicable Town, County, State, and Federal laws and regulations,
- 16 - the location and character of the use if developed according to the plan as submitted
- 17 approved would be in harmony with the area in which it is to be located and in general
- 18 conformity with the Land Use Plan as updated and amended for the Town.

19
20 Town Planner Edmondson said this would be a major component of the electrical system in
21 Emerald Isle.

22
23 Commissioner Messer asked the height of the water tower. Town Manager Rush responded
24 that it was approximately 140 feet.

25
26 Jake Joplin, CCEC VP Engineering, stated that one of their goals with this request was to
27 improve communications with their substation by replacing the 65 ft. pole and replacing it with
28 a 100 ft. pole, and they used that to find out how their substation was doing, and were also
29 able to control the circuits with the communication. Mr. Joplin said they hoped to take the
30 structure and use it to continue in their smart grid initiative which was deploying devices out on
31 the system that allowed them to do what they can already do inside the substation but at their
32 house to see if they lost power, how things were performing. Mr. Joplin said they had always
33 relied on the members to call to let them know their power was out but this system detected
34 when a member lost power, and also let them know when power was restored. Mr. Joplin felt
35 there were a lot of major advantages to this system. Mr. Joplin mentioned issues with seasonal
36 members who were not at their homes and didn't realize when they lost power and weren't
37 there to call, and this system would allow CCEC to know when the power went out so they can
38 fix it. Mr. Joplin spoke of many other advantages with the smart grid devices, AMI meters,
39 allowing them to read important use data as well as enabling the members to view their use
40 data on the CCEC website to assist in conserving energy, promoting conservation. Mr. Joplin
41 said this also provided lightning protection in the station because it would be the tallest point in

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1 the substation and so lightning would strike that pole and go to ground instead of damaging the
2 rest of the equipment, and also provided security lighting that would be directed downward.
3 Mr. Joplin felt this would not have any adverse effects to public safety as it was located in the
4 middle of the lot and if it fell would fall on the property which was fenced and secured with no
5 access for anyone other than Cooperative employees. Mr. Joplin stated that the radio
6 frequencies were licensed with the FCC.

7
8 Town Attorney Stanley stated that this 100 ft. pole was being placed in an existing substation
9 and so it would not injure the value of abutting property, to which Mr. Joplin certified that was
10 the case and there were existing poles in the substation than ranged from 65 ft. to 85 ft., this
11 would be the tallest pole but it would be in the middle of four existing poles.

12
13 Mr. Joplin said they did review co-location at the water tower on Coast Guard Road and while it
14 did have significant height for the antenna, the reason they didn't prefer the location was due
15 to security as it had to be maintained per Federal and State guidelines, and the existing
16 substation was fenced with cameras, signage, lighting needed. In addition, Mr. Joplin said they
17 maintained the property with inspections on a monthly basis and they would like to continue to
18 inspect the antenna while they inspect the rest of the equipment, and they had the equipment
19 to work on the pole as needed, whereas on the water tower they had to rely on contractors.
20 Mr. Joplin said they hoped to maintain the equipment and be able to rely on the smart grid
21 system during storms like the recent Hurricane Matthew.

22
23 ***Motion was made by Commissioner Messer to close the Public Hearing. The Board voted***
24 ***unanimously 5-0 in favor. Motion carried.***

25
26 Commissioner Messer thanked Mr. Joplin for bringing the Board an easy request, and for
27 keeping their power on during the storm.

28
29 ***Motion was made by Commissioner Normile to approve the Special Use Permit request for***
30 ***Carteret Craven Electric Cooperative to erect a new 100 ft. monopole tower at 9202 Coast***
31 ***Guard Road based on the 4 determinations below:***

- 32 - ***that the proposed use will not materially endanger the public health and safety,***
33 - ***that the proposed use will meet all Federal, State, and local laws and regulations,***
34 - ***that the proposed use will not substantially injure the value of adjoining or abutting***
35 ***property, and***
36 - ***that the proposed use will be in harmony with the surrounding area and conform to***
37 ***the Town's Land Use Plan.***

38 ***The Board voted unanimously 5-0 in favor. Motion carried.***
39
40
41

1 **15. Coyote Management Program**

2
3 **a. Recommended Program**

4 **b. Ordinance Amending Chapter 8 – Animals – of the Code of Ordinances Regarding**
5 **Trapping of Coyotes (16-10-11/O2)**
6

7 Police Chief Jeff Waters addressed the Board concerning this Agenda item. The following
8 excerpt from the Town Managers memo to the Board is provided for additional background:

9
10 The Board of Commissioners is scheduled to consider a recommended program for coyote management at the
11 October 11 meeting, and also consider an ordinance amending Chapter 8 – Animals – of the Code of Ordinances
12 regarding the trapping of coyotes. Police Chief Jeff Waters will discuss the recommended program with the Board,
13 and Evin Stanford and Chris Kent, biologists with the NC Wildlife Resources Commission (NC WRC), will also attend
14 the meeting to offer their insights and answer any questions about coyotes.

15
16 As discussed with the Board in recent months, there are believed to be several coyotes active in Emerald Isle.
17 Sightings of coyotes have been reported near The Point, in Pointe Bogue, in Lands End, in Emerald Isle Woods Park,
18 in Osprey Ridge, near Emerald Landing, on Janell Lane, near the large vacant tract behind the Town government
19 complex, near Lee Avenue, on Canal Drive near Craig Drive, at the public boating access area, near Bogue Sound
20 Drive, and near the Eastern Ocean Regional Access. I suspect that coyotes have also been observed in other
21 neighborhoods in Emerald Isle, but not reported to Town staff. It is believed that some of these sightings involve
22 the same coyote family groups, and we are uncertain exactly how many coyotes are living in Emerald Isle. Based
23 on observations and discussions with NC WRC staff, the coyote population is estimated to be in the 10 – 20 range.
24 Coyotes have also been observed in Indian Beach, Pine Knoll Shores, and Atlantic Beach, and in other mainland
25 communities in recent months.

26
27 NC WRC staff addressed the Board earlier this year, and noted that there has never been a recorded, unprovoked
28 attack by a coyote on a human being in North Carolina. Attacks by coyotes on smaller wild and domestic animals
29 are more common, and in Emerald Isle there have been several observations of coyotes carrying small wild animals
30 in their mouths, presumably back to feed their young. In the past year, there have been three incidents in Emerald
31 Isle involving domestic animals reported to the Police Department:

- 32
33
- 34 • September 2015 – a small dog was found dead in a yard along Coast Guard Road, however, NC Wildlife
35 Resources Commission staff was unable to determine whether the dog had been killed by a coyote or
36 another dog.
 - 37 • March 2016 – a Chihuahua was attacked by coyotes on Canal Drive near Craig Drive, however, the owner
38 was able to scare the coyotes away and the dog was not seriously harmed.
 - 39 • September 2016 – a resident reported an aggressive coyote growling at the resident and her dog while
40 walking along Lee Avenue near Archers Creek.
41
42

43 There may have been other incidents involving domestic animals, however, the three noted above are the only
44 incidents reported to the Police Department. Additionally, there have been a few reports of feral cats (that some
45 consider to be pets) believed to have been killed by coyotes.

46
47 Until now, the Town's approach has been to simply monitor these issues, and have the Police Department take
48 immediate action for any in-progress incidents that may be reported (there have been none requiring immediate

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1 Police Department action). With more residents and property owners expressing concerns in recent months, Chief
2 Waters and I are now recommending the coyote management program outlined in the attached memo from Chief
3 Waters, and authorized in the attached ordinance amendment.
4

5 As noted in Chief Waters' memo, we are recommending that that Town authorize the trapping of coyotes on
6 private property by our residents and visitors, at their discretion, subject to the requirements outlined in the
7 attached ordinance amendment. Emerald Isle Police Department staff have reviewed the list of licensed (by the
8 NC WRC) coyote trappers for Carteret County, and have attempted to contact each licensed trapper to learn about
9 their interest, preferred methods, and fees. Based on this research, the Town has prepared the attached list of
10 licensed coyote trappers that are interested in trapping opportunities in Emerald Isle and whose methods would
11 be compliant with the attached ordinance amendment. A total of 6 trappers are included on the list, and their fees
12 range from "free" to \$50.00. Trappers who offer their services for free to the Emerald Isle property owner intend
13 to sell the captured coyote to legal hunting dog training facilities, which allows them to offer the trapping service
14 at no cost to the property owner.
15

16 The recommended coyote management program and the attached ordinance include the following key elements:
17

- 18 • coyote trapping would be allowed in Emerald Isle, either during the established NC WRC season
19 (December 1 – February 28), or at other times of the year with a depredation permit issued by the NC
20 WRC,
21
- 22 • the decision to trap coyotes would be solely up to the private property owner, who would make
23 arrangements with a licensed trapper included on the attached list (the Town will publicize this list to our
24 property owners via various public information platforms),
25
- 26 • because the private property owner is making this decision, he / she will be knowledgeable of the location
27 and timing of traps and can take any necessary precautions that he / she deems best,
28
- 29 • only "soft catch" traps would be permitted in Emerald Isle, and these traps do not result in the death of
30 the animal trapped,
31
- 32 • any captured coyotes would need to be removed from Emerald Isle, and could not be euthanized within
33 the Town limits; the Board should note that some captured coyotes would likely be euthanized at a
34 location outside of Emerald Isle or would be sold to a legal hunting dog training facility,
35
- 36 • trapping activities, captured coyotes, and other information must be reported to the Police Department,
37 and
38
- 39 • accidental trapping of domestic animals must be reported to Police Department immediately.
40

41 We anticipate that the majority of coyote trapping activities would occur during the established coyote trapping
42 season (December 1 – February 28), and Town staff would have sufficient time to publicize this program before
43 December 1 if the Board approves the recommended program.
44

45 Additionally, the Board may wish to consider directing Town staff to arrange coyote trapping activities on certain
46 Town-owned properties. Potential Town-owned properties where traps could be set include Emerald Isle Woods
47 Park, the Town government complex (near the creek), and the public boating access area. Coyote sightings have
48 been reported in each of these areas in recent months.
49

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1 If the Board approves the recommended program, we intend to reach out to Indian Beach, Pine Knoll Shores, and
2 Atlantic Beach to gauge their interest in a similar program. If similar efforts are not undertaken in neighboring
3 communities, it is likely that new coyotes will migrate from these areas into Emerald Isle in the future to take over
4 the territory previously dominated by any coyotes removed from Emerald Isle. A common effort among all of the
5 nearby towns will likely increase the effectiveness of the Town's efforts.
6

7 I have again attached information sheets about coyotes for your review, in case they are helpful to you in
8 formulating your position on this issue. Chief Waters and I look forward to discussing this issue with the Board at
9 the October 11 meeting.

10 Police Chief Jeff Waters spoke to the Board and public in detail about the recommended
11 program authorizing the trapping of coyotes on private property in Emerald Isle. Chief Waters
12 noted that Evin Stanford, NC Wildlife Resources Commission was also in attendance as well to
13 answer questions. Chief Waters stated that he had spoken with the Chiefs of the other
14 jurisdictions on the Crystal Coast and at this time their towns only wanted to monitor the
15 coyotes and take action when it was deemed necessary. Chief Waters noted that NC Wildlife
16 Resources Commission staff Evin Stanford had in the past year addressed the Board presenting
17 an educational PowerPoint presentation. Chief Waters said that the Town's approach until now
18 had been to simply monitor the issues with the coyotes and to have the Police Department take
19 immediate action for any in progress incidents that were reported, and there had not been any
20 required immediate action by the Police Department to this time. Chief Waters felt with more
21 residents and property owners expressing concerns in recent months, and recent research
22 conducted had culminated in the following recommended actions to be implemented as
23 outlined in Chief Waters memo to the Town Manager:

24
25 Based on the research that has been conducted and the lengthy discussions that we have
26 had between ourselves, concerned citizens and biologist from the North Carolina Wildlife
27 Resources Commission regarding the coyote population on Emerald Isle, I am
28 recommending the following actions:

- 29 1. The board should consider adopting an ordinance that will permit the trapping of
30 coyotes within the town limits of Emerald Isle during the permitted Carteret County
31 trapping season which runs from December 1st through February 28th, annually.
- 32 2. The ordinance should include language that permits the trapping of coyotes by
33 licensed trappers on private property at the discretion of the property owner, and on
34 town property at the discretion of the Town Manger or his designee.
- 35 3. The ordinance should require the property owner or trapper to notify the police
36 department of the following information:
 - 37 a. Date trap set
 - 38 b. Location of trap
 - 39 c. Trapper's name and contact information
 - 40 d. Date animal harvested
 - 41 e. Sex of animal harvested
 - 42 f. Date trap removed.

43 This information will be used by the department to keep track of the

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- 1 coyote population on Emerald Isle and address any concerns, violations or
2 complaints.
3 4. The ordinance should prohibit the euthanizing of harvested coyotes within the town
4 limits of Emerald Isle by any method.
5 5. The ordinance should require the removal of harvested coyotes from the town limits
6 of Emerald Isle.
7 6. The ordinance should limit the use of only “soft catch traps” to prevent injury to other
8 unintended animals or wildlife that are not permitted to be trapped and harvested.
9 7. The ordinance should require every trapper to comply with all NCWRC rules,
10 regulations and all state statutes and local ordinances related to the harvesting and
11 trapping of animals.

12 Town Manager Rush stated that if the Board approved the proposed ordinance presented tonight
13 their intention would be to make available a list of licensed trappers that were willing to do this
14 work for our residents in Emerald Isle, and they could simply call the trapper and make
15 arrangements to have that person come to their property. Town Manager Rush said the
16 advantage to that approach was that it made it a very personal decision for that land owner and
17 ensured the land owner knew exactly where the trap was and what was being proposed, and
18 provided a mechanism to help control the coyote population. Town Manager Rush stated it was
19 intended to put the decision making authority in the hands of the private property owners in
20 Emerald Isle. Mr. Rush stated this information would be publicized for the public for the season
21 that would begin on December 1 and continued until February 28. Mr. Rush said that a
22 subsequent decision for the Board if they approved this ordinance was would they also like the
23 Town to trap coyotes on Town owned properties in order to help control the coyote population.
24 Mr. Rush said he would recommend if the Board approved that they set the traps at Emerald Isle
25 Woods Park, the Public Boat Launching Facility, and perhaps the Town Hall complex which were
26 all locations that coyotes had been spotted.

27 Evin Stanford, NCWRC stated that he thought staff had done a good job of putting together
28 something that could be a model ordinance for other communities to follow. Mr. Stanford said
29 this was not an easy fix and it was not a one-time fix, and he thought using this approach had the
30 potential to be effective. Mr. Stanford discussed this issue in detail and answered several
31 questions from the Board of Commissioners and the public.

32 Town Manager Rush noted that there was a revised ordinance at their places that didn't specify
33 the kind of trap to be used but simply stated they had to comply with the NC Wildlife Resources
34 Commissions regulations.

35 ***Motion was made by Commissioner Messer to adopt the revised version of the Ordinance***
36 ***Amending Chapter 8 – Animals – of the Code of Ordinances Regarding Trapping of Coyotes, and***
37 ***recommend use of the trapping services on our Town owned properties. The Board voted***
38 ***unanimously 5-0 in favor. Motion carried.***

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1 **Clerks Note: A copy of Ordinance 16-10-11/O2 as noted above are all incorporated herein by reference and**
2 **hereby made a part of these minutes.**

3
4 **16. Comments from Town Clerk, Town Attorney, and Town Manager**

5
6 There were no comments from the Town Clerk or Town Attorney.

7
8 Town Manager Frank Rush thanked the Town staff for their hard work during Hurricane
9 Matthew and let the Board know that they had extended the offer to assist the communities
10 inland that were affected by flooding.

11
12 The following is an excerpt from the Town Manager Comments memo to the Board providing
13 additional background information for all items of importance:

14
15 **FY 15-16 Comprehensive Annual Financial Report**

16 Laura Rotchford, Finance Director, and the Town's auditors are working on the annual audit and financial
17 statements. A meeting of the Board's Audit Committee is scheduled for October 18, and we expect to have
18 Williams, Scarborough, Smith, & Gray present the audit report to the Board and the public at the November 8
19 meeting.

20
21 **Bogue Inlet Drive Bicycle Path**

22 We have received a survey of the entire Bogue Inlet Drive right of way between NC 58 and Bogue Inlet Pier. Alesia
23 Sanderson, Parks and Recreation Director, Ken Stone, Bicycle and Pedestrian Advisory Committee Chair, and I will
24 soon review the survey and determine the preferred design for the new bicycle path. I hope to include a review of
25 this project on the Board's November 8 meeting agenda.

26
27 **Public Reception – Retirement of Chief Waters**

28 This reception will be held on Thursday, October 27 from 6 pm – 8 pm in the Community Center gymnasium. The
29 public is invited to attend, and snacks and drinks will be provided. We also expect to formally present Chief
30 Waters with his service weapon and badge at that reception.

31
32 **New Police Chief Selection**

33 I expect to finalize the process for selecting a new Police Chief in the next few weeks, and will make an
34 announcement at that time.

35
36 **New Community Resource Officer Position**

37 We have placed the selection of this new position in the Police Department on hold. I expect that the new Police
38 Chief will name an existing member of EIPD to this new position sometime this winter or spring.

39
40 **Nies v. Emerald Isle**

41 Oral arguments before the NC Supreme Court have not yet been scheduled, and will not occur until sometime in
42 November or December, at the earliest.

43
44 The Nies home was actually sold to new owners on September 30 for a total sales price of \$1.3 million. I am
45 uncertain at this time as to if or how this sale may affect the NC Supreme Court's review of this case.

46
47
48

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1 **Osprey Ridge Storm Water Pump Station**

2 SunLand Builders has not yet begun construction of the new pump station, and I am awaiting an official project
3 schedule from SunLand within the next week. I still hope to have the new pump station complete and operational
4 by January 2017.

5
6 **New Small Storm Water Relay Pump - Bogue Court**

7 Public Works is currently working on the installation of a new small storm water relay pump system to serve the
8 Bogue Court area. This new system will be similar to the one recently installed in the 6400 block of Ocean Drive.
9 The new system will discharge water into the dune field at The Point, and should effectively resolve standing water
10 issues on Bogue Court.

11
12
13 **Work Continues on Comprehensive Plan / Land Use Plan Update**

14 The Steering Committee, consultant, and Town staff continue to work hard on the updated plan, and the
15 Committee is currently reviewing policies and future land use classifications. We hope to have a draft of the final
16 plan ready for review by the Committee sometime in November or December. I hope to schedule a joint meeting
17 of the Planning Board and Board of Commissioners for some time in December or January to review the draft plan
18 once the Committee's work is complete.

19
20 **New Gym Lighting**

21 The Town's contractor recently completed the installation of new lighting in the gym at the Community Center.
22 Town staff is very pleased with the new lights, which are attached directly to the roof beams and not hanging. The
23 new fixtures are LED and are also shatter-resistant. A new dimmer feature will soon be added to the new lights.

24
25 **2017 Emerald Isle Beach Music Festival**

26 We have established a date of Saturday, September 30, 2017 for the 2017 Emerald Isle Beach Music Festival. The
27 tentative lineup includes Sammy O'Banion as emcee and performer, and performances by Band of Oz, the Embers,
28 Too Much Sylvia, Fantastic Shakers, and Chairmen of the Board.

29
30 The 2016 festival netted a total of \$7,200, and these funds will be applied to the 2017 festival costs. We expect to
31 seek additional funding from the TDA for performer fees, and will submit that request in the coming months.

32
33 **Beach Driving Closed Between Wyndtree Drive and Channel Drive Beach Access**

34 Due to the narrow width of the flat beach in this area and the proximity of the dunes, we have closed this ¼ mile
35 section of the beach to driving, until further notice. Beach drivers can still access all areas of the beach from the
36 Town's 3 beach vehicle ramps, but cannot travel through this area.

37
38 **Deer Population Estimate**

39 EIPD and NC Wildlife Resources Commission staff conducted field work in late September, and I am awaiting the
40 new deer population estimate. We will present this information to the Board when it is received, and make a
41 decision in November regarding a controlled deer hunt in January / February 2017.

42
43 **Town Dumpster Service**

44 I have not had an opportunity to devote sufficient time to this contract, but hope to do so soon. I am planning to
45 solicit quotes from at least 3 different dumpster service companies in the coming weeks, including Waste
46 Industries, the Town's current contractor. The Town's existing contract with Waste Industries expires on
47 December 31, 2016, and has an annual value of approximately \$80,000. I hope to make a recommendation to the
48 Board at the November or December meeting, but if necessary I will seek to extend the existing Waste Industries
49 contract on a month-to-month basis.

50

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1 **CVS Aesthetic Improvements, Better Traffic Flow**

2 I continue to discuss the proposed improvements at this location with CVS corporate staff and also the owner of
3 the building (CVS leases the building from a Raleigh-based company). CVS corporate staff appears comfortable
4 with the proposed improvements, however, I sense some hesitation from the building owner. The building owner
5 is seeking official confirmation from CVS that the proposed improvements will not negatively impact the lease
6 agreement. I will continue to work with the building owner and CVS to try to make these improvements a reality
7 prior to the 2017 tourism season, if possible.

8
9 **Change in NC Residential Code Re: Railings on Fixed Seating**

10 I have submitted suggested language to the NC Department of Commerce to pursue an amendment to the NC
11 Residential Code to create an exemption from requirements for deck railings to extend 36 inches above the seat
12 bottom of fixed deck seating. As drafted, the exemption would apply to railings associated with fixed seating in
13 barrier island communities only over natural sand dunes. If the exemption is granted, it would measure the 36
14 inch requirement from the floor, which is the requirement for deck railings, and would eliminate the “cage” look
15 that is created when railings extend 36 inches above the seat bottom.

16
17 I recently received notice from the NC Department of Insurance (administers the NC Building Code) indicating that
18 the new 2018 version of the building code is likely to remove this requirement altogether, which is good news. In
19 the meantime, many contractors are simply installing non-fixed seating in order to pass the inspection. It may also
20 be advisable to install removable guardrails that can be eliminated when the 2018 building code is effective.

21
22 **Islander Drive**

23 I continue to consider different strategies to promote redevelopment of the Islander Drive area, and hope to
24 present recommendations to the Board sometime in the coming months.

25
26 **Deck Issues**

27 We met recently with the EI vacation rental companies, and discussed the deck inspection program. All companies
28 agreed to continue the program, and will be working on annual deck inspections this offseason.

29
30 I am contemplating scheduling another public information seminar on deck issues sometime this winter, and will
31 be contacting the North American Deck and Railing Association again to try to arrange another class.

32
33 Town staff will also be working to establish a similar deck inspection program for condominium complexes this
34 winter.

35
36 **Wyndtree Public Beach Access**

37 Due to concerns from the adjacent oceanfront property owners about the public access sand path meandering
38 onto private property, we recently graded a new public access sand path completely within the boundaries of the
39 Town’s public access easement.

40
41 **Emerald Isle Woods Walkway**

42 A new wooden walkway has been completed over wetland areas in EI Woods Park along the Cape Emerald
43 boundary. The new walkway provides a safer, more convenient pathway for the park trail in that area, and will
44 also make it easier to monitor water levels in EI Woods Park in the future.

45
46 An additional small wooden walkway will soon be constructed over the emergency discharge storm water feature
47 along Bogue Sound.

48
49
50

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1 **Lee Street Sound Access**

2 The Town removed aging and deteriorating walkways at three sound access locations on Sound Drive last year due
3 to safety concerns. Town staff converted the walkways to sand paths, and in most locations the sand path is easily
4 navigated. There is, however, a steep slope at the water's edge at the Lee Street access, and we have awarded a
5 contract to B&P Services, Cedar Point, NC for the construction of steps at that location to make it easier and safer
6 to access the water. Work is expected to be complete in the next few weeks.
7

8 **Beach Access Walkway Replacements**

9 Town staff will soon solicit informal bids for the reconstruction of existing beach access walkways at Georgia
10 Street, Hubert Street, and Sea Crest. We hope to award a contract in November or early December, and begin
11 work soon thereafter.
12

13 **New Gates at Western Ocean Regional Access, El Woods Park**

14 We have placed the order for these new gates, which will be identical to the gates in place at the beach vehicle
15 ramps and the Eastern Ocean Regional Access. We hope to have the new gates in place sometime this winter or
16 early spring.
17

18 **Old Ferry Road Status**

19 Richard Stanley has reviewed the ownership of two segments of Old Ferry Road, and has confirmed that the
20 portion that traverses Island Harbor Marina is private.
21

22 Richard Stanley has confirmed that the portion that runs from Mangrove Drive, behind CVS, toward NC 58 to the
23 east, is public. The pavement in the shoulder of the roadway is in bad condition, and Public Works will soon
24 remove that pavement and replace it with grass seed / sod to improve the appearance of that area. The actual
25 roadway itself is in decent condition, but may need resurfacing in the next few years.
26

27 **Coastal Awnings, Keller Williams Signs**

28 We have communicated a December 31, 2016 deadline for the removal of sign messages on each of these signs,
29 due to the fact that neither business is physically located in Emerald Isle, as required by Town sign ordinances.
30 Based on discussion with the sign owner, we expect the Keller Williams sign to be removed by December 31, but
31 have not yet received confirmation from the owner of the Coastal Awnings sign. The owner of the Coastal Awnings
32 sign may ultimately appeal the staff decision to the Board of Adjustment.
33

34 **Bogue Inlet Navigation Dredging**

35 We have reviewed the most recent survey results from the US Army Corps of Engineers, and expect them to
36 relocate the main connecting channel to the more central location recently discussed with the Board of
37 Commissioners. We are uncertain as to the dredging schedule at this time, but expect the US Coast Guard to move
38 the navigation aids as soon as the next dredging cycle is complete.
39

40 **Cape Emerald Pipe Expansion / Replacement**

41 I have not yet been able to devote time to this project, but still hope to solicit informal quotes for this work later
42 this fall. I remain hopeful that the budgeted amount will be sufficient to award a contract later this fall. Permit
43 authorization is still necessary, but we don't anticipate any hurdles.
44

45 **Emerald Plantation Canal Concerns, Road Concerns**

46 I met recently with representatives from the Emerald Plantation residential subdivision regarding concerns about
47 algae, duckweed, and debris in the canal between the commercial center and the residential subdivision, and may
48 pursue grant funding in the future to assist the community in its goal to clean up the canal.
49

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1 Additionally, some members in Emerald Plantation have expressed interest in the Town assuming ownership and
2 maintenance of Emerald Plantation Drive between NC 58 and the Emerald Isle Baptist Church. I expect that the
3 Town may receive a formal request at some point in the future, at which time it could be scheduled for Board
4 consideration at a Town meeting.

5
6 **Cape Emerald Pipe Failure**

7 A private storm water pipe in Cape Emerald recently failed, in part, due to poor workmanship by the Town's
8 contractor on a Town storm water pipe in 2012. Unfortunately, I have not been able to devote significant time to
9 this issue to secure compensation from Southeast Pipe Survey, the Town's contractor for the original work on the
10 Town storm water pipe. I hope to resolve this issue sometime soon, and remit any compensation to the Cape
11 Emerald homeowners association.

12
13 **NC 58 Traffic Improvements**

14 As reported earlier, NC 58 traffic improvements at the Bogue Inlet Drive intersection, Coast Guard Road
15 intersection, Emerald Plantation intersection, and at the NC 24 intersection did not make it into the "region"
16 version of the Statewide Transportation Improvement Program. Projects included in the "division" version of the
17 Statewide Transportation Improvement Program are expected to be announced later in October or in November,
18 and based on discussions with DERPO and NCDOT staff, I remain hopeful that the Emerald Isle projects will
19 ultimately be included in the "division" version of the Statewide Transportation Improvement Program.

20
21 **Potential Partnership To Provide Staff Assistance for Emerald Isle Business Association**

22 I have not yet had an opportunity to pursue this idea in any meaningful way, but still hope to develop a cost-
23 effective plan to create a paid staff position for the EIBA, ideally in partnership with the Tourism Development
24 Authority. I envision that such a new position would better promote EI to our visitors and potential visitors, help
25 with existing special events (i.e., St. Patrick's Festival, Christmas Parade, etc.), help with new events (i.e., new "EI
26 Beach Music Festival", etc.), organize special shopping experiences among Emerald Isle businesses (i.e., Christmas
27 shopping deals throughout the entire Town), and better galvanize the brick-and-mortar businesses in Emerald Isle.

28
29 **Customer Satisfaction Survey**

30 I am planning to work with the Board, staff, and a professional survey designer to develop a "customer satisfaction
31 survey" for Town services and programs. I hope to begin work on the survey sometime this winter and release it
32 to the public sometime in the spring or summer 2017.

33
34 **Potential Speed Limit Change, Golf Cart Ordinance Amendment**

35 I am contemplating presenting two ordinance amendments to the Board at a future meeting in response to the
36 Board's discussion at the August 9 meeting regarding golf carts.

37
38 One ordinance amendment would reduce the speed limit on Coast Guard Road between Deer Horn Drive and NC
39 58 and Crew Drive from 35 mph to 25 mph. The second amendment would eliminate the language in the golf cart
40 ordinance that prohibits golf carts from driving on Coast Guard Road and NC 58, and would replace it with "golf
41 carts may only operate on streets with a speed limit of 25 mph or less". This ordinance amendment would
42 effectively allow golf carts on the segment of Coast Guard Road between Deer Horn Drive and NC 58 and Crew
43 Drive, and would likely assist many golf cart operators without creating significant safety concerns. This
44 amendment would also allow golf carts to operate legally on Coast Guard Road between Ring Street and Inlet
45 Drive.

46
47 Please let me know your thoughts on this idea.
48
49
50

MINUTES OF THE REGULAR MEETING
OF THE EMERALD ISLE BOARD OF COMMISSIONERS
OCTOBER 11, 2016
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1 **Rethinking Itinerant Merchants, Satellite Merchants**

2 I have been considering alternative approaches to the Town's regulation of itinerant merchants and satellite
3 merchants (i.e., mobile vendors) in recent weeks, and have narrowed the options to three:

4
5 Option 1 – Maintain current system whereby they are not allowed in EI, except for oceanfront commercial and
6 condo parcels, and must simply register with the Town.

7
8 Option 2 – Allow mobile vendors anywhere in Emerald Isle that is zoned commercial or mixed use, on private
9 property only.....provided the vendor is an Emerald Isle resident or business and has the permission of the private
10 commercial property owner. There would be no other restrictions, and the private commercial property owners
11 and the market itself would regulate such activities. Non-EI residents or vendors would still be prohibited, and no
12 vendors would be allowed on public right of ways or the beach strand. The mobile vendor would still be required
13 to register with the Town, and no fee would be charged.

14
15 Option 3 – Allow mobile vendors anywhere in Emerald Isle that is zoned commercial or mixed use, on private
16 property only.....provided the vendor has the permission of the private commercial property owner and secures a
17 permit from the Town. The vendor could be from anywhere, and this approach would not be limited to EI
18 residents or businesses. The amount of the annual permit fee would be several hundred dollars (\$500 - \$1000?),
19 and would be roughly equal to the average property tax bill paid by a brick and mortar business in EI. There would
20 be no other restrictions, and the private commercial property owners and the market itself would regulate such
21 activities. No vendors would be allowed on public right of ways or the beach strand.

22
23 Ideally, I am seeking to eliminate or reduce the Town's involvement in regulating this issue, and would transfer the
24 decision making process to the private commercial property owner and the mobile vendor. Please let me know if
25 you have any thoughts on this issue. Any desired changes would be presented to the Board for formal
26 consideration this winter, and would be implemented for summer 2017.

27
28 **NC League of Municipalities Annual Meeting – October 23 – 25**

29 Mayor Barber, Commissioners Dooley, Finch, and Normile, and I are registered for this annual meeting in Raleigh.

30
31 **17. Comments from Board of Commissioners and Mayor**

32
33 There were no further comments from the Board of Commissioners and Mayor.

34
35 **18. Adjourn**

36
37 ***Motion was made by Commissioner Messer to adjourn the meeting. The Board voted***
38 ***unanimously 5-0 in favor. Motion carried.***

39
40 **The meeting was adjourned at 9:40pm.**

41
42 Respectfully submitted:

43
44
45 Rhonda C. Ferebee, CMC, NCCMC
46 Town Clerk