

1                                   **MINUTES OF THE REGULAR SCHEDULED MEETING**  
2                                   **OF THE EMERALD ISLE BOARD OF COMMISSIONERS**  
3                                   **TUESDAY, APRIL 10, 2012 – 7:00 P.M.**  
4                                   **TOWN BOARD MEETING ROOM**  
5  
6

7    **1. Call To Order**  
8

9    The regular monthly meeting of the Emerald Isle Board of Commissioners was  
10 called to order by Mayor Art Schools at 7:00 PM in the Emerald Isle Town Board  
11 Meeting Room.  
12

13   **2. Roll Call**  
14

15 Present for the meeting: Mayor Art Schools, Commissioners Nita Hedreen, Tom  
16 Hoover, Floyd Messer, John Wootten, and Maripat Wright.  
17

18 Others present during the regular meeting: Town Manager Frank Rush, Town  
19 Attorney Richard Stanley, Town Clerk Rhonda Ferebee, Planning Director Kevin  
20 Reed, and Parks and Recreation Director Alesia Sanderson.  
21

22   **3. Opening Prayer**  
23

24 Mayor Schools offered the Opening Prayer for the meeting.  
25

26   **4. Pledge of Allegiance**  
27

28 All who were present recited the Pledge of Allegiance.  
29

30   **5. Adoption of Agenda**  
31

32 Mayor Schools requested that the Board consider switching Items 7 and 8 on  
33 the Agenda.  
34

35 ***Motion was made by Commissioner Messer to adopt the Agenda so***  
36 ***amended. The Board voted unanimously 5-0 in favor. Motion carried.***  
37

38   **6. Proclamations / Public Announcements**  
39

- 40    • **Proclamation – Municipal Clerks Week – April 29 – May 5 (12-04-10/P1)**
- 41    • **Proclamation – National Tourism Week – May 5 – 13 (12-04-10/P2)**
- 42    • **Proclamation – National Day of Prayer – May 3 (12-04-10/P3)**
- 43    • **Proclamation – Bicycle Month in Emerald Isle – May 2012 (12-04-10/P4)**
- 44    • **“Soccer Shots” Program – April 4 – May 23 – See Parks and**  
45      **Recreation for details**  
46

MINUTES OF THE REGULAR MEETING  
OF THE EMERALD ISLE BOARD OF COMMISSIONERS  
APRIL 10, 2012  
Page 2 of 14

- 1
- 2 • **Beach Driving Temporarily Closed – Will Re-Open on Mon., April 16**
- 3 **and End for Season on Mon., April 30**
- 4 • **Friday Free Flick – Friday, April 13 – 7 pm – Community Center –**
- 5 **“The Muppets”**
- 6 • **Bicycle and Pedestrian Advisory Committee Meeting – Tuesday,**
- 7 **April 17 – 9 am – Community Center**
- 8 • **Building Dunes Workshop – Saturday, April 21 – 10 am – 12:30 pm –**
- 9 **NC Aquarium at Pine Knoll Shores**
- 10 • **Planning Board Regular Meeting – Monday, April 23 – 6 pm – Town**
- 11 **Board Meeting Room**
- 12 • **A Special Mothers Day Out – Saturday, May 5 – 9 am – 12 noon –**
- 13 **Community Center**
- 14 • **Summer Day Camp Registration – Monday, May 7 – 8 am –**
- 15 **Community Center**
- 16 • **Board of Commissioners Regular Meeting – Tuesday, May 8 – 7 pm –**
- 17 **Town Board Meeting Room**
- 18

19 Mayor Schools congratulated Island Review reporter Dan Ryan for the success  
20 of his son Billy Ryan and the whole Croatan basketball team for an outstanding  
21 season.

22  
23 Parks and Recreation Director Alesia Sanderson reminded everyone to get their  
24 resident parking permit as paid parking had begun the past weekend.

25  
26 **Clerks Note: A copy of Proclamations 12-04-10/P1, 12-04-10/P2, 12-04-10/P3, and 12-04-10/P4 as**  
27 **noted above are incorporated herein by reference and hereby made a part of these minutes.**

28  
29 **7. Public Comment (switched items as amended on Agenda to come before Consent Agenda)**

30  
31 **Brief Summary:** The public will have the opportunity to address the Board about  
32 any items of concern not on the agenda.

33  
34 Tony Dicapua, 101 Sea Oats, spoke concerning the Resolution to reconfirm the  
35 walkways in Blocks 36-39. Mr. Dicapua said that he and his wife Jane believed  
36 that this Resolution recently recommended by Town Attorney Stanley was a very  
37 misleading and one-sided document and they hoped that as members of the  
38 Board being asked to approve it they would wait until hearing both sides of the  
39 issue. Mr. Dicapua requested the Board not take formal action tonight to allow  
40 interested stakeholders an opportunity to come and be heard. Mr. Dicapua cited  
41 several examples of why he called the Resolution a misleading document. He  
42 asked the Board to not take action tonight but allow for a full and fair hearing of  
43 all stakeholders. Mr. Dicapua said they had more than 130 tax paying property  
44 owners including a number of local residents who were plaintiffs in four lawsuits  
45 recently filed against the Town. Mr. Dicapua said all they were trying to do with

MINUTES OF THE REGULAR MEETING  
OF THE EMERALD ISLE BOARD OF COMMISSIONERS  
APRIL 10, 2012  
Page 3 of 14

1  
2 these lawsuits was follow-up with what the Attorney General of the State of North  
3 Carolina said needed to be done, namely have the courts review the facts and  
4 declare whether the walkways were intended by the original developers to be  
5 only for the use and enjoyment of the residents of the subdivisions they created  
6 by recording the old maps, as opposed to breaking the 40 years of consistent  
7 interpretation and finding that they were for the use of anyone who came through  
8 the quiet residential neighborhoods. Mr. Dicapua again asked the Board to hold  
9 off on approving the resolution until they heard everything.

10  
11 Jerry Stockdale, 8521 Oceanview, also spoke concerning the walkway issue.  
12 Mr. Stockdale said the request for the Board to reconfirm the acceptance and  
13 dedication of these walkways seemed to be an action after the fact and may  
14 really have no bearing on the pending lawsuits. Mr. Stockdale said that if it was  
15 found in court that the 1981 acceptance did not cover these walkways then it  
16 would be the Board's first action regarding them and he felt that would be a  
17 significant downside for them. Mr. Stockdale said that the property owners in the  
18 affected neighborhoods were not at war with the Town but were very unhappy  
19 with the Town's actions of suddenly declaring and advertising that their  
20 neighborhood walkways were now public which he felt had turned their  
21 residential neighborhood into a public thoroughfare and had brought many  
22 problems they had never had to deal with before. Mr. Stockdale said through the  
23 lawsuits they were simply following the recommended direction from the State's  
24 Attorney General's office which was to allow the courts to decide on whether or  
25 not the walkways were public property of the Town. Mr. Stockdale said for 40  
26 years the Town considered the walkways not to be public and many property  
27 owners made their decisions based on that posturing. Mr. Stockdale said they  
28 wanted a fair, balanced and impartial decision from the court system. Mr.  
29 Stockdale asked the Board why they wanted to vote tonight to change their 40  
30 year posturing. He felt this was a policy decision and not a legal one. Mr.  
31 Stockdale said once the Board heard from both sides they should be able to  
32 make a better decision about their policy and inform the public about their  
33 decision and then proceed. He asked if the Board wanted to be on record for  
34 taking a vote contrary to a 40 year history that literally took out of the hands of  
35 the property owners these three beach access walkways built with their private  
36 funds without hearing from them. He requested the Board give property owners  
37 the time to present their position at the next meeting, not to fight the lawsuit in the  
38 Board meeting, but to give them time on the agenda to present to them the  
39 perspective of taxpaying residents and property owners. Mr. Stockdale said after  
40 hearing from the property owners they may decide to let the lawsuit play out and  
41 not allow the Town Manager and Town Attorney to make this issue more  
42 adversarial that it needed to be.

43  
44  
45

1  
2 Jim Snyder, 6820 Ocean Drive, spoke about seeing glass bottles floating around  
3 the pier area on the beach and asked if signs could be placed about no glass on  
4 the beach and the Police Department could really enforce that issue.

5  
6 **7. Consent Agenda**

- 7  
8 a. **Tax Refunds / Releases**  
9 b. **Resolution Reconfirming Acceptance of All Streets, Alleys, and**  
10 **Walkways in Blocks 36 – 39 (12-04-10/R1)**  
11 c. **Resolution Authorizing Contract for Reconstruction of Edna Street**  
12 **Beach Access Walkway (12-04-10/R2)**  
13 d. **Resolution Concerning North Carolina’s Sea Level Rise Reports,**  
14 **Policies, and Monitoring Efforts (12-04-10/R3)**

15  
16 ***Motion was made by Commissioner Hedreen to approve the items on the***  
17 ***Consent Agenda. The Board voted unanimously 5-0 in favor. Motion***  
18 ***carried.***

19  
20 **Clerks Note: A copy of Resolutions 12-04-10/R1, 12-04-10/R2, 12-04-10/R3, and all Consent Agenda**  
21 **items as noted above are incorporated herein by reference and hereby made a part of these minutes.**

22  
23 **9. Commercial Review – Proposed Boat Storage Facility – Woodpecker**  
24 **Lane**

25  
26 Kevin Reed, Planning Director, addressed the Board regarding this agenda item.  
27 The following excerpt from his memo to the Town Manager is provided for  
28 additional background:

29  
30 A request has been submitted by Brother and Sisters, LLC for commercial review of a proposed boat storage facility  
31 located at 201 and 202 Woodpecker Lane. The property is currently zoned Business (B) and the proposed boat  
32 storage facility is a permitted use in the Business (B) Zoning District. The submitted site plan indicates that  
33 Woodpecker Lane is a private street; however, the Town’s official Powell Bill street map indicates that the street is  
34 maintained by the Town. The proposed facility would accommodate approximately 53 boats.

35  
36 You will find attached a copy of a site plan for the project. Also attached is a lighting plan for the project. The only  
37 development that will take place is the construction of two paved and lighted parking areas that will be fenced,  
38 including the required stormwater retention areas. The lighting plan indicates that a total of 14 400-watt metal halide  
39 lights will be installed at a height of 25 feet. No other development will take place. The Town’s Unified Development  
40 Ordinance (UDO) requires that the development be screened along its northern boundary from the adjacent residential  
41 property. The owners are proposing to use a six-foot opaque fence to meet the screening requirement. The UDO also  
42 requires that exterior commercial lighting be installed in a manner that does not create any offensive glare visible on  
43 adjacent streets or properties. The UDO requires that every lot zoned Business retain a natural area of at least 15%  
44 which may be disturbed for the septic area. Since no septic system installation is necessary for this project, the entire  
45 natural area should remain undisturbed. The applicants are proposing to retain the natural area along the southern  
46 boundary of the project at a distance varying from 20 to 40 feet in depth. The Town’s Technical Review Committee  
47 (TRC) reviewed the project at its meeting held on January 4, 2012. Following that meeting, Town staff requested  
48 several revisions to the plan and additional information.  
49

MINUTES OF THE REGULAR MEETING  
OF THE EMERALD ISLE BOARD OF COMMISSIONERS  
APRIL 10, 2012  
Page 5 of 14

1  
2 Town staff is comfortable in concluding that the current plan and other submitted materials are consistent with the  
3 Town's zoning requirements for screening and natural area requirements. The property owners are required to obtain  
4 a State Erosion and Sediment Control Permit (E & SC) since the project will disturb more than one acre of land.  
5 Expected land disturbance is approximately four acres. To date, the owners have not provided the Town with a copy  
6 of the required State E&SC Permit. The Town's consulting engineer has reviewed the stormwater plan for the  
7 proposed development and found it to be consistent with the Town's requirements for stormwater control. The  
8 stormwater permit is currently being prepared by the Town's engineer. In addition, the site plan indicates that the U.S.  
9 Army Corps of Engineers (U.S.A.C.E) had determined that there are no 404 jurisdictional wetlands on the property.  
10 The owner needs to provide documentation from the U.S.A.C.E. regarding this statement.

11  
12 The Planning Board considered this request at its meeting held on March 26, 2012. Following its discussion of the  
13 request, the Planning Board voted unanimously (5 to 0) to recommend to the Board of Commissioners that the request  
14 be approved subject to the following conditions:

- 15
- 16 1. Provide copy of State Erosion and Sediment Control Permit.
- 17
- 18 2. Provide documentation from the U.S. Army Corps of Engineers that there are no 404 jurisdictional wetlands  
19 located in the project area.
- 20
- 21 3. Provide copy of letter from Carteret-Craven Electric Cooperative that they can serve the proposed  
22 development.
- 23
- 24 4. Exterior lighting to be shielded to reduce offensive glare to adjacent properties.
- 25

26 I look forward to discussing this issue with the Board of Commissioners at its April 10 meeting. Please let me know if  
27 you have any questions regarding the foregoing information.

28  
29 Mr. Reed added that in addition to the four conditions recommended by the  
30 Planning Board there was a fifth condition recommended by Town staff as to  
31 whether Woodpecker Lane was a private or public street. Mr. Reed said the  
32 issue was resolved between the Town's Attorney and the legal representative for  
33 the property owners so that the site plan could accurately reflect whether a  
34 private street or a street maintained by the Town. Mr. Reed noted that Phil  
35 Collier was here on behalf of Stroud Engineering representing the designers and  
36 the owners.

37  
38 Commissioner Hedreen asked about the lighting and whether it would be  
39 shielded from the nearby homes. Mr. Collier referred to the grids on the lighting  
40 plan and stated the lower the number the lesser the light and felt there should not  
41 be a problem. Mr. Reed added that the Planning Board had suggested that the  
42 lighting could be adjusted after they were installed when the true impact was  
43 known; they had situations in the past with commercial development and the  
44 lighting was adjusted afterward as needed. Commissioner Wootten asked if the  
45 lights had a shield behind them so the light was directed toward the lot. Mr.  
46 Collier said it was more the positioning of the lens of the light itself that  
47 determined the light shed on the property itself but he added that Emerald Isle  
48 Baptist Church had problems with after hours illegal activity so the light would  
49 actually be welcomed on that side of the property.  
50

MINUTES OF THE REGULAR MEETING  
OF THE EMERALD ISLE BOARD OF COMMISSIONERS  
APRIL 10, 2012  
Page 6 of 14

1  
2 Commissioner Hedreen stated that the opaque fence was only on the north side  
3 but she felt since there was almost no vegetation close to the boundary line  
4 between the church and the property it would make good sense to continue that  
5 opaque feature down that line to provide more privacy. Commissioner Hedreen  
6 understood they were both commercially zoned but she felt the church was a  
7 different type of neighbor than another business.

8  
9 The Board further discussed the lighting and the ability for adjustment as well as  
10 the condition that additional opaque feature be added to extend down the  
11 western boundary. Mr. Collier seemed to feel the owner would be willing to  
12 provide the additional fencing.

13  
14 Commissioner Wootten asked about the ownership of Woodpecker Lane and  
15 how it would be determined whether private or public and if it mattered. Town  
16 Attorney Stanley stated that his research indicated the current owner got it by  
17 metes and bounds, he had looked at the deed and there was no reference to a  
18 map and no map could be found that dedicated Woodpecker Lane as a public  
19 road. Attorney Stanley's recommendation would be that it's a private road and  
20 they get a letter as a condition from the owners that they would not expect town  
21 maintenance and the owners were already showing it as private.

22  
23 ***Motion was made by Commissioner Hedreen to approve the site plan and***  
24 ***lighting plan for Woodpecker Boat Storage, subject to the following***  
25 ***conditions:***

- 26  
27 1. ***The applicant shall provide a copy of the State Erosion and***  
28 ***Sedimentation Control Permit.***  
29 2. ***The applicant shall provide documentation from the US Army Corps***  
30 ***of Engineers that there are no 404 jurisdictional wetlands located in***  
31 ***the project area.***  
32 3. ***The applicant shall provide a copy of letter from Carteret-Craven***  
33 ***Electric Cooperative that they can serve the proposed project.***  
34 4. ***The applicant shall insure that exterior lighting is shielded to reduce***  
35 ***offensive glare to adjacent properties.***  
36 5. ***The correct ownership of Woodpecker Lane, as determined by the***  
37 ***Town Attorney and the applicant's agent shall be indicated on the***  
38 ***site plan and the owners will submit a letter to the Town stating that***  
39 ***Woodpecker Lane will not be subject to Powell Bill funds or taxpayer***  
40 ***money.***  
41 6. ***The opaque feature of the chain link fence be extended to include the***  
42 ***entire western boundary.***

43  
44 ***The Board voted unanimously 5-0 in favor. Motion carried.***  
45

1  
2 **10. Coast Guard Road Bicycle Path Extension – Emerald Isle Woods Park**  
3 **to Ocean Oaks Drive**  
4

- 5 **a. Budget Amendment – Powell Bill Fund**  
6 **b. Capital Project Ordinance Amendment**  
7 **c. Resolution Authorizing Construction Contract (12-04-10/R4)**  
8

9 Alesia Sanderson, Parks and Recreation Director addressed the Board regarding  
10 this agenda item. The following excerpt from the Town Manager’s memo to the  
11 Board is provided for additional background:  
12

13 The Board of Commissioners is asked to approve 3 items associated with a planned 0.17 mile (897 linear feet)  
14 extension of the Coast Guard Road bicycle path at the April 10 meeting. Board approval of these items would enable  
15 the construction of a new bicycle path segment from the current terminus at Emerald Isle Woods Park to the  
16 intersection of Ocean Oaks Drive. The total cost of this work is \$66,847.  
17

18 As you know, the Bicycle and Pedestrian Advisory Committee has been working hard on fundraising efforts for the  
19 future extension of the bicycle path along the entire length of Coast Guard Road. Recent fundraising efforts have  
20 raised the current total available to approximately \$33,500. At the Board’s special budget workshop meeting in late  
21 February, the Board indicated that it would be willing to match any funds raised by the Bicycle and Pedestrian Advisory  
22 Committee to construct future segments of the Coast Guard Road bicycle path. The appropriation of an additional  
23 \$33,500 by the Town for this project will result in the total amount necessary for the proposed extension from Emerald  
24 Isle Woods Park to Ocean Oaks Drive.  
25

26 Town staff recently solicited informal bids for this work from two local contractors with whom the Town has enjoyed a  
27 positive working relationship in recent years, both of whom have completed previous bicycle path segments in Emerald  
28 Isle. Johnson Contracting, Inc., Maysville, NC, submitted the lowest informal bid of \$66,847. SunLand Development  
29 and Construction, Cape Carteret, NC, submitted an informal bid of \$67,150, and this bid did not include the cost of  
30 utility relocation (which was included in the Johnson Contracting, Inc. bid). Town staff have been very pleased with the  
31 work of both contractors in recent years, and Town staff recommends award of the construction contract to Johnson  
32 Contracting, Inc. in the amount of \$66,847. The attached resolution formally authorizes the Town Manager to execute  
33 a contract with Johnson Contracting, Inc.  
34

35 The attached Powell Bill Fund budget amendment appropriates the Town’s \$33,500 share of the construction cost for  
36 this project. These funds are available due to unexpected savings associated with the recent resurfacing of Ocean  
37 Drive (from W. Landing Drive to Emerald Drive near the “dog-leg”), and I recommend that the Board appropriate a  
38 portion of these savings for the Town’s share. The attached capital project ordinance for the Coast Guard Road  
39 Bicycle Path project formally appropriates the \$33,500 transferred from the Powell Bill Fund for construction, along with  
40 a total of \$29,290 of “new” fundraising proceeds generated by the Bicycle and Pedestrian Advisory Committee’s  
41 efforts. There is currently a balance of approximately \$4,210 of “old” fundraising proceeds generated by the annual  
42 Emerald Isle Triathlon and other past fundraising efforts in the Coast Guard Road Bicycle Path capital project account,  
43 and the combination of these two sources equals the \$33,500 matched by the Town. The attached capital project  
44 ordinance amendment appropriates a total of \$67,000 for the construction of the new bicycle path segment.  
45

46 If awarded, Johnson Contracting, Inc. expects to begin work soon after the April 10 Board meeting. Town staff have  
47 requested that all work be complete prior to Memorial Day weekend, and Johnson Contracting, Inc. has committed to  
48 this completion date. The contract includes all work associated with the project, including removal of the existing  
49 southern asphalt shoulder of Coast Guard Road, rock base and asphalt for the new path, approximately 130 linear feet  
50 of retaining wall, sod installation, and associated signage and markings.  
51  
52

MINUTES OF THE REGULAR MEETING  
OF THE EMERALD ISLE BOARD OF COMMISSIONERS  
APRIL 10, 2012  
Page 8 of 14

1  
2 Upon completion of this segment to Ocean Oaks Drive, the remaining length of desired bicycle path along Coast Guard  
3 Road is approximately 1.45 miles at a total estimated cost of approximately \$500,000. The next identified segment for  
4 construction is from Ocean Oaks Drive to Dolphin Ridge / Royall Oaks, a distance of approximately 0.24 miles. The  
5 total estimated cost of this next segment is approximately \$99,000 (due to an expected greater length of retaining wall  
6 in this segment). I would expect to present a construction contract to the Board at such time that the Bicycle and  
7 Pedestrian Advisory Committee has raised an additional \$50,000.  
8

9 The Board should note that this project also involves the shifting of existing vehicle travel lanes on Coast Guard Road  
10 slightly to the north side of the existing Coast Guard Road asphalt between Emerald Isle Woods Park and Ocean Oaks  
11 Drive (as has been done for previous segments). I have been disappointed in the quality of new pavement markings  
12 delineating the vehicle travel lanes on Coast Guard Road from Reed Drive to Emerald Isle Woods Park, and would like  
13 to have this area re-marked with a higher quality pavement marking after this bicycle path work is completed. Town  
14 staff are currently seeking informal bids for the re-marking of Coast Guard Road in this area with thermoplastic  
15 markings (the same material used on NC 58) that are more durable and visible. I hope to complete this work with  
16 available savings in the FY 11-12 budget in late May or early June.  
17

18 Ms. Sanderson thanked Ken Stone and the Bicycle and Pedestrian Advisory  
19 Committee for their capital campaign fundraising efforts as well as some very  
20 large donors who had helped make this possible. Ms. Sanderson said the  
21 committee planned to continue their fundraising efforts.  
22

23 Mayor Schools asked for public comment.  
24

25 Ken Stone, Bicycle and Pedestrian Advisory Chair thanked the Board, stating  
26 that the committee had worked extremely hard to get the donations and would  
27 certainly continue that for the next section of path which would go to Dolphin  
28 Ridge.  
29

30 Ms. Sanderson gave her projected cost for the next section that would take the  
31 path to Dolphin Ridge as approximately \$99,000.  
32

33 ***Motion was made by Commissioner Messer to approve the Powell Bill Fund***  
34 ***Budget Amendment. The Board voted unanimously 5-0 in favor. Motion***  
35 ***carried.***  
36

37 ***Motion was made by Commissioner Wright to approve the Capital Project***  
38 ***Ordinance Amendment for the Coast Guard Road Bicycle Path Extension.***  
39 ***The Board voted unanimously 5-0 in favor. Motion carried.***  
40

41 ***Motion was made by Commissioner Hoover to approve the Resolution***  
42 ***Authorizing Construction Contract. The Board voted unanimously 5-0 in***  
43 ***favor. Motion carried.***  
44

45 **Clerks Note: A copy Resolution 12-04-10/R4 and related items as noted above are incorporated**  
46 **herein by reference and hereby made a part of these minutes.**  
47  
48

1  
2 **11. Resolution That There Exists Significant Public Interest in the Nature**  
3 **and Extent of Local Government Regulation of Ocean Beaches Within Their**  
4 **Jurisdiction (12-04-10/R5)**  
5

6 Frank Rush Town Manager addressed the Board regarding this agenda item.  
7 The following excerpt from his memo to the Board is provided for additional  
8 background:  
9

10 The Board of Commissioners is asked to approve the attached resolution formally requesting that the NC Supreme  
11 Court review a recent NC Court of Appeals decision in the case of *Town of Nags Head v. Cherry, Inc.* The Town of  
12 Nags Head has requested that all NC beach municipalities adopt the attached resolution due to uncertainty created by  
13 a recent NC Court of Appeals ruling regarding a local government's ability to regulate activities and enforce local  
14 ordinances on the public trust area of the ocean beach.  
15

16 *Town of Nags Head v. Cherry, Inc.* involves the enforcement of a Nags Head ordinance that required the removal of a  
17 residential structure from the public trust beach area. Due to repeated beach erosion events, the home became  
18 located seaward of the first line of stable vegetation and primary dune line, and was deemed unusable. The Town of  
19 Nags Head determined that the structure was a nuisance that interfered with the public's right to access the public trust  
20 beach and that it hampered the ability of emergency vehicles to respond on the beach strand. In January 2011, the  
21 trial court ruled in favor of the Town of Nags Head and ordered the removal of the home. The owner of the home  
22 appealed the decision to the Court of Appeals, and the Court of Appeals issued its ruling in February 2012. The Court  
23 of Appeals reversed the trial court's decision, and indicated that the Town of Nags Head did not have authority to  
24 enforce a nuisance ordinance on the public trust beach - that only the State of North Carolina could bring such an  
25 action. The Court of Appeals decision was unanimous, thus any review of the case by the NC Supreme Court is  
26 discretionary. The Town of Nags Head is petitioning the NC Supreme Court to hear their appeal of the Court of  
27 Appeals ruling. Because this case has potentially far-reaching implications on the general authority of NC beach  
28 municipalities to regulate activities and enforce ordinances on the public trust beach area, and because clarification is  
29 needed, the Town of Nags Head is hopeful that support from other NC beach municipalities will help to convince the  
30 NC Supreme Court to hear the case, hopefully later in 2012.  
31

32 The Town of Emerald Isle, like many other NC beach municipalities, regulates several activities on the public trust  
33 beach and enforces various ordinances. The recent *Cherry, Inc.* ruling has the potential to be used by aggrieved  
34 parties to argue that the Town (and/or other NC beach municipalities) does not have the authority to regulate certain  
35 activities and enforce certain Town ordinances that the individual may have violated or that he / she may disagree with  
36 in policy. Although attorneys for the Town, State attorneys, and State agency personnel believe that NC beach towns  
37 have the clear authority to regulate activities and enforce ordinances on the public trust beach, a review by the NC  
38 Supreme Court would clarify the scope of municipal authority on the public trust area of the beach.  
39

40 It is important to note that the central issue for the Town of Emerald Isle is the need for clarification of the authority of  
41 NC beach municipalities to regulate activities and enforce ordinances on the public trust beach, regardless of one's  
42 opinion about whether or not the Town of Nags Head (or any town, including Emerald Isle) should require the removal  
43 of a structure from the beach that has been impacted by severe beach erosion. Fortunately, the Town of Emerald Isle  
44 has effectively abated beach erosion concerns with various beach nourishment projects over the past 9 years, and has  
45 not found it necessary to even consider such an action. I am hopeful that the Town's future commitment to beach  
46 nourishment will enable the Town to avoid such issues in the future.  
47

48 As you know, the Town regulates various activities and enforces ordinances to protect the public health, safety, and  
49 welfare on the public trust beach area., and also provides important emergency and public services on the public trust  
50 beach area. Among the activities regulated on the public trust beach area are dune protection, dog-leash  
51 requirements, an anti-littering ordinance, an unattended beach equipment ordinance, beach driving, horseback riding,  
52 a prohibition on overnight camping, and a prohibition on fires on the beach strand. Among the services provided by the

MINUTES OF THE REGULAR MEETING  
OF THE EMERALD ISLE BOARD OF COMMISSIONERS  
APRIL 10, 2012  
Page 10 of 14

1  
2 Town on the public trust beach area are emergency response, general Police patrol, trash and recycling collection,  
3 debris removal, and beach nourishment. Although it is likely that the *Cherry, inc.* ruling would not impact all of these  
4 regulatory tools and Town services, the *Cherry, Inc.* ruling has the potential to lead to future legal challenges, the  
5 ceasing of certain regulatory activities or services, and confusion and/or discord among the public. The *Cherry, Inc.*  
6 decision has already led to assertions by some attorneys that certain municipal regulations and activities are not valid,  
7 and a NC Supreme Court review of the case would hopefully provide necessary clarification on these issues.

8  
9 If the NC Supreme Court chooses not to hear the *Cherry, Inc.* case, it may be necessary to seek clarifying legislation  
10 from the NC General Assembly in the future.

11  
12 ***Motion was made by Commissioner Wootten to approve the Resolution***  
13 ***That There Exists Significant Public Interest in the Nature and Extent of***  
14 ***Local Government Regulation of Ocean Beaches Within Their Jurisdiction.***  
15 ***The Board voted unanimously 5-0 in favor. Motion carried.***

16  
17 **Clerks Note: A copy of Resolution 12-04-10/R5 as noted above is incorporated herein by reference**  
18 **and hereby made a part of these minutes.**

19  
20 **12. Emergency Medical Services Contracts**

21  
22 Frank Rush Town Manager addressed the Board regarding this agenda item.  
23 The following excerpt from his memo to the Board is provided for additional  
24 background:

25  
26 The Board of Commissioners is scheduled to consider 1-year extensions to two contracts associated with Emerald Isle  
27 Emergency Medical Services, Inc. (EI EMS, Inc.) at the April 10 meeting. The first contract extends the Town's  
28 existing contract with EI EMS, Inc. for the provision of emergency medical services for another year, until at least June  
29 30, 2013. The second contract extends the Town's existing contract with EI EMS, Inc. for the Town's provision of  
30 comprehensive financial administration services for EI EMS, Inc. for another year.

31  
32 The Town has contracted with the non-profit Emerald Isle Emergency Medical Services, Inc. to provide emergency  
33 medical services for Emerald Isle residents and visitors since 2001. The Town provides the majority of EI EMS, Inc.'s  
34 annual funding (\$298,000 appropriated for FY 11-12), and EI EMS, Inc. also realizes approximately \$130,000 -  
35 \$140,000 annually from service call fees. Over the years, the Town and EI EMS, Inc. have maintained a strong  
36 partnership that has served our community well, including the construction of the new EMS station in 2008, a joint  
37 venture between the Town and EI EMS, Inc.

38  
39 The existing 1-year contract between the Town and EI EMS, Inc. for the provision of emergency medical services will  
40 expire on June 30, 2012, and the Joint EMS Committee (comprised of 3 representatives each from the Town and EI  
41 EMS, Inc.) recommends another 1-year contract extension. As you know, the Joint EMS Committee has had several  
42 discussions over the past few years to assess the best long-term structure for the provision of emergency medical  
43 services in Emerald Isle. These discussions will continue over the next year, and perhaps beyond, but the Joint EMS  
44 Committee is comfortable with the quality of EMS service and the relationship between the Town and EI EMS, Inc. at  
45 this time.

46  
47 The attached 1-year contract is identical to the current contract between the Town and EI EMS, Inc., and again  
48 includes a provision (paragraph #7) whereby the Town and EI EMS, Inc., with the Joint EMS Committee taking the  
49 lead, will again re-evaluate the best long-term structure for the provision of emergency medical services in Emerald Isle  
50 over the course of the next year. The attached contract requires EI EMS, Inc. and the Joint EMS Committee to work in  
51 good faith to make a new recommendation no later than February 1, 2013. Among the long-term options to be  
52 considered are: 1) the continuation of a contractual relationship, 2) the transition of EI EMS, Inc. to Town government

MINUTES OF THE REGULAR MEETING  
OF THE EMERALD ISLE BOARD OF COMMISSIONERS  
APRIL 10, 2012  
Page 11 of 14

1  
2 department, 3) the transition of EI EMS, Inc. to a County government department, or d) any other relationship structure  
3 that provides for the highest quality service in the most cost-effective manner. Based on recent discussions, the most  
4 likely recommendations are either to continue a contractual relationship or become a Town department.  
5

6 The Town began providing financial administration services for EI EMS, Inc. through a separate contract on July 1,  
7 2011. The existing contract is also a 1-year contract that expires on June 30, 2012, and the attached 1-year extension  
8 would simply extend the existing contract to June 30, 2013. The new contract is identical to the existing contract.  
9 Under this separate contract, the Town processes all payroll transactions, accounts payable transactions, performs  
10 cash management duties, invests idle EI EMS, Inc. funds, and assists with budget monitoring for EI EMS, Inc. The  
11 Board should note that the Town's responsibilities under the attached contract are limited to processing functions, and  
12 EI EMS, Inc. retains sole decision-making authority for its operations. EI EMS, Inc. continues to operate as a separate  
13 non-profit entity, and remains responsible for all personnel selection decisions, employee supervision, adherence to  
14 medical protocols and regulations, departmental policies, purchasing decisions, and other typical daily management  
15 activities.  
16

17 The new system whereby the Town provides financial administration services for EI EMS, Inc. has worked relatively  
18 well thus far. There were a few minor issues that arose during initial implementation, however, these issues have been  
19 resolved relatively easily, and the system is expected to continue to operate smoothly in the future.  
20

21 Beginning with the fiscal year ending June 30, 2012, EI EMS, Inc. will be audited as part of the Town's annual financial  
22 audit, and their financial statements will be included in the Town's annual financial report. EI EMS, Inc.'s financial  
23 position will be reported separately from the Town's however, with all EMS revenues, expenditures, and cash  
24 segregated in a separate EMS fund. The annual financial report will clearly indicate that EI EMS, Inc. is a separate  
25 entity from the Town, but also reflect the strong partnership and contractual arrangements.  
26

27 ***Motion was made by Commissioner Wootten to approve the Contract to***  
28 ***Provide Emergency Medical Services. The Board voted unanimously 5-0 in***  
29 ***favor. Motion carried.***  
30

31 ***Motion was made by Commissioner Hedreen to approve the Contract to***  
32 ***Provide Financial Administration Services for Emerald Isle Emergency***  
33 ***Medical Services, Inc. The Board voted unanimously 5-0 in favor. Motion***  
34 ***carried.***  
35

36 **Clerks Note:** A copy of Contracts as noted above are incorporated herein by reference and hereby  
37 made a part of these minutes.  
38

39 **13. Comments from Town Clerk, Town Attorney, and Town Manager**  
40

41 There were no comments from the Town Clerk or Town Attorney.  
42

43 Town Manager Rush updated the Board on several important issues including  
44 the latest status of the Island Circle pump station as well as Lands End storm  
45 water options. Mr. Rush noted the Ocean Oaks drainage pipe was scheduled  
46 and expected to be completed in April. Mr. Rush noted that a date of Friday,  
47 May 25 had been set for a dedication ceremony for the new Veterans Memorial  
48 at the boat launching facility.  
49  
50

MINUTES OF THE REGULAR MEETING  
OF THE EMERALD ISLE BOARD OF COMMISSIONERS  
APRIL 10, 2012  
Page 12 of 14

1  
2 The following is an excerpt from the Town Manager Comments memo to the  
3 Board providing additional background information for all items of importance:

4  
5 **FY 12-13 Recommended Budget**

6 Work continues on the development of the FY 12-13 budget, and I expect to present the FY 12-13 Recommended  
7 Budget to the Board at the May 8 regular meeting. Budget workshop meetings are tentatively scheduled for Tuesday,  
8 May 22 at 6 pm and Tuesday, June 5 at 6 pm (official public hearing). Mayor Schools may not be able to attend the  
9 June 5 meeting, and this meeting can be rescheduled if desired. The Board is tentatively scheduled to adopt the FY  
10 12-13 budget at the June 12 regular meeting, assuming the Board is comfortable at that time. By law, the budget must  
11 be adopted by June 30.

12  
13 **Ordinance Regulating Residential Solar and Wind Power Devices**

14 In response to concerns expressed at the March meeting, and due to the likely greater demand for residential solar  
15 and wind power devices in the future, I have asked Kevin Reed, Planning and Inspections Director, to draft appropriate  
16 ordinance amendments for Planning Board consideration at the April meeting.

17  
18 I have asked Kevin Reed to develop only minimal regulations for solar devices, in part due to the fact that State law  
19 requires that they not be prohibited. I have also asked him to consider regulations that would allow some types of  
20 residential wind power devices to be used in Emerald Isle, without harming the aesthetic character of our residential  
21 neighborhoods.

22  
23 I expect to present a draft ordinance for Board review at your May 8 regular meeting.

24  
25 **Internet Sweepstakes Café Ordinance Amendments**

26 Kevin Reed is working with the Planning Board on ordinance amendments that would regulate the location and  
27 operation of internet sweepstakes cafes in Emerald Isle. I expect the Planning Board to review a draft ordinance  
28 amendment at their April meeting, and expect this to be on the Board of Commissioners May 8 regular meeting  
29 agenda.

30  
31 **Island Circle Pump Station**

32 SunLand Builders, the Town's contractor, has completed the installation of the pump station housing and the  
33 underground infiltration pipe. SunLand is awaiting delivery of pump and electrical components, and these components  
34 are expected to be installed later this month. All work is expected to be complete by the end of April. I have been very  
35 pleased with SunLand's work thus far.

36 **Lands End Storm Water Pump Options**

37 I am scheduled to meet with Moffatt & Nichol Engineers and members of the Lands End HOA Board of Directors on  
38 April 18 to discuss potential options to connect existing Lands End storm water pumps to the Town's storm water pump  
39 system that discharges to Emerald Isle Woods Park.

40  
41 If it's feasible, I envision a potential system whereby Lands End's existing pumps could be diverted either to the Lands  
42 End dune field (as the system is currently set up) or to a newly installed HDPE pipe that ties into the existing pumps  
43 and pipes in Spinnakers Reach. This approach could potentially reduce the overall cost to serve Lands End  
44 significantly.

45  
46 **Ocean Oaks Drive Drainage Pipe (Cape Emerald)**

47 Southeast Pipe Survey, the Town's contractor, plans to begin work on the installation of a cured-in-place-pipe in the  
48 Ocean Oaks Drive drainage pipe in Cape Emerald on April 16. Work is expected to be complete by the end of April.  
49 Minimal disruption is expected in Cape Emerald.

50  
51 **FEMA Irene Beach Nourishment Project**

52 A Major CAMA permit application has been submitted, and will be reviewed in the coming months. Everything appears  
53 to remain on track for permit receipt later this summer, bid solicitation in the fall, and construction in early 2013.

MINUTES OF THE REGULAR MEETING  
OF THE EMERALD ISLE BOARD OF COMMISSIONERS  
APRIL 10, 2012  
Page 13 of 14

1  
2 The NC Department of Environment and Natural Resources included the Town's \$3 million funding request in their FY  
3 12-13 budget request, however, we have not yet learned whether or not this funding is included in the Governor's  
4 budget request. We will continue to work with Representative McElraft and Senator Preston on this issue as the State  
5 budget process unfolds.  
6

7 **Potential New Beach Nourishment Funding Source**

8 Discussions with Representative McElraft and Senator Preston about the potential establishment of a new local beach  
9 nourishment funding source continue. Mayor Schools and I are scheduled to participate in a conference call with  
10 Representative McElraft, Senator Preston, lobbyists for the State's hospitality industry, and others on Monday, April 9  
11 to discuss options.  
12

13 **Gordon McAdams Memorial**

14 Volunteers have begun work on the covered picnic table at the Emerald Isle Public Boating Access Area that is being  
15 constructed in honor of former Town Commissioner Gordon McAdams. Posts and concrete are in place, and we  
16 expect the volunteer group to complete this work within the next month.  
17

18 **Veterans Memorial**

19 The monument for the new Veterans Memorial has been ordered. The accompanying flagpole has been delivered and  
20 is in storage at the Town Administration Building. In order to connect to an existing power source, the location for the  
21 new memorial has been moved to the landscaped area near the wooden information sign adjacent to the ramps,  
22

23 Coordinator Bernie Whalley is targeting Friday, May 25 for a dedication ceremony for the new memorial, and the  
24 details of the ceremony will be discussed by the Emerald Isle Parks and Recreation Association, Inc. at a meeting on  
25 Monday, April 9.  
26

27 **Soundside Pier at Aquarium Pier**

28 The NC Aquariums are moving forward with the construction of a new 161 ft. long soundside pier at the site of the  
29 future Aquarium Pier at Emerald Isle project (on the Park Drive right of way). The new pier will include an observation  
30 area and gangway to a floating kayak launch area.  
31

32 The NC Aquariums are also planning to install a few benches and plant additional trees along the Park Drive right of  
33 way. Work is expected to begin in mid-April and be complete by June 1. No other improvements will be constructed at  
34 this time.  
35

36 **Mosquito Larvacide Efforts**

37 Public Works staff will be placing mosquito larvacide in all accessible storm drains, ditches, and wetlands beginning  
38 next week. Public Works will also be conducting periodic landing counts to determine if / when / where to begin  
39 mosquito spraying.  
40

41 Emerald Isle property owners can obtain free mosquito larvacide for use around their private property from Public  
42 Works. Property owners should call Public Works at 354-4450 before visiting.  
43

44 **Community Center Roof Replacement**

45 EG Smithson, Inc., the Town's contractor, has completed the installation of the new roof on the Community Center.  
46 Town staff are very pleased with the work.  
47

48 **Oceanfront Exception Stickers for Unattended Beach Equipment**

49 Oceanfront exception stickers are now available to qualified oceanfront property owners (west of the "dog-leg" vehicle  
50 ramp only). The exception stickers are identical to those used in 2011, and Public Works staff will not warn or  
51 confiscate items with the 2011 or 2012 stickers.  
52  
53  
54

MINUTES OF THE REGULAR MEETING  
OF THE EMERALD ISLE BOARD OF COMMISSIONERS  
APRIL 10, 2012

Page 14 of 14

1 **Regional Access Free Parking Permits**

2 Regional Access free parking permits are now available to Emerald Isle taxpayers. The first day of the 2012 parking  
3 fee collection was Friday, April 6 (Good Friday).

4  
5 **Chief Hargett**

6 Chief Hargett continues to recover at home, but has not yet returned to work. I had been advised that he planned to  
7 return to work on April 11, however, it now appears that it will be later in April or perhaps into May.

8  
9 **Archers Creek Storm Water BMP Study**

10 Moffatt & Nichol has completed a draft of this study report, which is primarily funded by a NC Clean Water  
11 Management Trust Fund grant. I expect to review the draft report in the coming weeks and plan to include a  
12 presentation on the Board's May meeting agenda.

13  
14 **Cedar Point Yard Debris Collection Assistance**

15 The Public Works Department will collect yard debris in the Town of Cedar Point on the weekend of April 14 and 15.  
16 The Town of Cedar Point will be charged for overtime for Town personnel assigned this work, and will also be charged  
17 for all other direct costs. The completion of this work on a weekend should not impact the Town's yard waste collection  
18 schedule.

19  
20 **Ocean Drive Resurfacing**

21 Onslow Paving, the Town's contractor, completed the resurfacing of the 2.2 mile segment of Ocean Drive in late  
22 March. The Town expected the total cost of this work to be approximately \$217,000, however, the actual cost came in  
23 at approximately \$168,000. A portion of these savings is recommended to fund the Town's share of the Coast Guard  
24 Road bike path extension to Ocean Oaks Drive. A portion of the remaining funds will be utilized to improve pavement  
25 markings on Coast Guard Road.

26  
27 **Chapel By The Sea Town Employee Luncheon**

28 The annual luncheon prepared by the Chapel By The Sea congregation is scheduled for Tuesday, May 8 at 12 noon at  
29 the Community Center.

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

32  
33 Mayor Schools spoke of the summer concert series that would this year be called  
34 EmeraldFest. The Town was teamed up with the Seaside Arts Council and  
35 Emerald Isle's EmeraldFest and Swansboro's SwanFest would be advertised  
36 together. Mayor Schools said there were 8 concerts scheduled in Emerald Isle  
37 this summer and invited everyone to come out for the first concert on June 7.

38  
39 **15. Adjourn**

40  
41 ***Motion was made by Commissioner Messer to adjourn the meeting. The***  
42 ***Board voted unanimously 5-0 in favor. Motion carried.***

43  
44 ***The meeting was adjourned at 7:50 pm.***

45  
46 Respectfully submitted:

47  
48  
49 Rhonda C. Ferebee, CMC  
50 Town Clerk