

1 MINUTES OF THE REGULAR SCHEDULED MEETING
2 OF THE EMERALD ISLE BOARD OF COMMISSIONERS
3 TUESDAY, AUGUST 12, 2008 – 6:00 P.M. – COMMUNITY CENTER
4

5 The regular monthly meeting of the Emerald Isle Board of Commissioners was
6 called to order by Mayor Art Schools at 6:00 PM.
7

8 Present for the meeting: Mayor Art Schools, Commissioners Nita Hedreen, Tom
9 Hoover, Floyd Messer, John Wootten, and Maripat Wright.
10

11 Others present: Town Attorney Richard Stanley, Town Manager Frank Rush,
12 Town Clerk Rhonda Ferebee, Planning Director Kevin Reed, Police Chief Bill
13 Hargett, and Parks and Recreation Director Alesia Sanderson.
14

15 Also in attendance: Jay Barnes, Director, NC Aquarium.
16

17 After roll call all who were present recited the Pledge of Allegiance.
18

19 **4. ADOPTION OF AGENDA**
20

21 Mayor Schools noted that the Town had not heard back yet from the State
22 concerning the Aquarium Memorandum of Agreement. Town Manager Rush
23 stated that he envisioned just giving the Board a brief update tonight on the
24 status of the Memorandum of Agreement and then bring the item back for the
25 Board's September meeting.
26

27 ***Motion was made by Commissioner Wootten to adopt the Agenda. The***
28 ***Board voted unanimously 5-0 in favor. Motion carried.***
29

30 **5. PROCLAMATIONS / PUBLIC ANNOUNCEMENTS**
31

32 Mayor Schools noted the following announcements for the public:
33

- 34 • Beach Jive After Five – “Big Drink” – Thursday, August 21 – 5:30 pm –
35 Western Ocean Regional Access
- 36 • Planning Board Regular Meeting – Monday, August 25 – 6 pm –
37 Community Center
- 38 • Labor Day Holiday – Monday, September 1 – Town Hall Closed,
39 Community Center Closed
- 40 • Board of Commissioners Regular Meeting – Tuesday, September 9 –
41 6 pm – Community Center
- 42 • Special Informational Meeting – The Aquarium Pier at Emerald Isle –
43 Saturday, September 20 – 10 am – Location To Be Determined (tentative
44 – adjacent property owners to be invited)
- 45 • 3rd Annual Emerald Isle Day 4 Kids – Saturday, September 20 – 10 am to
46 2 pm – Community Center

- 5th Annual Emerald Isle Triathlon – Saturday, October 18 – 8 am – Eastern Ocean Regional Access

Town Manager Rush noted that the date for the Special Information Meeting for the Aquarium Pier at Emerald Isle had been confirmed and would be held on Saturday, September 20 at 10 am at the Aquarium in Pine Knoll Shores.

Parks and Recreation Director Alesia Sanderson mentioned the NC State Cycling Time Trial Championships would be in Emerald Isle on September 27 and 28.

6. SPECIAL PRESENTATION TO PLANNING BOARD MEMBER ROBERT CONRAD

Mayor Schools recognized Planning Board member Bob Conrad who recently resigned from the Planning Board after 4 1/2 years of service, having served on the Planning Board from January 2004 until July 2008. Mr. Conrad was unable to attend the meeting to receive his service award plaque.

7. INTRODUCTION OF NEW EMPLOYEES

Police Chief Bill Hargett introduced new full-time Police Officer Belinda Maldonado to the Board. Chief Hargett noted that Officer Maldonado graduated from Lafayette High School in Brooklyn, New York, moving to Emerald Isle in 2006. Ms. Maldonado took courses in criminal justice, psychology, and microcomputers, graduating from Basic Law Enforcement Training (BLET) from Coastal Carolina Community College in 2007. Officer Maldonado was hired part-time in December 2007 and was promoted full-time July 2008. Chief Hargett said that Officer Maldonado is married with two children; her husband is serving our Country currently stationed in Iraq. Chief Hargett added that he was glad to have her as a member of the Police Department.

Parks and Recreation Director Alesia Sanderson, introduced Randy Abrams, new Landscape Specialist. Ms. Sanderson stated that Mr. Abrams came to Emerald Isle in 2003 from Pinetops, North Carolina, where he worked for 8 years as an Asst. Superintendent of a golf course. He has also worked with Century 21, Outdoor Solutions, as well as being self-employed as a residential landscaper. Ms. Sanderson said they are excited to have Mr. Abrams on board.

The Board and public welcomed Officer Maldonado and Mr. Abrams to their new positions with the Town.

1
2 **8. CONSENT AGENDA**
3

- 4 a. Tax Refunds / Releases
5 b. Minutes – June 10, 2008 Regular Meeting
6 c. Minutes – July 8, 2008 Regular Meeting
7

8 *Motion was made by Commissioner Messer to approve the items on the*
9 *Consent Agenda. The Board voted unanimously 5-0 in favor. Motion*
10 *carried.*

11
12 **9. PUBLIC COMMENT**
13

14 There were no comments from the Public.

15
16 Commissioner Wootten stated that he felt it had not been as widely publicized as
17 it should be that our Mayor Art Schools was recently appointed to the Board of
18 Directors of the North Carolina League of Municipalities. Commissioner Wootten
19 explained that this was an organization that works on behalf of municipalities like
20 ourselves, keeping municipalities abreast of ongoing legislative affairs, as well as
21 providing expertise answering specific questions for town employees on any
22 given issue. Commissioner Wootten felt that it was a big deal to have our Mayor
23 appointed to the Board of this organization. Commissioner Wootten added that
24 he had already seen the benefits of this in terms of keeping track of the recent
25 stormwater rules and its impact and non-impact on the Town. Commissioner
26 Wootten wanted to take the time and publicly thank Mayor Schools for taking the
27 time to volunteer to fill this position on behalf of the Town.
28

29 Mayor Schools thanked Commissioner Wootten for his comments, adding that
30 along that same line he wanted to note that Mayor Jerry Jones of Morehead City
31 was going to become President of the North Carolina League of Municipalities
32 beginning in October, and that he and Mayor Richard Stanley, of Beaufort would
33 be hosting a reception for Mayor Jones on September 19.
34

35 **10. PROPOSED REZONING – 8604 REED DRIVE – FROM MOBILE HOME-1**
36 **(MH-1) TO BUSINESS-3 (B-3)**
37

- 38 a. Public Hearing
39 b. Consideration of Rezoning Request
40

41 Commissioner Hedreen in the spirit of full disclosure noted for the Board and
42 public that her husband owns a computer consulting business, with many
43 business customers in Emerald Isle which included the applicant Bluewater
44 Associates, Inc. Commissioner Hedreen said if this was a conflict of interest she
45 was willing to not comment or vote.

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1
2 Commissioner Hoover added that his wife works for the applicant Bluewater
3 Associates, Inc. and he requested to be excused by the Board due to conflict of
4 interest.

5
6 Town Attorney Stanley found that as Commissioner Hoover could claim a
7 financial interest; this was a direct conflict of interest, and it would be appropriate
8 for the Board to excuse him from voting. Town Attorney Stanley did not find a
9 conflict however for Commissioner Hedreen.

10
11 ***Motion was made by Commissioner Messer to excuse Commissioner***
12 ***Hoover. The Board voted unanimously 4-0 in favor. Motion carried.***

13
14 Planning Director Kevin Reed addressed the Board with details of this agenda
15 item. The following excerpt from Frank Rush, Town Manager's memo to the
16 Board for additional background:

17
18 The Board of Commissioners is scheduled to consider a request from Bluewater Associates, Inc. to rezone an 8,140
19 sq. ft. parcel from Mobile Home-1 (MH-1) to Business-3 (B-3). The parcel proposed for rezoning is located at 8604
20 Reed Drive, directly behind and west of the existing Bluewater Builders building that is located on the corner of NC 58 /
21 Mangrove Drive / Reed Drive. The parcel is owned by Land One Development, Inc., however, Bluewater Associates,
22 Inc. intends to acquire the parcel and construct an addition to the existing Bluewater Builders building.

23
24 The attached memo from Kevin Reed, Planning and Inspections Director, includes additional information about the
25 rezoning request. The Planning Board voted 4-1 at its July meeting to recommend approval of the rezoning, as the
26 parcel is located directly adjacent to several other parcels currently zoned B-3 and the rezoning would simply expand
27 the boundaries of the existing B-3 zone in this area. The Board should note that the proposed rezoning is not
28 consistent with the Town's Land Use Plan, which depicts this parcel as "single/dual family residential", however, the
29 Board is not precluded from rezoning the parcel if it believes the rezoning has merit. The Planning Board also
30 recommended that the Land Use Plan be amended at a future meeting to reflect this change for this parcel if the
31 rezoning is approved.

32
33 All adjacent property owners have been informed about the rezoning request and the public hearing scheduled for
34 August 12. Kevin Reed has been contacted by some of the nearby property owners, and we believe that there may be
35 some objection to the proposed rezoning. These property owners have been advised to share their concerns with the
36 Board of Commissioners prior to or at the August 12 public hearing if so desired.

37
38 It is our understanding that Bluewater Associates intends to construct an addition to their existing building on this
39 parcel, and that the community impacts associated with this use will be relatively minor compared to other business
40 uses. The Board should note, however, that a rezoning to the B-3 classification would allow a wide range of
41 commercial uses (indicated on the attached copy of the Town's Table of Permitted Uses) on this site by right, and the
42 Board has no authority to legally limit the potential use of the parcel by Bluewater Associates to their stated intentions.
43 The small dimensions of the parcel, wastewater system limitations, other ordinance requirements, and the fact that the
44 location has limited visibility for commercial purposes make it highly unlikely that it would be desirable location for any
45 other commercial use other than Bluewater Associates. Of course, the potential always exists for redevelopment of the
46 entire Bluewater Associates complex at some point in the future, however, that appears unlikely at this time.

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2 The Board should note that the Town's zoning ordinance requires a 10 ft. setback from the western property line if it is
3 used for residential purposes. If the property is rezoned to B-3, a minimum 15 ft. setback will be required, along with a
4 buffer consisting of an opaque vegetative screen 6 ft. in height or a 6ft. opaque fence. Bluewater Associates may be
5 willing to provide an expanded buffer in order to address neighbors' concerns, however, the Town cannot legally
6 accept or enforce such offers.

7
8 Finally, the Board should note that the proposed rezoning is intentionally scheduled on the agenda prior to the Board's
9 consideration of the Unified Development Ordinance (UDO) in order to avoid confusion with the UDO. If the Board
10 rezones this property to B-3 and then adopts the UDO, this parcel would ultimately have a "Business" zoning
11 classification. (Business-3 is being renamed as simply "Business" in the UDO.)
12

13 ***Motion was made by Commissioner Hedreen to open the Public Hearing.***
14 ***The Board voted unanimously 5-0 in favor. Motion carried.***
15

16 Wayne Robey, 8606 Reed Drive, stated his property abuts the lot proposed to be
17 rezoned. Mr. Robey said that he had been coming to Emerald Isle since 1960,
18 purchasing his property in 1989 with the plans to retire here in Emerald Isle. He
19 built his home in 1998 and retired full-time to Emerald Isle two months ago. Mr.
20 Robey stated that they had complied over the years with all Town requests. Mr.
21 Robey stated that their expectations were to enjoy retirement here in Emerald
22 Isle living in a residential neighborhood. He expected with this rezoning more
23 traffic, noise, ground water. He expressed his concerns if Bluewater moved that
24 it could become a McDonalds or a night club in the middle of a residential
25 neighborhood. Mr. Robey stated that they were opposed to the rezoning and
26 that they had supported a petition that was presented in opposition to any
27 reclassification of the property. Mr. Robey stated the Land Use Plan indicated
28 residential use for the subject property making the rezoning request inconsistent
29 with the Town's plan. In referencing the Town Manager's memo to the Board,
30 Mr. Robey said that he had not yet as of today received official notification of
31 tonight's meeting. (By state law, official notice was mailed to Mr. Robey's
32 Raleigh address. Mr. Robey had been in contact with the town prior to the
33 meeting, so we knew he was aware of the rezoning request)
34

35 Frank Powell, 8614 Reed Drive, spoke concerning the stormwater runoff
36 problems on Reed Drive, describing the ditch and conduit system that handles
37 their rainwater. He spoke of the flooding problems on Reed drive during
38 moderate rain and heavy rain. Mr. Powell felt that the proposed building by
39 Bluewater extending their present building and surrounding that with a parking lot
40 would exacerbate the existing problem.

41
42 Nell Roberts, 8603 Reed Drive, facing the property proposed to be rezoned
43 stated that she was against the rezoning, and she understood that the rezoning
44 request was inconsistent with the Future Land Use Plan. Ms. Roberts said her
45 neighborhood was comprised of people who had been coming to Emerald Isle for
46 several decades, and generations. Ms. Roberts said this neighborhood had a
47 perfect mix of homeowner and rental properties, reminiscent and representative

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1
2 of the older, established beginnings of Emerald Isle. Ms. Roberts said she
3 bought here with the expectations of living in a resident area that was walk-able,
4 bike-able to the Town and the beach. She was planning to build a house on her
5 property and retire here in the next 6 years. Ms. Roberts spoke of her concerns
6 with more businesses wrapping around the corners from Reed Drive and
7 adjoining and facing residential properties. She said businesses can change and
8 relocate or expand to offer services that would not enhance their neighborhood.
9 She talked about the traffic on Reed Drive and felt the rezoning would increase
10 traffic on an already dangerous 4-way stop negatively impacting the
11 neighborhood. Ms. Roberts also noted the increased noise from early morning
12 commercial trucks starting their engines in the expanded parking lot. Ms.
13 Roberts requested the Board not rezone this property to Business.

14
15 John McLean, Civil Engineer, hired by Bluewater Associates, Inc., stated that he
16 had been here since 1953 and wanted to make a few points. First, he said that
17 Land Use Plans were made to be revised. Mr. McLean in reference to
18 stormwater issues noted that Town ordinances require they collect and treat all of
19 the stormwater that falls on this property up to 2". Mr. McLean said this would be
20 a construction office and they have a great plan prepared to landscape and
21 shield to do whatever they can to protect the neighborhood. He said they have a
22 16 foot wide building and they need to expand and asked that they listen to the
23 Planning Board.

24
25 Judy Whatley, wife of Wayne Robey, 8606 Reed Drive, wanted to point out that
26 they believed the proposed rezoning was not in the best interest of their
27 residential neighborhood for the following reasons: Bluewater Realty already
28 contributed to the heavy traffic on Reed Drive. She felt growing the building
29 division and the size of its parking lot would likely increase the truck traffic. She
30 noted the noise already in the morning from the building division parking lot
31 presumably prior to going to job sites, she felt increasing the size of the parking
32 lot and positioning it closer to their house would exacerbate the problem. She
33 spoke about the bike paths built by the Town; feeling increased vehicular traffic
34 would increase the risk of injury to a visitor or resident. She felt it was in the best
35 interest of the entire neighborhood to preserve all of the properties currently
36 zoned residential. Ms. Motley noted that success of their petition drive which
37 garnered 72 signatures shows that the neighborhood was unified in its belief.
38 She noted personal concerns of the trees that serve as a buffer but also function
39 as a safe habitat for birds and other wildlife. She was concerned if these trees
40 were taken down, and also concerned about their property values being
41 adversely affected by being the first residential property adjoining a business
42 property. Ms. Motley concluded by stating that Bluewater should not be
43 permitted further extension into their residential area.

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2 Sherrell Futrall, and business partner Woody Warren, Bluewater Associates, Inc.
3 spoke to the Board. Mr. Futrall stated that their construction office is an
4 administrative building, there are no construction people working out of the
5 building. Mr. Futrall noted that Mr. McLean had designed a stormwater system
6 for the existing building that contains the water from that building and the parking
7 lots that are there now, the new plan will have another system that will contain
8 the water from the expansion. Mr. Futrall noted that the subject property was
9 only 62 feet wide with a 14 foot wide building now, the proposal is to add 32 feet
10 to that building. Mr. Futrall stated that he had explained to Mr. Robey that they
11 did not intend to take out the buffer between the property but in fact planned to
12 enhance that buffer. Mr. Futrall displayed a rendering showing the plans for
13 planting large oak trees in the sparse areas to help privatize the properties, and
14 other trees they also hope to protect. Mr. Futrall said they had done as much as
15 they possibly could to alleviate concerns, take care of the buffer, the stormwater,
16 and the parking will be minimal, they have a 14 foot wide building that is just very
17 awkward, they need more working space.

18
19 Herman Boyd, 121 Myrtle Street, said he had counted as many as 12 trucks, a
20 big dumpster, two white trailers, at 7 o'clock in the morning. He said they had
21 just gotten that area cleaned up and now they want to do something else. Mr.
22 Boyd said he was not in favor of this. Mr. Boyd said that a lot of his neighbors
23 couldn't be here tonight so they asked him to speak for them and so speaking for
24 those on Myrtle Street, they are not in favor of rezoning this piece of property.

25
26 ***Motion was made by Commissioner Messer to close the Public Hearing.***
27 ***The Board voted 4-0 in favor. Motion carried.***

28
29 Commissioner Wootten questioned the applicants about the reference to
30 construction trucks. Mr. Warren answered that had been using a trailer for
31 storage and things unintentionally blossomed from a storage area into where
32 there was maintenance working out of it and it grew out of proportion. Mr.
33 Warren said they got a call from Planning Director Reed that they were possibly
34 violating ordinances so they moved as quickly as they could to get out of that
35 building and they are out and no longer using it for maintenance workers. Mr.
36 Warren said the trucks are no longer there and the storage vehicles and
37 dumpster are no longer there. Mr. Warren said they were looking for a facility
38 where their maintenance workers can have a shop; some of that work is now
39 being done off the Island and some at the job sites. Mr. Futrall noted that the
40 property management division is totally independent of the construction company
41 which is a total different entity. This would be an administrative building, where
42 estimates are done, orders placed, and management.

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1
2 Commissioner Hedreen asked about the dumpster noise between 5am to 7am in
3 the morning. Mr. Futral noted that the dumpsters were across the street behind
4 the property management division. He wasn't sure how the Town regulated
5 Waste Industries but that it was a valid concern and they would look into that.

6
7 Commissioner Hedreen asked Planning Director Reed if the applicants because
8 it was commercial would have to have an engineered storm water plan. Mr.
9 Reed responded that depending on the size of the expansion they would,
10 typically commercial projects are associated with an engineered storm water
11 plan.

12
13 Town Manager Rush stated to the Board before deliberation of this request, that
14 as the petition received by the Town did constitute a legal protest petition, statute
15 required a super majority in order for the Board to approve the rezoning. Mr.
16 Rush said in this case that would be 75% with Commissioner Hoover being
17 excused that means that 3 of the 4 remaining Commissioners would be required
18 to vote affirmative.

19
20 Commissioner Wright asked what else could be done with a 62 foot lot. Mr.
21 Reed said that a stand alone 60 foot commercial lot would probably present
22 some challenges for someone wanting to develop that small parcel for
23 commercial purposes but the zoning ordinance would permit anything that is an
24 allowable use in a B-3 district to be located on that property. Mr. Reed said if it
25 remained a residential lot it would be a challenge but you could build a narrow
26 home or place a manufactured home on it in a shotgun fashion.

27
28 ***Motion was made by Commissioner Messer to deny the rezoning of 8604***
29 ***Reed Drive from Mobile Home-1 to Business-3. The Board voted 1-3 with***
30 ***Messer in favor of denying, Hedreen, Wootten, Wright against denying.***
31 ***Motion to deny rezoning failed.***

32
33 ***Motion was made by Commissioner Wootten to approve the rezoning. The***
34 ***Board voted 3-1 with Hedreen, Wootten, Wright in favor of approving,***
35 ***Messer against approving. Motion to approve rezoning carried.***

36
37 Town Attorney Stanley pointed out that the Board would now need to determine
38 whether the action is consistent with the Land Use Plan and if they find that it is
39 not they must state facts as to the reasons that their action taken is both
40 reasonable and in the public interest.

41
42 ***The Board by a vote of 4-0 found that the subject rezoning was not***
43 ***consistent with the Town of Emerald Isle's 2004 CAMA Land Use Plan.***
44
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1
2 Commissioner Hedreen stated that the lot is small and by doing the addition off
3 of the back she felt this action would be much less intrusive to the overall
4 neighborhood than to try to put another home on the lot. She walked the site and
5 noted that there was a big wide driveway across the street that probably had as
6 much pavement as does the parking lot planned, adding that while it is not
7 completely consistent with the Land Use Plan it does abut commercial property,
8 and serves a public interest to spread the traffic out rather than having it all vie
9 for the small spaces on the east side of the property.

10
11 Commissioner Wootten agreed with Commissioner Hedreen's comments, feeling
12 that this would be a great use of this property and would not have the impacts
13 feared by the residents, and that it was in the best interest of the public.

14
15 Commissioner Wright said that the back of this building will be farther away from
16 the existing houses than if another home were put there. She felt there would be
17 more of a buffer and because it is a commercial building they would have more
18 requirements for containing their stormwater than someone building a house.

19
20 ***Motion was made by Commissioner Wootten to approve the statement as***
21 ***read aloud by Mayor Schools that the rezoning was both reasonable and in***
22 ***the public interest for the following reasons:***

- 23
24 • ***The property to be rezoned is immediately adjacent to existing***
25 ***property zoned B-3,***
26 • ***The Town's Land Use Plan will be amended to make the rezoning***
27 ***consistent with the community's goals,***
28 • ***The rezoning will allow for an adjacent commercial use to be***
29 ***expanded; and***
30 • ***The community's overall interest in maintaining a small-town***
31 ***atmosphere.***

32
33 ***The Board voted 3-1 in favor – Hedreen, Wootten, Wright in favor, Messer***
34 ***opposed. Motion carried.***

35
36 Commissioner Messer stated that he had known the applicants, Mr. Futral and
37 Mr. Warren for many years, and everything he had known them to do had always
38 been first class, his objection to this rezoning was the gradual edging of
39 commercial property into a residential neighborhood.

40
41 ***Motion was made by Commissioner Messer to welcome Commissioner***
42 ***Hoover back. The Board voted unanimously 4-0 in favor. Motion carried.***
43
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2 **11. UNIFIED DEVELOPMENT ORDINANCE / ZONING MAP AMENDMENTS**
3

4 Planning Director Kevin Reed addressed the Board with an overhead
5 presentation and details of this agenda item. The following excerpt from Frank
6 Rush, Town Manager's memo to the Board for additional background:
7

8 The Board of Commissioners is scheduled to conduct the official public hearing on the Unified Development Ordinance
9 (UDO) and associated zoning map amendments at the August 12 meeting. Following the required public hearing, the
10 Board may formally consider the adoption of the UDO and the associated zoning map amendments.
11

12 As you know, Town staff, the Planning Board, and the Board of Commissioners have completed a very extensive
13 review of the UDO over the past several months. Town staff have also reached out to the local development / real
14 estate community to seek their input during this process. The Planning Board voted to recommend approval of the
15 UDO at their June 23 meeting, and the Board of Commissioners conducted the first of two planned additional reviews
16 at the July 8 meeting. The August 12 meeting is the second of these additional reviews, potentially followed by formal
17 Board adoption at the August 12 meeting.
18

19 Kevin Reed, Planning and Inspections Director, will make a brief presentation to the Board and the public prior to the
20 public hearing to summarize the goals of the UDO, note any significant policy changes, and identify the proposed
21 zoning map amendments. The Board has previously received a copy of the new UDO notebook, and should bring this
22 notebook to the August 12 meeting. (If you need an additional copy, please let us know and we can provide that to you
23 prior to the August 12 meeting.) I have included copies of staff memos from me and Kevin Reed from the May 13 and
24 July 8 regular Board meetings as additional background information for the August 12 meeting. I have also included
25 copies of maps indicating all proposed zoning map amendments. The Board should note that the UDO and associated
26 zoning map amendments presented for Board approval at the August 12 meeting are identical to the information
27 presented to the Board at the July 8 meeting, with two minor clarifications that are explained below.
28

29 Two sections of the UDO associated with the Towns' Universal Storm Water Management Program (USMP)
30 regulations have been revised to simply clarify the Town's intent. First, additional language has been added to clarify
31 that the UDO / USMP requirement that limits impervious coverage to 25% or 36% adjacent to Outstanding Resource
32 Waters does not apply to redevelopment projects. Redevelopment projects with existing impervious surface that
33 already exceeds this limit will be allowed to retain the same amount of impervious surface. This has been the Town's
34 practice and intent all along, however, we believe it is helpful to include this clarifying language in the UDO / USMP.
35 This requirement is consistent with the State's regulations governing USMP. Second, the Town's definition of
36 "watercourse" has been amended and expanded to include sub-definitions of "ephemeral", "intermittent", and
37 "perennial" watercourses. This language has been amended in order to clarify that the required 30 ft. setback from
38 watercourses applies only to "perennial" watercourses. There was some concern expressed that the previous
39 language would have required a 30 ft. setback from "ephemeral" or "intermittent" watercourses (i.e., drainage ditches,
40 swales, etc.), and that is not the Town's intent. We do not believe that these changes are significant or will prevent the
41 NC Division of Water Quality from certifying the Town's ordinance as USMP-compliant.
42

43 The required public hearing has been advertised for August 12, and all affected and adjacent property owners have
44 been informed of the proposed rezoning and the August 12 public hearing. Kevin Reed has fielded numerous inquiries
45 from property owners about the proposed rezonings in recent weeks, and we have not perceived any significant
46 concerns.
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2 ***Motion was made by Commissioner Messer to open the Public Hearing.***
3 ***The Board voted unanimously 5-0 in favor. Motion carried.***
4

5 Clint Routson, attorney with Ward & Smith, and an Emerald Isle resident, spoke
6 on behalf of his client Tom Singleton. Mr. Routson had a list of questions for the
7 Board regarding the business zone and stormwater provisions in the proposed
8 Unified Development Ordinance that he requested be distributed to the Board.
9 Mr. Routson asked that if the Board planned to adopt the ordinance tonight that
10 the questions be considered at this time so that the ordinance is not adopted and
11 then has to be amended. (A copy of this list of questions is attached in its
12 entirety and hereby made a part of these minutes).
13

14 Commissioner Wootten recommended that the Board defer now and potentially
15 get the committee back together to go through the ordinance portion and Mr.
16 Rush and Mr. Reed meet with Mr. Routson to go over the stormwater issues;
17 however Commissioner Wootten still wished to hear other public comments.
18

19 Larry Spell, President, Bogue Banks Water Corp., a non-profit corporation stated
20 that Bogue Banks Water Corp. owns 8 well sites in Emerald Isle, as well as
21 others in Indian Beach and Salter Path. Mr. Spell said of the 8 sites in Emerald
22 Isle, 3 of these sites have been shown to having zoning change. Mr. Spell said
23 they felt that if in the future some of these sites become unusable for well sites or
24 office sites, that it would be their responsibility and duty to sell those pieces of
25 property for the most money. In particular, Mr. Spell said he would prefer if the
26 office site closest to them bordering residential zoning to the east remain R-2 as
27 opposed to Governmental use. Mr. Spell also mentioned the well site on Coast
28 Guard Road, which is surrounded on two of its four sides by multi-family, one
29 side by the electric company, and the other side by residential, again feeling that
30 property should be zoned multi-family as opposed to Governmental use.
31

32 Ron Thigpen, 2414 Emerald Drive, spoke about his single family dwelling he
33 owns that is located on 4 lots. Mr. Thigpen said to the west side there are
34 duplexes and to the east side there are condos in that area. He asked the Board
35 to consider that his property as presently zoned as RMH be rezoned to RMF,
36 residential multi-family. He felt this would be consistent with the block of property
37 that he owns. He said that it is currently 4 lots with one house so it is not
38 developed to its full potential. He said he would probably keep it the way it is but
39 for the value of the property he felt it would be best suited and also be consistent
40 with the planning to rezone it to RMF.
41

42 Jan Ray, Archers Creek Court, spoke about the property behind Town Hall that
43 extends to Sound Drive that is set to change to RMF residential multi-family from
44 RMH residential motel-hotel. Ms. Ray said her main concern was that this
45 property was probably the last virgin maritime forest here on the island with all

1
2 kinds of wildlife, birds and species of trees and plants. She asked if no condos
3 could be built there to destroy the wildlife. Ms. Ray also mentioned this property
4 as it related to the Bogue Airfield as far as density.

5
6 Mayor Schools noted that the proposed changes to that property are more
7 restrictive than the zoning there now. Mr. Reed confirmed that this rezoning
8 would eliminate the opportunity for the owner to develop motels and hotels but
9 still allow multi-family.

10
11 ***Motion was made by Commissioner Messer to close the Public Hearing.***
12 ***The Board voted unanimously 5-0 in favor. Motion carried.***

13
14 Town Manager Rush suggested that staff would meet with Mr. Routson, prepare
15 written response, share that with the UDO committee and hopefully come back to
16 the Board for their consideration in September.

17
18 ***Motion was made by Commissioner Messer to table this item. The Board***
19 ***voted unanimously 5-0 in favor. Motion carried.***

20
21 **12. MEMORANDUM OF AGREEMENT – TRANSFER EASTERN OCEAN**
22 **REGIONAL ACCESS TO THE NORTH CAROLINA AQUARIUMS FOR THE**
23 **CONSTRUCTION OF “THE AQUARIUM PIER AT EMERALD ISLE”**

24
25 Town Manager Frank Rush addressed the Board concerning this agenda item.

26
27 Mr. Rush pointed out that Jay Barnes, Director, North Carolina Aquarium at Pine
28 Knoll Shores was also in attendance tonight.

29
30 Mr. Rush noted that the Memorandum of Agreement before the Board tonight
31 had been reviewed at the Town staff level, the Aquarium staff level, with
32 significant input from the State Property Office who will actually handle the
33 transaction. Unfortunately, the final comments had not been received from the
34 State Property Office prior to this meeting. Mr. Rush said he didn't expect that
35 there would be significant comments that would affect the proposed
36 Memorandum of Agreement. Mr. Rush said he would like to walk the Board
37 through the document, allow Mr. Barnes to make comments, and then receive
38 the formal correspondence from the State Property Office and bring this item
39 back to the Board on the September meeting agenda.

40
41 The following excerpt from Mr. Rush's memo to the Board is provided as
42 additional background:

43
44
45

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1
2 The Board of Commissioners is scheduled to consider the official Memorandum of Agreement (MOA) between the
3 Town and the State of NC for "The Aquarium Pier at Emerald Isle" project at the August 12 meeting. The MOA is
4 based on ideas presented to the Board at the February 2008 meeting, and has been negotiated by Town and NC
5 Aquarium officials, with input from other State agencies, over the past several months.
6

7 The approval of the MOA is the first critical step for the project, and will enable future project activities to occur later
8 this fall, including the actual transfer of the Eastern Ocean Regional Access (EORA) to the NC Aquariums, the
9 selection of an architect for the project, and the appointment of a citizen advisory committee to provide input into the
10 project. The MOA outlines the understanding between the Town and the NC Aquariums as we move forward on the
11 project, and represents the foundation of a strong partnership for this beneficial project.
12

13 The parties to the MOA are the Town, the NC Aquariums Division of the NC Department of Environment and Natural
14 Resources, and the NC State Property Office. The EORA property will actually be titled to the State of North Carolina
15 and the NC State Property Office will allocate the property for use by the NC Aquariums. The EORA property consists
16 of a 2.8 acre tract of land currently titled to the Town and also includes the Park Drive right of way, a Town street right
17 of way. The MOA stipulates that the Town will convey title to the 2.8 acre tract to the State of NC and that the Town
18 will also assign a non-exclusive right of way easement to the State of NC for additional parking facilities, access to the
19 2.8 acre tract, and construction of a soundside pier in the Park Drive right of way. We have completed significant
20 research on this issue, and have determined that this approach is the most efficient approach to enable construction of
21 "The Aquarium Pier at Emerald Isle" project on the EORA site. The Town will convey the title to the 2.8 acre tract and
22 the right of way easement at no cost to the State of NC.
23

24 The most significant and important provision in the MOA is the inclusion of a reverter clause that calls for the 2.8 acre
25 tract and the right of way easement to be returned to Town ownership if, for whatever reason, the project does not get
26 constructed as planned. The Town's and the NC Aquariums' goal is to open the facility to the public by 2012, however,
27 due to the potential for delays during project development and construction, the MOA stipulates that the Town may not
28 activate the reverter clause earlier than December 31, 2015. The MOA also includes flexibility for the parties to extend
29 this deadline if necessary at that time. The inclusion of the reverter clause will guarantee that the property will continue
30 to be used for public beach and sound access in perpetuity in the event that "The Aquarium Pier at Emerald Isle"
31 project is not ultimately constructed. Of course, both parties will be working hard to avoid that situation, however, the
32 reverter clause is included for the "worst-case" scenario.
33

34 Another significant provision in the MOA is an affirmation of the close partnership between the NC Aquariums and the
35 Town. The MOA stipulates that the Town will work closely with the NC Aquariums to secure future grant funding
36 sources for construction of the project, to be used to supplement the planned allocation of NC Aquarium operating
37 receipts and hopefully expedite construction of the project. Although the NC Aquariums will have ultimate authority
38 and control over the project, the MOA stipulates that the Town Manager and Mayor will serve on the project
39 development team along with the NC Aquariums Director, the Director of the NC Aquarium at Pine Knoll Shores, and
40 the Director of the NC Aquarium Society. Additionally, a special citizen advisory committee will be established to
41 provide input into the development of the project. The committee will be advisory in nature, and will consist of 8
42 members – with 4 members appointed by the NC Aquariums and 4 appointed by the Town of Emerald Isle. The Town
43 Manager and Mayor will serve as non-voting members of the committee and help provide support to the committee.
44 The 4 members appointed by the Town will represent the following interests:
45

- 46 • one member of the Board of Commissioners,
- 47
- 48 • one member who is a neighboring property owner in the general vicinity of the project,
- 49
- 50 • one member who is an avid pier fisherman, and
- 51
- 52 • one at-large member.
- 53
- 54

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I envision the Board advertising for applicants for the committee and making appointments later this year, with the committee beginning its work late in 2008 or early 2009.

Other key provisions in the MOA include the following:

- The Park Drive right of way must remain available for access to private property currently served by Park Drive.
- The EORA site will continue to be operated as a public beach access facility prior to construction and to the maximum extent practical during construction.
- The State of NC will own the property upon formal transfer later this year, and will be responsible for liability issues and property insurance.
- The Town will continue to maintain the EORA site (routine day to day maintenance, etc.) in a similar manner in the interim period after transfer to the State up until construction of the project. The Town will not charge the NC Aquariums for these services.
- The NC Aquariums will submit a detailed project budget and financing plan to the Town prior to actual transfer of the EORA site later this year.

Once the MOA is formally approved by the Board of Commissioners, the NC Aquariums, the NC Department of Environment and Natural Resources, and the State Property Office, it will serve as the basis for the drafting of appropriate legal documents to complete the actual transfer of the property later this year. The transfer of the property must first be approved by the NC Council of State, and this item is expected to be considered in the coming months.

The Board should note that the MOA has been reviewed and approved by the Mayor, Town Manager, the Town Attorney, the Director of the NC Aquariums, and the Director of the NC Aquariums at Pine Knoll Shores. We are still awaiting final comments (any day, and hopefully prior to the August 12 meeting) from the NC State Property Office and legal counsel at the NC Department of Environment and Natural Resources, however, we do not believe these reviews will result in any significant changes as their input has been sought and provided throughout the process of drafting the MOA. If there are additional changes to be made to the MOA, and they are received prior to the August 12 meeting, these changes will be presented to the Board at the August 12 meeting. If these changes are not received by August 12, or if any additional changes are judged to be significant, I will ask the Board to delay consideration of the MOA until the September meeting.

The architect selection process will begin later this fall, and will be coordinated by the State Construction Office with input from NC Aquariums staff. The Town Manager and Mayor will also likely participate in this process. The NC Aquariums currently have a contract with BMS Architects of Wilmington, NC for the design of "The Aquarium Pier at Nags Head", which is set to begin construction in early 2009. There is keen interest in utilizing BMS Architects for the Emerald Isle project also, however, State Construction Office policies may require the completion of a new selection process. This issue will be resolved in the coming weeks.

The Board should note that we will soon conduct an informational meeting for nearby property owners and the general public to learn more about the project. We have tentatively established Saturday, September 20 at 10 am for this meeting, and the meeting will likely be held at the Pine Knoll Shores Aquarium. Invitations will be sent to all known nearby property owners in the coming days. We will be working hard to address the concerns of neighbors during design and construction, and value their input.

I am extremely pleased to present this MOA to the Board for consideration at the August 12 meeting. "The Aquarium Pier at Emerald Isle" will bring tremendous benefits to Emerald Isle, Carteret County, and all of North Carolina, and will insure the perpetual existence of a public ocean fishing pier along the central NC coast. The Town could not ask for a better partner than the NC Aquariums for this project, and the addition of Aquarium facilities, exhibits, educational

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1
2 programs, and public meeting spaces will significantly enhance the quality of life in Emerald Isle and strengthen the
3 Town's standing as a prime tourism destination.
4

5 Jay Barnes, Director, NC Aquarium at Pine Knoll Shores, addressed the Board,
6 thanking Mr. Rush, Mr. Stanley and others who worked to put this document
7 together. Mr. Barnes apologized that the State Property Office had not yet
8 completed their review and provided their final comments. Mr. Barnes said the
9 State of North Carolina has plans to build 3 piers with the first being in Nags
10 Head to be constructed in 2009. Mr. Barnes mentioned the informational
11 meeting scheduled for September 20 at the Aquarium, he plans to have a slide
12 presentation and talk about that project which is really the model on which the
13 pier here in Emerald Isle will be based. Mr. Barnes said the third project will be
14 much later on in Carolina Beach.
15

16 Keith Maready, 207 Park Drive, soundfront property owner directly adjacent on
17 the west side, owning the duplex together with Robert and Deborah Nash,
18 shared with the Board some of his concerns. Mr. Maready speaking on behalf of
19 himself and his wife as well as the Nash's discussed their dialogue with Town
20 Manager Rush when they heard about the mention of a pier, and a soundside
21 pier. Mr. Maready provided a chronological order of events and conversations
22 with Town Manager Rush concerning the pier project, and the Memorandum of
23 Agreement. Mr. Maready spoke of concerns regarding the soundside pier such
24 as environmental, parking, and lighting issues.
25

26 Mayor Schools stated that the Memorandum of Agreement wouldn't address any
27 of these issues, but the concerns such as parking and environment are things
28 that the advisory committee will want to hear. Town Manager Rush agreed that
29 the comments expressed by Mr. Maready are exactly the type of comments they
30 want to hear, but it is too early in the process. Mr. Rush noted that the email sent
31 to many property owners that he had made a great effort to seek out to include in
32 the process noted that the Memorandum of Agreement was not intended to deal
33 with site specific issues. Mr. Rush noted that clearly the goal of the Town and
34 the Aquarium would be to work very closely with nearby property owners on the
35 issues as they move forward with the project.
36

37 Commissioner Wootten complimented Town Manager Rush and NC Aquarium
38 Director Jay Barnes on the drafting of the MOA document.
39

40 Town Manager Rush stated that he would hope to bring this item back no later
41 than the September Board meeting.
42
43
44
45
46

1
2 **13. COMMENTS FROM TOWN CLERK, TOWN ATTORNEY, AND TOWN**
3 **MANAGER**
4

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

7 Town Manager Rush provided a brief update for the Board on the status of
8 various projects. The following is an excerpt from his Manager Comments memo
9 to the Board for additional information:

10
11 **Update - Coast Guard Road Storm Water Project**

12 The project is nearing completion, with all underground pipeline drilling work completed. The only remaining pipeline
13 work involves the fusion of several pipe segments along Coast Guard Road and in Dolphin Ridge. All other project
14 components have been installed.
15

16 Clean up work remains along Coast Guard Road, in Dolphin Ridge, and in Emerald Isle Woods Park. Sod has been
17 installed in Spinnakers Reach, and that area is essentially "back to normal". Minor road repairs will be completed in
18 Spinnakers Reach where the contractor's equipment damaged the road. Additional improvements will be made to
19 improve the aesthetics of the electrical control panels and additional landscaping will be planted.
20

21 The project should be complete and functional within the next few weeks.
22

23 **Update - New EMS Station**

24 The EMS Station remains on schedule for a September completion date. Interior finish work is ongoing, and
25 underground storm water management features have been installed. Remaining exterior work includes driveway
26 construction and landscaping. EI EMS should take occupancy of the building before the end of September.
27

28 A dedication ceremony will be organized for late September.
29

30 **Update - Town Administration Building**

31 A pre-construction meeting was held on July 22, and additional cost savings were identified to cover the estimated cost
32 of the cupola clock. The storm water plan for the project is being modified, and should be approved in the near future.
33 Site grading will begin as soon as the storm water permit is approved.
34

35 A groundbreaking ceremony is tentatively scheduled for September 9 at 10 am, assuming that site clearing has been
36 completed by that date. More details will be provided later.
37

38 **Itinerant Merchants Ordinance**

39 I discussed this issue with the Emerald Isle Business Association at their July meeting, and received some helpful
40 feedback. Additional feedback from the business community will be solicited in the fall and winter, and a revised
41 ordinance could be presented to the Board in the spring.
42

43 **Tents on the Beach**

44 We continue to receive complaints about shade tents being left on the beach overnight, with concerns expressed about
45 aesthetics, sea turtle nesting impacts, and potential hazards. The Board may want to explore this issue further this fall
46 and winter.
47

48 Town staff have attempted to improve education efforts by distributing flyers to the vacation rental agencies. Beach
49 Patrol staff have also been instructed to distribute flyers to visitors on the beach strand.
50
51
52

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1
2 **Parks and Recreation Trust Fund Grant for McLean Park Was Not Approved**

3 The Town's request for a \$150,000 grant from the Parks and Recreation Trust Fund (PARTF) was denied at the July
4 25 PARTF meeting. We are disappointed that this grant was not approved, which would have funded construction of a
5 new ball field and playground at McLean Park. We will investigate other strategies to add these park features in the
6 future, including future grant opportunities, potentially including PARTF.

7
8 **Non-Emergency Dispatch Contacts / Carteret County Consolidated E911 Center**

9 I have attached a summary of non-emergency dispatch contacts (phone calls and visits) at the Police Department for
10 the past 3 months. We will continue to track this information.

11
12 Chief Hargett and Chief Walker continue to serve on the County's E911 Advisory Committee, and we continue to learn
13 more about this issue. I don't expect to return to the Board for a final decision on this issue until later this year or
14 sometime next year.

15
16 **US Coast Guard Agreement**

17 Chief Walker executed the attached agreement between the Town and the US Coast Guard that indicates the Town
18 will provide firefighting services for the US Coast Guard Station – Emerald Isle. The agreement is simply a formality,
19 as the EI Fire Department would surely respond to a fire at the station regardless of the existence of an agreement.

20
21 **14. COMMENTS FROM BOARD OF COMMISSIONERS AND MAYOR**

22
23 There were no further comments from the Board of Commissioners or Mayor.

24
25 **15. CLOSED SESSIONS**

- 26
27 **a. Pursuant to NCGS 143-318.11(5), for the Purpose of Discussing**
28 **Potential Real Estate Acquisition**
29 **b. Pursuant to NCGS 143-318.11(6) for Personnel Matter**

30
31 ***Motion was made Commissioner Messer to go into Closed Session. The***
32 ***Board voted unanimously 5-0 in favor. Motion carried.***

33
34 ***Motion was made by Commissioner Messer to return to Open Session. The***
35 ***Board voted unanimously 5-0 in favor. Motion carried.***

36
37 There was no action taken as a result of Closed Session.

38
39 **16. ADJOURN**

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

43
44 Respectfully submitted:

45
46
47 Rhonda C. Ferebee, CMC
48 Town Clerk