

1 MINUTES OF THE REGULAR SCHEDULED MEETING
2 OF THE EMERALD ISLE BOARD OF COMMISSIONERS
3 TUESDAY, OCTOBER 9, 2007 – 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 Asst. Town Manager/ Finance Officer Mitsy Overman, Town Clerk Rhonda
13 Ferebee, and Planning and Inspections Director Kevin Reed.
14

15 After roll call all who were present recited the Pledge of Allegiance.
16

17 **4. ADOPTION OF AGENDA**
18

19 *Motion was made by Commissioner Wootten to approve the Agenda*
20 *removing Item 6c – Budget Amendment General Fund Donation from the*
21 *Consent Agenda and placing on regular Agenda as Item 7a. The Board*
22 *voted unanimously 5-0 in favor. Motion carried.*
23

24 **5. PROCLAMATIONS / PUBLIC ANNOUNCEMENTS – (07-10-09/P1)**
25

26 **a. Fire Prevention Week**
27

28 Mayor Schools read aloud the Proclamation for Fire Prevention Week – October
29 7-13, 2007, the 2007 theme “**It’s Fire Prevention Week – Practice Your**
30 **Escape Plan!**”
31

32 Mayor Schools recognized Fire Captain Bruce Norman and EMS member and
33 part-time Firefighter Doug Fleming in attendance tonight.
34

35 Fire Captain Bruce Norman gave a brief description of the fire safety education
36 program presented each year by the Emerald Isle Fire Department. Mr. Norman
37 noted that this program began with White Oak Elementary 15 years ago teaching
38 fire safety to the kindergartners and Mr. Norman noted how he now has high
39 school age kids come up to him still remembering this program. Mr. Norman said
40 they provide for about 400 students every October that has now expanded to
41 also include Bogue Sound Elementary, Morehead City Primary, Gramercy
42 Christian, Parks & Recreation’s Mother’s Morning Out, various churches in the
43 area pre-schools. Mr. Norman invited anyone to stop by to see their fire safety
44 presentations. Mr. Norman was thanked for all the good work that the Fire
45 Department is doing.
46

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Note: A copy of Proclamation 07-10-09/P1 is incorporated herein by reference and hereby made a part of these minutes.

Mayor Schools noted the following public announcements:

- **Groundbreaking Ceremony – New EMS Station – Wednesday, October 10 – 10 am – EMS Station Site**
- **Friday Free Flick – Friday, October 12 – 7 pm – Community Center – “Monsters, Inc.”**
- **4th Annual Emerald Isle Triathlon – Saturday, October 20 – 8 am – Eastern Ocean Regional Access**
- **5th Annual Gordie McAdams Speckled Trout Surf Fishing Tournament – October 20 – December 1**
- **Planning Board Regular Meeting – Monday, October 22 – 6 pm – Community Center**
- **Halloween Carnival – Friday, October 26 – 6 pm – 8 pm – Community Center**
- **Youth Recreational Opportunities Committee – Monday, November 5 – 6 pm – Community Center**
- **Friday Free Flick – Friday, November 9 – 7 pm – Community Center**
- **Election Day – Tuesday, November 6 – 6:30 am – 7:30 pm – Community Center**
- **Board of Commissioners Regular Meeting – Tuesday, November 13 – 6 pm – Community Center**
- **Emerald Isle Holiday Parade – Saturday, November 24 – NC 58**

Mayor Schools added that the Western Carteret Public Library Card Party would take place on October 17, and also Century 21 would be hosting a benefit barbecue for Habitat for Humanity on October 12.

6. CONSENT AGENDA

- a. **Minutes – September 11, 2007 Regular Meeting**
- b. **Tax Refunds / Releases**
- c. *Budget Amendment – General Fund Donation (removed from Consent Agenda to Regular Agenda as Item 7a)*
- d. **Budget Amendment – FY 06-07 “Roll-Over”**

Motion was made by Commissioner Wootten to approve the Consent Agenda. The Board voted unanimously 5-0 in favor. Motion carried.

Note: A copy of all above noted Consent Agenda items (with exception of removed item 6c) are all incorporated herein by reference and hereby made a part of these minutes.

1
2 **7. PUBLIC COMMENT**

3
4 **Brief Summary: The public will have the opportunity to address the Board**
5 **about any items of concern not on the agenda.**

6
7 There were no comments from the Public.

8
9 **7a. BUDGET AMENDMENT – GENERAL FUND DONATION**

10
11 Town Manager Frank Rush said that he was happy to present this budget
12 amendment to the Board that will increase the budget by \$25,000. Mr. Rush
13 stated as noted in the written material that the Town had received a generous
14 \$12,500 donation from an Emerald Isle resident and property owner contingent
15 on the Town matching those funds with \$12,500. The budget amendment would
16 recognize those funds and the benefactor stipulated that the total of \$10,000 go
17 toward the Parks & Recreation Department with \$5,000 each to Police, Fire and
18 EMS. Mr. Rush said that each of the Department Heads had identified items
19 they would like to purchase with these funds and they are all very appreciative of
20 this generous donation. Mr. Rush said that the uses identified will benefit the
21 departments and allow them to provide services more efficiently and effectively.

22
23 ***Motion was made by Commissioner Wootten to approve Budget***
24 ***Amendment recognizing General Fund Donation. The Board voted***
25 ***unanimously 5-0 in favor. Motion carried.***

26
27 **Note: A copy of the above noted Budget Amendment – General Fund Donation is incorporated**
28 **herein by reference and hereby made a part of these minutes.**

29
30 **8. COMMERCIAL REVIEW – ICE HOUSE (ISLANDER DRIVE)**

31
32 Kevin Reed, Planning Director addressed the Board concerning this agenda
33 item. The following excerpt from Planning Director Kevin Reed's memo to the
34 Town Manager is provided as background:

35
36 The Board of Commissioners is asked to consider a request by the Thomas and Amy Earnhardt for commercial review
37 of the proposed Ice House to be located at 211 Islander Drive. The property is currently zoned Business-3 (B-3) and
38 the proposed commercial ice operation is a permitted use in the B-3 Zoning District. You will find attached to this
39 memorandum a copy of a site plan/stormwater plan for the proposed project along with supporting information
40 submitted by the applicants. This information includes a project description, site survey, pictures of building elevations
41 and other narrative information.

42
43 The Town's Technical Review Committee (TRC) reviewed the project at its meeting held on September 5, 2007.
44 Following that meeting, the applicants submitted a revised site plan and accompanying information to the Town. To
45 date, the Town has received a letter from the Carteret County Health Department that no permit or on-site septic
46 disposal system will be required. In addition, the Carteret-Craven Electric Cooperative and Bogue Banks Water
47 Corporation have indicated that they can serve the proposed commercial development. The Town's consulting
48 engineer has conducted his initial review of the stormwater plan for the project. Following that initial review, a revised

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1
2 plan was resubmitted. Staff has received a letter from its consulting engineer that the stormwater plan is in accordance
3 with Town Code requirements.

4
5 The current plan is consistent with the Town's zoning requirements for building setbacks, building height limitations,
6 screening/buffering, parking and natural area requirements. It should be noted that Section 19-74.1, Paragraph (4) of
7 the Town Code requires the following:

8
9 "Each exterior wall of a building which is viewable from any street or road shall have one offset each (20) feet
10 of each exterior wall. The offset shall be a minimum of eight (8) feet of each exterior wall and extend a
11 minimum of four (4) feet in depth. A projecting porch, gable or other similar structure may serve as an offset if
12 it creates a visual break in the exterior wall."
13

14 Based on a total length of the proposed building of 24 feet and from the pictures submitted by the applicant, it appears
15 the proposed development does not meet the requirement set forth above for the portion of the building fronting on
16 Islander Drive. Town staff believes that an awning, or other similar feature, installed along this side of the building
17 would satisfy the requirements of Section 19-74.1, Paragraph (4). The applicants have submitted a schematic detail of
18 an awning which can be placed along this portion of the proposed structure and it is included in the information
19 attached to this memorandum.

20
21 The Planning Board discussed this request at its meeting held on September 24. Following its discussion of the
22 request, the Planning Board voted unanimously (4 to 0) to recommend approval Board of Commissioners that the
23 commercial review be approved subject to the following conditions:

- 24
25 1. Revisions to the structure's design to indicate compliance with Section 19-74.1, Paragraph (4).
26 2. The placement of appropriate screening material along the top of the structure to shield the equipment from
27 public view.
28

29 Amy Earnhardt, applicant, stated that she felt Mr. Reed was very detailed in his
30 information. Ms. Earnhardt noted that the screening around the top of the
31 structure is an additional feature provided directly from the manufacturer so it is
32 in accordance with the size and height necessary.
33

34 Mr. Reed in response to a question from Commissioner Hedreen concerning the
35 structure being manufactured and not built, stated that at this time the Board is
36 only asked to consider the Commercial Review process, and that assuming
37 commercial use is approved, as part of the building permitting process it will be
38 determined through the application process if this meets the requirements of the
39 North Carolina Building Code. Commissioner Hedreen asked if it would be
40 allowed if there are no windows, whether it is on a metal frame or certified by
41 HUD, or it has trailer skirting. Mr. Reed stated that it will only be allowed to be
42 constructed if it is in conformance with the North Carolina Building Code. Mr.
43 Reed pointed out that at the entrance into the Western Regional Access is an
44 office that is also a modular commercial building. Commissioner Hedreen felt
45 this didn't look like a stick built modular which is what she would have
46 envisioned. Mr. Reed said that there is no particular requirement in the
47 commercial review process that requires any number of windows or anything
48 along those lines but certainly prior to issuing any building permit they would
49 need to meet all appropriate requirements.
50

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1
2 Commissioner Hedreen recalled during the review of plans for the EMS Building
3 that there was a lot of discussion about expanses of building without windows
4 breaking it up. Mr. Reed said that the section he used in his comments Section
5 19-74.1(4) basically says for every 20 feet of commercial building you have to
6 have some type of offset so that you don't get the box like appearance. Mr.
7 Reed said in discussions with the Planning Board he thought with the 24 foot
8 length of the building in the absence of an awning it did not meet that
9 requirement. He believed that with the addition of an awning it would essentially
10 serve as the same visual break as a porch or something similar.

11
12 Town Manager Rush interjected that at this stage of the review the Board's
13 process is to review the site plan, make sure it is in compliance with our zoning
14 ordinance, to review the building colors for compliance, review the elevation and
15 exterior features for compliance with the zoning ordinance which is the basis for
16 the decision to be made by the Board tonight. Mr. Rush noted that for this
17 commercial review or any other commercial review there is always an underlying
18 assumption that the actual building constructed will meet the building code and
19 will comply with the appropriate building permits issued by the building inspector.
20

21 ***Motion was made by Commissioner Messer to approve the Commercial***
22 ***Review for the Ice House, contingent upon compliance with the Town's***
23 ***building offset requirements and the installation of screening materials to***
24 ***shield equipment located on the top of the structure. The Board voted 4-1***
25 ***in favor, Hoover, Messer, Wootten, Wright voting in favor, Hedreen***
26 ***opposed. Motion carried.***

27
28 Mayor Schools commented to Ms. Earnhardt that anything she could do to make
29 the building aesthetically pleasing is always appreciated.
30

31 Ms. Earnhardt added that the plans and specs of the building are approved by
32 the State of North Carolina and it is a modular unit. She said the reason why
33 windows cannot be put in is because it is a manufactured unit and it would affect
34 the functionality of the machine which contains the mechanical parts.
35

36 **9. UNIFIED DEVELOPMENT ORDINANCE**

37
38 **a. Appointment of Joint Planning Board / Board of Commissioners**
39 **Subcommittee**
40

41 Kevin Reed, Planning Director addressed the Board concerning this agenda
42 item. The following excerpt from Planning Director Kevin Reed's memo to the
43 Town Manager is provided as background:
44
45

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1
2 As you know, Town staff has been working with Clarions Associates to develop a draft Unified Development Ordinance
3 (UDO). One purpose of this project has been to make the Town's development regulations more user-friendly and
4 organized. For the purposes of preparing a Unified Development Ordinance, the Town's consultants have taken all of
5 the material in Chapters 13, 16, 18, 19, and 20, along with the development-related regulations contained in Chapters
6 1, 4, 5, and 17, and created a draft ordinance that is one self-contained document containing all regulations related to
7 land development.

8
9 The new draft UDO is organized in the following format, consistent with the manner in which most modern
10 development ordinances are organized:

11
12 Chapter 1: General Provisions - - Contains descriptions of the authority for the ordinance and effective date, along with
13 general purpose and intent and references to the official Zoning Map.

14
15 Chapter 2: Administration - - Describes the role of the Board of Commissioners in development-related issues, and
16 establishes a Planning Board and Board of Adjustment. This chapter describes the roles and responsibilities of each
17 of these bodies, along with the authority and responsibilities vested in staff. A key component of Chapter 2 is a list of
18 application procedures and a list of required components of applications for each of several types of development
19 applications (e.g., application for a Zoning Permit, Special Use Permit, Subdivision Approval, or Planned Unit
20 Development).

21
22 Chapter 3: Zoning Districts - - This chapter establishes and describes the characteristics of base and overlay zoning
23 districts. A summary table on page 3-1 at the beginning of the chapter lists the districts.

24
25 Chapter 4: Use Regulations - - This chapter defines the terms Permitted Use, Special Use, Accessory Use, and
26 Prohibited Use. A table that begins on page 4-2 is one of the most important components of this UDO, listing all
27 potential land uses that exist or might be considered for Emerald Isle, and for each use in each district specifying
28 whether that use in that district is considered a permitted, special, or accessory use. There are a number of uses for
29 which unique standards are imposed (e.g., mobile home parks, wireless communication towers) and these are called
30 out in Chapter 4.

31
32 Chapter 5: Density, Intensity, and Dimensional Standards - - This chapter contains another key table: Table 5-1
33 summarizes dimensional standards that apply to new development, such as minimum lot size, maximum building
34 height, and maximum number of dwelling units per acre of land.

35
36 Chapter 6: Development Standards - - This key chapter pulls together in one place a variety of standards that are
37 scattered throughout the existing Code of Ordinances. This is the chapter that specifies how development must be
38 designed, and what it must include. Sections of this chapter deal with parking, design, flood damage prevention,
39 stormwater management, dune and vegetation protection, and signs.

40
41 Chapter 7: Subdivision Standards - - This is a short chapter, requiring that lots be recorded in the County Register of
42 Deeds and requiring that new lots (except in certain specified circumstances) abut a street.

43
44 Chapter 8: Nonconformities - - This short but important chapter contains the rules for dealing with development that
45 was legally established under previous zoning and subdivision regulations but does not meet today's standards.

46
47 Chapter 9: Enforcement - - This chapter describes what it means to be in violation of the provisions of the Town's
48 zoning regulations, and specifies remedies and penalties associated with confirmed violations.

49
50 Chapter 10: Definitions and Rules for Interpretation - - Many of the terms used in zoning regulations carry a specific
51 meaning, and often the manner in which a term is defined results in a requirement or standard. Accordingly, it is
52 important that all key terms are defined, and it is useful to have all those definitions in one place. In this draft UDO,
53 Chapter 10 contains all the definitions for all of the sections. (Example: "Public Street: Any public right-of-way used for
54 vehicular traffic that is permanently maintained by the Town or State of North Carolina and is open to traffic.")

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1
2 One of the purposes of this project has been to make the Town's various development regulations as user-
3 friendly as possible. Accordingly, all key and relevant information about land development regulations (other than
4 application fees) is contained in this one document. This draft document was initially presented to the Planning Board
5 at its August meeting. It was discussed further at the Planning Board's September 29 meeting. Following its discussion
6 of the matter in September, the Planning Board appointed two members (Chairman Jim Crag and Ken Sullivan) to
7 work with Town staff and two members of the Board of Commissioner to further refine this draft document. This
8 "committee" approach to reviewing a draft document worked well when the Town updated its CAMA Land Use Plan in
9 2004. At this time the Board of Commissioners are asked to appoint to members to the UDO review committee.

10
11 Commissioner Wootten stated that he had spent several hours looking through
12 this and felt that the contractor took all of the information and rearranged it but
13 nothing came out. Commissioner Wootten thought that they should take a
14 deeper look beyond what they had the consultant do, and felt that the Board and
15 the Planning Board needed to be involved in this.

16
17 ***Motion was made by Commissioner Messer to appoint Commissioner John***
18 ***Wootten and Commissioner Tom Hoover to serve on the subcommittee.***
19 ***The Board voted unanimously 5-0 in favor. Motion carried.***

20
21 **10. DISCUSSION – COAST GUARD ROAD STORM WATER PROJECT**

22
23 Town Manager Frank Rush addressed the Board concerning this agenda item.
24 The following excerpt from Town Manager Rush's memo to the Board is provided
25 as background:

26
27 The Board of Commissioners is scheduled to review and discuss a potential strategy for Phase II of the Coast Guard
28 Road Storm Water Project at its October 9 meeting. If the Board concurs with the strategy, the Town could potentially
29 begin construction of two new storm water pumps in Spinnakers Reach in early 2008.

30
31 The Town has held multiple meetings with Federal and State regulatory personnel in recent weeks to discuss Phase II
32 of the project. The Town has been guided in this process by our consulting engineers, Moffatt & Nichol, and their
33 subconsultant, EcoScience. The recent meetings included representatives from the US Army Corps of Engineers, the
34 US Environmental Protection Agency, the NC Division of Water Quality, the NC Shellfish Sanitation Section, and also
35 the NC Coastal Federation. Overall, these meetings were productive, and have resulted in this potential new strategy
36 for moving forward with the project.

37
38 Based on previous discussion with the Board and in our community, and the recent meetings, the strategy for Phase II
39 and future phases of the project is essentially dependent on addressing the following concerns:

- 40
41
- 42 • Implement Phase II and future phases of the project in a manner that does not negatively impact Cape
43 Emerald or other nearby subdivisions,
 - 44 • Provide storm water flood relief in the Spinnakers Reach subdivision (and indirectly to Lands End) prior to the
45 2008 hurricane season (Phase II of the overall project),
 - 46 • Seek approval for an emergency spreader bar discharge to Bogue Sound for extreme conditions when the
47 sound is already closed to shellfishing, and
 - 48 • The need to minimize and avoid any changes to the character and integrity of the existing wetlands on site,
49 with a goal to create new wetland areas.
- 50
51

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1
2
3 Considering each of these concerns, it now appears that the best strategy for Phase II is to proceed with the
4 construction of the two new pumps in Spinnakers Reach, the associated pipeline conveyances from Spinnakers Reach
5 to Emerald Isle Woods, and minimal additional site improvements at Emerald Isle Woods to contain the additional
6 volume of pumped storm water. No other features (spreader bar, equalization pipes, sheet piling, etc.) would be
7 constructed as part of Phase II, but would instead be incorporated into future phases of the overall Coast Guard Road
8 Storm Water Project, for which overall permitting would continue during construction of Phase II.
9

10 This new strategy for Phase II would enable the Town to avoid significant permitting requirements and associated
11 delays, and could enable the new system to be functional by mid-2008. This strategy evolved out of the recent
12 meetings, and would essentially involve the use of the so-called "southern wetlands" located between Coast Guard
13 Road and the park access road (near the existing discharge pipe) as a larger containment area than originally
14 envisioned. The Town would essentially discharge the storm water from the two additional pumps into this area along
15 with the discharge from the two existing pumps, and this water would be allowed to spread over the entire area
16 bounded by Coast Guard Road and the park access road.
17

18 Earlier concerns about changing the character of the wetlands in this area appear to have been diminished to a degree
19 in light of monitoring completed for Phase I and the greater overall public and environmental benefits associated with
20 the project. The "southern wetlands" encompass only $\frac{3}{4}$ of an acre in size, and in a worst-case scenario the Town may
21 be required to mitigate any impacts to these wetlands. This is now a relatively minor concern, as 1) it is possible that
22 the Town's pumping will not result in a significant impact, 2) if the pumping does result in impacts, the Town can first
23 point to the additional wetlands created at the EI Woods site as mitigation, and 3) as a last resort the Town appears to
24 have the option of paying into the State's EEP fund to replace the wetlands, with an estimated cost in the \$15,000 -
25 \$25,000 range, which is not significant compared to the overall project budget.
26

27 In order to further guard against impacts in Cape Emerald, additional berms would be constructed by raising the
28 elevation of the park access road near Coast Guard Road, and possibly along the historically cleared area near the
29 existing discharge. The creation of these additional berms would increase surface storage capacity in this area, and
30 would prevent overland flow into wetlands near the southwestern corner of EI Woods adjacent to Cape Emerald and
31 Coast Guard Road. Another consideration is that the equalization pipe installed as part of Phase I (which connects the
32 "southern wetlands" to the "northern wetlands") is located approximately 18" - 24" above the normal wetland
33 elevations, and this difference will help to control flows into the "northern wetlands" which connect with wetlands in
34 Cape Emerald near their tennis courts. Additional modeling is being completed by Moffatt & Nichol to provide
35 confidence that the discharge from the two additional pumps will not harm Cape Emerald via groundwater
36 transmission, and I will report the results of this modeling in the coming weeks. If this modeling does indicate the
37 potential for impacts to Cape Emerald, the strategy may be revised to include the installation of an equalization
38 pipe/outlet from the "southern wetlands" to low depressions in the northeast corner of Emerald Isle Woods.
39

40 As was the case for Phase I, all of the proposed work would be completed outside of CAMA jurisdiction, and no CAMA
41 permits would be required. Permits would also not be required by the US Army Corps of Engineers nor the NC
42 Division of Water Quality (NC DWQ). However, it may be to the Town's advantage from a wetland impact standpoint
43 to secure a minor permit from NC DWQ. This permitting process is relatively short, and could likely be completed in a
44 matter of weeks. Because the pipeline conveyances will be bored underground with only limited surface disturbance, it
45 may also be possible to avoid a NC Erosion and Sedimentation Control Permit, however, if one is necessary this is not
46 expected to cause a significant delay.
47

48 As noted earlier, overall permitting activities for the emergency spreader bar discharge, additional equalization pipes,
49 and future improvements to Emerald Isle Woods would continue during construction of Phase II. At this point, we are
50 hopeful that the emergency spreader bar discharge and equalization pipes will ultimately be approved, and that these
51 features will eliminate the need for expensive sheet piling installation near the northwest and southwest corners of EI
52 Woods near Cape Emerald.
53

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1 I have attached two graphics illustrating the work completed in Phase I, the tentative plans for Phase II, and work that
2 is envisioned during future phases. The pumps planned for Spinnakers Reach are Pumps #4 and #5 on the attached
3

4 graphic. The Board should note that easements will be required from private property owners in Spinnakers Reach
5 and Dolphin Ridge in order to provide the most cost-effective pipeline route, however, I do not anticipate significant
6 difficulty in securing these easements.

7
8 According to updated cost estimates provided by Moffatt & Nichol, the estimated cost of the work envisioned for Phase
9 II is approximately \$906,000. The Board should note that this figure includes a 25% contingency equal to \$181,150,
10 which reduces the actual cost estimate to approximately \$725,000. As noted on the attached cost estimate, there are
11 additional potential costs indicated for the installation of other features if necessary, including equalization pipe, and
12 the estimated cost of these items is indicated on the attached cost estimate sheet. The FY 07-08 budget anticipated
13 the issuance of \$1.2 million of installment financing debt for Phase II of the Coast Guard Road Storm Water Project.

14
15 Town Manager Rush brought this item before the Board to discuss and make
16 sure they are comfortable with this path, and address any outstanding concerns
17 or questions at this point. Mr. Rush added that Commissioner Wootten and
18 Commissioner Wright were present at one of the meetings with the agencies.

19
20 Commissioner Wootten said that in addition to this Phase II part, the guidance to
21 Moffatt & Nichol is to continue with the permitting process for the emergency
22 spreader bar, and for the diking. Mr. Rush agreed that they would continue the
23 permitting activities for Phase III or any future phases.

24
25 Bert Speicher, 9708 Lord Berkeley Drive, asked about survey work being done
26 on Coast Guard Road right now by McKim & Creed. Mr. Rush said he didn't
27 know if the survey work in question is for the Town or some other reason, but
28 that the Town is getting additional survey work done. Mr. Speicher said he
29 wanted to make sure that the Town knows that there is small pipe into Cape
30 Emerald entrance across to Ocean Oaks, same as Royall Oaks into Dolphin
31 Ridge. Mr. Rush said that before any boring of pipeline would occur in that area
32 all utilities would be located.

33
34 Doug Fleming, Lands End Subdivision, asked about the sizing of the pipes if they
35 extend across to Lands End. Mr. Rush stated that the pipeline between pump 4
36 and pump 5 and then weaving easterly through Dolphin Ridge coming back to
37 Coast Guard Road would be sized appropriately to tie into the Lands End's
38 system.

39
40 The Board indicated their agreement with this strategy. Mr. Rush said that as
41 soon as they get the additional modeling results to gauge the impact on Cape
42 Emerald he would share that with the Board.

43
44
45
46
47

1
2 **11. DISCUSSION – “GATEWAY” CONSERVATION EASEMENT / CREW**
3 **DRIVE EXTENSION PROJECT**
4

5 Town Manager Frank Rush addressed the Board concerning this agenda item.
6 The following excerpt from Town Manager Rush’s memo to the Board is provided
7 as background:

8
9 The Town’s efforts to guarantee the preservation of the natural vegetation and topography along the “Gateway” into
10 Emerald Isle have been ongoing for more than 2 years now. Despite the execution of a formal agreement for a
11 conservation easement in this area in June 2006, the completion of this project has been at a “stand-still” for the past 6
12 months. I will update the Board on the current status of this project at the October 9 meeting, and I am seeking the
13 Board’s direction on future actions by the Town to achieve this goal.

14
15 As you know, the preservation of the “Gateway” natural area located along NC 58 between Coast Guard Road and the
16 B. Cameron Langston Bridge is a high priority for our community and the Board of Commissioners. This area is the
17 main entrance to Emerald Isle, and has traditionally provided an aesthetically-pleasing welcome to residents and
18 visitors of Emerald Isle. The Town’s highly-inclusive 2004 CAMA Land Use Plan includes the following statement:

19
20 “The Town supports the concept of creating the Emerald Isle Gateway on Emerald Drive, beginning at the
21 Cameron Langston Bridge and extending to the Coast Guard Road intersection. The Gateway will focus on
22 preserving existing vegetation, introduction of complementary native vegetation, and minimizing public and
23 private signage. The Gateway will announce arrival at a special place.”
24

25 In an effort to achieve the goal outlined in the Land Use Plan, and due to the potential for future commercial
26 development along the “Gateway”, the Town began efforts to insure the preservation of the “Gateway” in June 2005.
27 The initiation of these efforts also coincided with the planned redevelopment of Bridgeview Campground into Sunset
28 Landing subdivision. The Town pursued several methods to achieve this goal between June 2005 and June 2006,
29 including an amendment to the Land Use Plan, multiple outright purchase offers to the property owner (the Howe
30 Family), land swaps and the closing of Crew Drive, and others. Several months of negotiation resulted in the execution
31 of a formal “Agreement to Enter into Conservation Easement” with the Howe Family on June 13, 2006. (A copy of the
32 agreement is attached for your review.) The Town was very pleased to enter into this agreement with the Howe
33 Family.
34

35 The agreement, which is essentially equivalent to a purchase contract executed when an individual purchases a home
36 (prior to closing), includes the following key provisions:
37

- 38 • The Howe Family will provide a 30 ft. conservation easement on their property along its boundary with NC 58
39 between the B. Cameron Langston Bridge and a point approximately 285 feet northwest of the Coast Guard
40 Road / NC 58 intersection. A map indicating the conservation easement is attached. The total length of the
41 conservation easement is approximately 1,200 feet, and is in the area commonly considered as the
42 “Gateway”. No trees may be removed from this area, and no alteration of the topography may occur. The
43 only permitted activities are routine maintenance of existing off-premises signs and clean-up of storm
44 damaged trees, limbs, etc.
45
- 46 • In exchange for the conservation easement, the Town agrees to pave the currently unimproved Crew Drive
47 right-of-way to Town street standards. The Town has budgeted \$130,000 for this project, and has spent
48 approximately \$15,000 of this amount on the completion of the first 150 ft +/- of the street improvements near
49 Coast Guard Road.
50
- 51 • The improved Crew Drive extension will be paved within 6 months from the date the conservation easement
52 is executed by the Howe Family and placed in escrow. The conservation easement has not yet been
53

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- executed and placed in escrow, however, the Town has completed a near-final design of the road improvements. As a result, the "clock" has not yet begun on the completion of the road improvements.
- The improved Crew Drive extension will feature a cul-de-sac at its terminus with Bogue Sound, and the area between the cul-de-sac and Bogue Sound will become a public park named in honor of Martha Howe. The Town will pursue future CAMA grant funds to construct a "viewing pier" at this location.

The Town's previous engineering consultant, Municipal Engineering, completed the near-final design of the Crew Drive road improvements in March 2007, and I met soon thereafter with the adjacent property owners on both sides of Crew

Drive to review the road design. The owners of Sunset Landing subdivision (the property adjacent to Crew Drive to the east) were comfortable with the road design. The Howe Family, however, was not pleased with the road design and this issue has led to the "stand-still" on this project since April 2007.

The Howe Family's main concern with the road design is the proposed location of the cul-de-sac at the end of Crew Drive near Bogue Sound. (A map indicating the proposed road location is attached.) The proposed location of the cul-de-sac is approximately 225 ft. landward of Bogue Sound, and is located in the vicinity of the existing cul-de-sac serving Sunset Landing subdivision and the historical terminus of the existing dirt road. The location of the new cul-de-sac is dependent upon NC storm water regulations that limit the amount of impervious area within 575 ft. of ORW waters to 25% of the total land area. In the case of Crew Drive, the Town controls a 60 ft. right of way within the 575 ft. area, resulting in a total project area of 34,500 sq. ft. The proposed location of the new 20 ft. wide paved road and 60 ft. diameter paved cul-de-sac is designed such that the impervious area occupies only approximately 8,600 sq. ft., which results in the location approximately 225 ft. landward of Bogue Sound. The placement of the cul-de-sac closer to Bogue Sound will result in the impervious area exceeding the 25% limit.

The Howe Family has indicated that they will not be satisfied unless the cul-de-sac is located closer to Bogue Sound, at one point suggesting that it should perhaps touch the water's edge. They have also suggested that the inability to construct the cul-de-sac closer to Bogue Sound would, in their view, violate the terms of the "Agreement to Enter into Conservation Easement", thereby terminating the agreement. Town Attorney Richard Stanley and I strongly disagree with this assessment, and have repeatedly noted that the Town may only construct the road within the limits of appropriate Federal and State regulations. We have also noted that these regulations will apply to whichever party might eventually construct the road improvements - whether it be the Town, the current property owner, or a future property owner.

Recent correspondence over the past week has suggested a greater willingness on the Howe Family's part to discuss these issues and reach an amicable resolution to this issue. I have attached copies of this correspondence for the Board's review prior to the October 9 meeting. Town Attorney Richard Stanley and I will be meeting with the property owner and their attorney just prior to the October 9 meeting, and will report on the results of that meeting on October 9.

Town Manager Rush discussed the meeting the previous day with the Howe family attorney as well as Town Attorney Richard Stanley noting that overall it was a productive meeting. Mr. Rush said that there is a commitment to go forward with this project and try to find a resolution to this issue. Mr. Rush noted the two different options in terms of the placement of the cul-de-sac and the design of the road. One involves the possible use of innovative stormwater features to place the cul-de-sac closer to the water; another option possibly pulling back the cul-de-sac landward toward Highway 58 and then constructing a private driveway on the right of way. Mr. Rush felt it was worth pursuing these options to try and bring this project to completion.

1
2 Town Attorney Stanley said they need to move forward with permits and in order
3 to do that engineering must be done so that innovative design can be done to cut
4 down on impervious surface.

5
6 Commissioner Hedreen asked what was meant by a private driveway. Mr. Rush
7 said the private driveway would be constructed on the public right-of-way but it
8 would essentially be the same as any other private driveway that ties into a right-
9 of-way. Mr. Rush said the advantage of that approach is that instead of building
10 a 20 foot road you may build a 12 foot wide driveway. Attorney Stanley added
11 that it is really not a private driveway it is within a public right-of-way, it is just
12 one-lane and the public could still use, it would just be too small for a car
13 because the cul-de-sac will be further up. Mr. Rush added that from a legal
14 perspective it is absolutely public, from a practical perspective it will look like their
15 driveway.

16
17 **12. APPOINTMENT – YOUTH REC OPPORTUNITIES COMMITTEE**

18
19 **Summary of this Item:** The new Youth Recreational Opportunities Committee
20 held its first meeting on October 1, and noted that there are no teen girls
21 represented on the new committee. The Board should consider appointing a
22 teen girl to the new committee. The new committee currently has three teen
23 boys. The next committee meeting is scheduled for Monday, November 5 at 6
24 pm.

25
26 ***Motion was made by Commissioner Wright to appoint Hannah Dweikat as***
27 ***the teenage girl representative for the Youth Recreational Opportunities***
28 ***Committee. The Board voted unanimously 5-0 in favor. Motion carried.***
29

30 **13. COMMENTS FROM TOWN CLERK, TOWN ATTORNEY, AND TOWN**
31 **MANAGER**

32
33 There were no comments from the Town Clerk or the Town Attorney.

34
35 Town Manager Rush had several items requiring the Board's direction that he
36 wished to discuss. The first item referenced as included in the Board packets
37 involved a request from property owner Nell Johnson. The following excerpt is
38 included from Town Manager Comments for background:

39 **Request to Remove Property from Primary Benefit Municipal Service District (Bogue Court)**

40 I have attached a copy of a request from Ms. Nell D. Johnson, owner of property at 119 Bogue Court, to have her
41 property removed from the Primary Benefit Municipal Service District established to finance bond payments for the
42 Town's locally-funded beach nourishment projects. Ms. Johnson contends that she should not be included in the
43 Primary Benefit Municipal Service District, that her property did not benefit from the relocation of the main channel in
44 Bogue Inlet by the Town in April 2005, and that she has faced additional erosion of her property after Hurricane
45 Ophelia blew open the Coast Guard Channel in September 2005.
46

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2 The Town established the original boundaries of the Primary Benefit district in September 2001, before the relocation
3 of the main channel in Bogue Inlet was included in the scope of the beach nourishment project. The original
4 boundaries of the Primary Benefit district included all oceanfront properties in the entire Town, up to and including the
5 oceanfront homes on Inlet Drive up to the Town's vehicle ramp at The Point. In February 2002, upon deciding to
6 pursue the relocation of the Bogue Inlet channel as part of the beach nourishment project, the Town amended the
7 boundaries of the Primary Benefit district to also include the homes along Bogue Court in the Primary Benefit district.
8 The boundaries of the Primary Benefit District were extended at that time to include 13 properties on Bogue Court
9 because the relocation of the main channel was deemed to provide comparable benefits to these properties as the
10 benefits that would accrue to oceanfront property owners benefiting from beach nourishment. As noted on the
11 attached map, Ms. Johnson's property is the very last property included in the Primary Benefit district.
12

13 The reason that Ms. Johnson's property was included in the Primary Benefit district is that her home fronted on the
14 sandy, dune area between the Bogue Inlet channel and the homes on Bogue Court, similar to other homes on Bogue
15 Court included in the Primary Benefit district, and was considered "inlet-front". The adjacent property to the east, at
16 119 Bogue Court (currently owned by Mr. Martin Baum), was not included in the Primary Benefit district because that
17 property fronted on navigable water at the then-terminus of the Coast Guard Channel, and was considered
18 "soundfront". An aerial photo dated September 18, 2001 is attached, and this photo approximates the ground
19 conditions in place when the Primary Benefit district was amended in February 2002. Note that 119 Bogue Court
20 (currently owned by Mr. Martin Baum) had a dock and boat lift on the Coast Guard channel, and is the only home on
21 Bogue Court with a dock and boat lift.
22

23 Ms. Johnson met with me in Town Hall in August 2007 prior to sending the attached letter formally requesting removal
24 from the Primary Benefit district. During that meeting, I expressed sympathy for Ms. Johnson's situation, but also
25 explained the rationale used in February 2002 to assign her property to the Primary Benefit district. I also noted that
26 the recent erosion problems that she experienced (which required the installation of an approximately \$300,000+
27 seawall) were caused by the blow-out of the Coast Guard channel by Hurricane Ophelia in September 2005, and not
28 the Town's Bogue Inlet channel project. I indicated that I was uncertain of my personal and professional opinion on her
29 request at that time, but that I would allow her to make such a request to the Board of Commissioners. As such, I am
30 now seeking the Board's direction on this issue.
31

32 If the Board decides to remove the Johnson property from the Primary Benefit district, the NC General Statutes outline
33 the following process:
34

35 § 160A-538.1. Reduction of service districts.

36 (a) Upon finding that there is no longer a need to include within a particular service district any certain
37 tract or parcel of land, the city council may by resolution redefine a service district by removing therefrom any tract
38 or parcel of land which it has determined need no longer be included in said district. The city council shall hold a
39 public hearing before adopting a resolution removing any tract or parcel of land from a district. Notice of the
40 hearing shall state the date, hour and place of the hearing, and its subject, and shall be published at least once
41 not less than one week before the date of the hearing.

42 (b) The removal of any tract or parcel of land from any service district shall take effect at the end of a
43 fiscal year following passage of the resolution, as determined by the city council.

44 (c) A service district which at the time of its creation had the same boundaries as an historic district
45 created under Part 3A of Article 19 of this Chapter may only have its boundaries reduced to exclude territory
46 which has been removed from the historic district. (1977, c. 775, s. 3; 1987, c. 621, s. 3.)
47

48 As noted, a public hearing would be required before Board consideration, and any change would not take effect until
49 FY 2008-09. After the current year's taxes are paid, there will be 3 more years of Primary Benefit district taxes levied
50 in order to fully retire the beach nourishment bonds. Ms. Johnson's annual Primary Benefit district tax bill for the next 3
51 years is approximately \$1,477 annually.
52

53 The loss of \$1,477 of Primary Benefit district tax revenue for the next 3 years will not have a significant impact on the
54 Town's ability to retire the beach nourishment bonds, and is likely not a primary consideration in the Board's decision.

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1 Of greater significance is the precedent that the Board may establish by removing Ms. Johnson's property from the
2 Primary Benefit district, and the potential additional requests that may be forthcoming from other property owners who
3 may believe that they have an equal or better case for removal from the Primary Benefit district. The Board should
4 carefully weigh this issue before it provides direction regarding Ms. Johnson's request.
5

6 If the Board's direction is to proceed with further consideration of Ms. Johnson's request, I will schedule the appropriate
7 public hearing for an upcoming Board meeting. If the Board's direction is not to proceed, I will advise Ms. Johnson of
8 such decision.
9

10 Ms. Nell Johnson, 119 Bogue Court, addressed the Board and thanked the
11 Board for their consideration of this request. Ms. Johnson said that she had
12 recently been awarded a permit by CAMA to put in a bulkhead which had been a
13 very expensive endeavor and she said that fueled her desire to be removed from
14 the Town's primary district. Ms. Johnson said she didn't feel that she should
15 have been in this district initially. Ms. Johnson said with this new bulkhead and
16 CAMA's blessing that it was necessary and beneficial and that her understanding
17 from CAMA was that no one else to the ocean side of her can have a bulkhead;
18 she felt that validated this request.
19

20 Following discussion, the Board directed Town Manager Rush to verify with
21 CAMA their rules regarding bulkheading. Town Manager Rush added that he
22 wanted to clarify that he felt the relevant time period for that information is as of
23 February 2002 and not as of October 2007, because they were using conditions
24 on the ground in February 2002 to decide whether or not the property should be
25 a part of the Primary Benefit District. The Board agreed with this statement from
26 Mr. Rush.
27

28 Town Manager Frank Rush sought direction from the Board regarding the
29 Simmons & Simmons contract requirements, noting that at the time the contract
30 was awarded to Simmons & Simmons the Board had indicated their willingness
31 to consider eliminating the requirement for the performance bond in the future if
32 Simmons & Simmons provided satisfactory service. Town Manager Rush wished
33 to receive direction from the Board as to whether they wanted to relieve
34 Simmons & Simmons of the performance bond requirement. Mr. Rush noted that
35 the Town had been very pleased with their performance over the past 10 months
36 or so, there was a good working relationship and he felt that would continue in
37 the future. Mr. Rush stated that if the performance bond is eliminated the Town
38 still retains the \$150,000 letter of credit which would theoretically provide
39 sufficient funds for two months of service. The Board indicated their agreement
40 in eliminating the performance bond requirement from Simmons & Simmons.
41

42 Mr. Rush provided a brief update on the status of the Doe Drive pump
43 stormwater easements, noting that the appraisal was received which indicated
44 that there is no devaluing of the property if the easements are provided. Mr.
45 Rush said easements had been mailed to the 4 property owners.
46

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1
2 Mr. Rush noted that a meeting was set for Thursday, November 15 to meet with
3 Division of Water Quality officials, Moffatt & Nichol, and our new consulting
4 engineer to review commercial projects in Emerald Isle to review and compare
5 our ordinance to the Universal Stormwater Management Program (USMP), and
6 identify what needs to be amended to comply with USMP. Mr. Rush said after
7 this meeting he would like to come back to the Board with a list of the
8 amendments to our ordinance that would be needed to comply with the USMP,
9 and possibly have the Board consider adopting that and making the Town a part
10 of the USMP in the future.

11
12 As a final point, Mr. Rush noted that he and Mayor Schools met with DOT
13 representatives Cameron McRae and Neil Lassiter regarding the resurfacing of
14 Highway 58. Mr. Rush said while it was a positive meeting, the bad news is that
15 it will be at least 5 years before Highway 58 is resurfaced throughout the entire
16 town based on the rating conditions and the limited funding they have available in
17 North Carolina. Mr. Rush stated that Mr. McRae verbally indicated that from his
18 discretionary funds as a Board Member he would attempt to have the first one
19 mile paved in Emerald Isle which would cover from the bridge to the Emerald
20 Plantation Shopping Center sometime between now and next summer's beach
21 season. Mr. Rush added that DOT has been planning to extend the existing right
22 turn lane off of Highway 58 onto Coast Guard Road; the resurfacing if these
23 funds are allocated, will be done at the same time that the turn lane is extended.
24 In addition, Mr. McRae was very supportive of the Town's plan for bike paths and
25 expressed his desire to see a bike path along Highway 58 through the whole
26 town and ultimately all the towns on the Island.

27
28 **14. COMMENTS FROM BOARD OF COMMISSIONERS AND MAYOR**

29
30 Commissioner Hoover, regarding the Youth Committee, expressed his concern
31 after hearing a comment that a young member made about wearing safety gear.
32 Commissioner Hedreen noted that the comment had been made that wearing
33 safety equipment would be a setback but that didn't mean they wouldn't use it,
34 adding that they must be sure to have youth buy-in and commitment, and also
35 noting that before investing too much time and money they need to be sure that
36 they wouldn't still have the issues of loitering, some vandalism, and just not
37 enough supervision.

38
39 Commissioner Wooten asked about the status of the Administrative Building
40 cost estimates, which Mr. Rush noted were not available yet. Commissioner
41 Hedreen questioned whether there was sufficient office space square footage to
42 accommodate staff office furniture.

43
44 There were no other comments made by the Board of Commissioners or Mayor.
45

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15. ADJOURN

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

The meeting was adjourned at 7:35 pm.

Respectfully submitted:

Rhonda C. Ferebee, CMC
Town Clerk