

1 MINUTES OF THE REGULAR SCHEDULED MEETING
2 OF THE EMERALD ISLE BOARD OF COMMISSIONERS
3 TUESDAY, SEPTEMBER 11, 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 Town Clerk Rhonda Ferebee, Parks and Recreation Director Alesia Sanderson,
13 Police Chief Bill Hargett, and Public Works Director Artie Dunn.
14

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

17 **4. ADOPTION OF AGENDA**
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19 ***Motion was made by Commissioner Wright to adopt the Agenda. The***
20 ***Board voted unanimously 5-0 in favor. Motion carried.***
21

22 **5. PROCLAMATIONS / PUBLIC ANNOUNCEMENTS**
23

24 Mayor Schools noted the following proclamations and public announcements:
25

- 26 • **Emerald Isle's 50th Birthday Celebration – Saturday, September 22 –**
27 **All Day Long – NC 58 Right of Way, Bogue Inlet Pier, Western Ocean**
28 **Regional Access – (07-09-11/P1)**
- 29 • **Certificate of Appreciation – Andrew Lanier**
30

31 Mayor Schools with the assistance of Parks and Recreation Director Alesia
32 Sanderson presented a Certificate of Appreciation plaque to Eagle Scout Andrew
33 Lanier. Mayor Schools noted that Andrew was instrumental in clearing a path in
34 Emerald Isle Woods Park that will be used by a great number of people and they
35 certainly appreciated and thanked him for his efforts. Ms. Sanderson added that
36 Andrew Lanier is the son of our Parks Superintendent Ricky Lanier, and as an
37 Eagle Scout Project, Andrew requested that he be able to do some work in
38 Emerald Isle Woods and he organized a team of other fellow scouts and they
39 cleared a 900' by 6' path on the high ridge closest to the water connecting to the
40 Cape Emerald walkway. Ms. Sanderson said he did an incredible job, and
41 thanked him as well as his parents Ricky and Sarah.
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MINUTES OF THE REGULAR MEETING
OF THE EMERALD ISLE BOARD OF COMMISSIONERS
SEPTEMBER 11, 2007

Page 2 of 15

- 1 • **Friday Free Flick – Friday, September 14 – 7 pm – Community Center**
- 2 • **– “The Incredibles”**
- 3 • **Household Hazardous Waste Collection Day – Saturday, September**
- 4 • **15 – 8 am – 1 pm – Lowe’s Home Improvement Warehouse, Cape**
- 5 • **Carteret**
- 6 • **Emerald Isle Day 4 Kids – Saturday, September 15, 2007 – 9 am until**
- 7 • **– Holiday TravLPark**
- 8 • **Fun Fifties Flounder Tournament – September 16 – 23 – Contact**
- 9 • **Parks and Recreation for details**
- 10 • **Beach Jive After Five – Thursday, September 20 – 5:30 pm – Western**
- 11 • **Ocean Regional Access Musical act if “Spiritual Therapy”**
- 12 • **Planning Board Regular Meeting – Monday, September 24 – 6 pm –**
- 13 • **Community Center**
- 14 • **Blood Drive – Friday, October 5 – 2 pm – 7 pm – Community Center**
- 15 • **Board of Commissioners Regular Meeting – Tuesday, October 9 – 6**
- 16 • **pm – Community Center**

17
18 **Note:** A copy of Proclamation 07-09-11/P1 is incorporated herein by reference and hereby made a
19 part of these minutes.

20
21 **6. INTRODUCTION OF NEW EMPLOYEES**

- 22
- 23 **a. Melissa Nazworth – Telecommunicator**
- 24 **b. Sandra Dean – Police Officer**
- 25 **c. Chad Strawser – Parks Maintenance Worker**
- 26

27 Police Chief Bill Hargett formally introduced Melissa “Missy” Nazworth,
28 Telecommunicator and Sandra Dean, Police Officer. Chief Hargett stated that
29 Missy came here from the Sampson County Sheriff’s Office where she worked as
30 dispatcher, and has worked here part-time for the past year, proving to be an
31 asset to the department. Chief Hargett introduced Police Officer Sandra Dean,
32 noting that she received her basic training from Coastal Carolina Community
33 College. Chief Hargett said that Sandra has worked full-time in a part-time
34 position throughout the summer doing an excellent job. Chief Hargett also
35 pointed out that Sandra recently responded to a call of an unconscious victim
36 and was credited with saving that man’s life by CPR.

37
38 Parks and Recreation Director Alesia Sanderson formally introduced Chad
39 Strawser, Parks Maintenance Worker. Ms. Sanderson stated that Chad had
40 been with the Town in a part-time capacity since the past May as summer
41 laborer. Ms. Sanderson said he did a really impressive job and that they were
42 glad to have him on board filling the Maintenance Laborer position and doing a
43 wonderful job for the Town. Ms. Sanderson added that Chad is the son of
44 Captain Jeff Strawser in the Fire Department.

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MINUTES OF THE REGULAR MEETING
OF THE EMERALD ISLE BOARD OF COMMISSIONERS
SEPTEMBER 11, 2007

Page 3 of 15

1 The Board and public gave a warm welcome to the Town's newest full-time
2 employees.

3
4 **7. CONSENT AGENDA**

- 5
6 a. Minutes – August 14, 2007 Regular Meeting
7 b. Fee Schedule Amendment
8 c. Capital Project Ordinance Amendment – Police Station Renovation /
9 Expansion
10 d. Capital Project Ordinance Amendment – Coast Guard Road Storm
11 Water Project, Phase II
12 e. Resolution Supporting the Pursuit of Special Projects Funding from
13 the Down East RPO to Study Access Management Concerns on NC
14 24 – (07-09-11/R1)
15

16 Town Manager Frank Rush pointed out that a slightly revised version of Consent
17 Agenda Item 7e had been placed before the Board tonight. Mr. Rush stated that
18 the resolution is identical to the one included in Board packets, however, it simply
19 indicates that the Town is also interested in a feasibility study for a third bridge to
20 Bogue Banks in the middle of the island, and that is a higher priority for the Town
21 than this study. The resolution continues to express support for the Access
22 Management study on Highway 24 if it is approved by the Board, but clarifies that
23 the third bridge study is a higher priority for Emerald Isle.
24

25 ***Motion was made by Commissioner Hedreen to approve items on the***
26 ***Consent Agenda. The Board voted unanimously 5-0 in favor. Motion***
27 ***carried.***

28
29 **Note:** A copy of all above noted Consent Agenda items including Resolution 07-09-11/R1 are all
30 incorporated herein by reference and hereby made a part of these minutes.
31

32 **8. PUBLIC COMMENT**

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34 **Brief Summary:** The public will have the opportunity to address the Board
35 about any items of concern not on the agenda.
36

37 There were no comments from the Public.
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MINUTES OF THE REGULAR MEETING
OF THE EMERALD ISLE BOARD OF COMMISSIONERS
SEPTEMBER 11, 2007

Page 4 of 15

9. NEW EMS STATION

- a. **Public Hearing on Proposed Installment Financing Agreement**
- b. **Resolution Authorizing Filing of an Application for Approval of a Financing Agreement (NC Local Government Commission) – (07-09-11/R2)**
- c. **Resolution Authorizing Installment Financing Agreement with RBC Centura – (07-09-11/R3)**
- d. **Long-Term Lease Agreement – Town of Emerald Isle / Emerald Isle EMS, Inc.**
- e. **Agreement to Transfer EMS Property – Town of Emerald Isle / Emerald Isle EMS, Inc.**
- f. **Resolution Authorizing Construction Contract with Bluewater Builders – (07-09-11/R4)**
- g. **Capital Project Ordinance**

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

The Board of Commissioners is scheduled to consider several action items pertaining to the construction of the new EMS station at the September 11 meeting.

Among the actions scheduled for consideration is a \$774,444 construction contract with Bluewater Builders, Emerald Isle, NC, which is slightly below the \$800,000 budget established for the project during the FY 07-08 budget process. The other items include formal actions for the financing of the project and formal legal agreements between the Town and Emerald Isle EMS, Inc. for both the existing and new EMS stations.

I am pleased to recommend approval of all action items to the Board of Commissioners. Representatives from Emerald Isle EMS, Inc. have reviewed these items, and also recommend approval by the Board of Commissioners. If all items are approved, the Town and Emerald Isle EMS, Inc. will begin construction of a new 4,878 sq. ft. facility by mid-October. The construction contract provides a total of 270 days to complete the project, which would result in the completion of the building by mid-July 2008.

As you know, the new EMS station will be constructed on Town-owned land adjacent to Fire Station #1 at the corner of Live Oak Street and NC 58. The new facility will include 3 vehicle bays, with 2 bays exiting to NC 58 and 1 bay exiting to Live Oak Street. The new facility includes 2 offices, a training room, a great room, bathroom and kitchen facilities, and 2 bunk rooms. The exterior look of the new station is more "coastal", and will enhance the overall appearance of the NC 58 commercial corridor. The new station is a dramatic upgrade from the existing EMS station on Cedar Street (a converted beach house) and should serve our community very well for many years to come.

A detailed description of each action item follows.

Public Hearing on Proposed Installment Financing Agreement

First, the Board is scheduled to conduct a public hearing on the proposed installment financing agreement that is necessary to temporarily fund construction of the new EMS station. This public hearing is required before the Board may consider the two financing-related action items on the agenda. The proposed installment financing agreement involves the issuance of \$500,000 of new debt with a 5-year term.

MINUTES OF THE REGULAR MEETING
OF THE EMERALD ISLE BOARD OF COMMISSIONERS
SEPTEMBER 11, 2007

Page 5 of 15

1 The Town's FY 07-08 budget and 5-Year Capital Replacement / Improvement Program contemplated a total budget of
2 \$800,000 for the construction of the new EMS station. The identified revenue sources for this planned expenditure
3 were:

- 4
- 5 • \$150,000 contribution from the FY 07-08 General Fund budget,
- 6
- 7 • \$200,000 contribution from Emerald Isle EMS, Inc.'s building reserve fund,
- 8
- 9 • \$450,000 from the sale proceeds of the existing EMS station on Cedar Street.

10
11 Emerald Isle EMS, Inc. must continue to utilize the existing EMS station on Cedar Street during construction of the new
12 station, thus the sale proceeds will likely not be available to the Town until sometime after construction is complete. In
13 order to resolve this cash-flow issue, the Town would enter into the proposed installment financing agreement to
14 provide the necessary funding for the construction of the new EMS station until the existing station is sold.

15
16 The Town has solicited financing proposals from several banks, and received a total of 4 financing proposals. RBC
17 Centura offered the most attractive proposal, which consists of a principal amount of \$500,000 at an annual interest
18 rate of 3.58% over a 5-year term. (The attached memo from Mitsy Overman, Finance Officer, includes a summary of
19 all 4 proposals.) The Town specified a 5-year term due to be cautious given the uncertainty of the current real estate
20 market and to provide ample time for the Town to sell the existing EMS station. The Town specified, however, that all
21 proposals should include no pre-payment penalty, as it is our intention to retire the installment financing agreement
22 with the proceeds from the sale of the existing EMS station as soon as the existing station is sold.

23
24 In the event that the existing EMS station is not sold in a timely manner, the Town will be responsible for annual debt
25 service payments on the new EMS station according to the following schedule:

26		
27	January 15, 2009	\$ 121,917
28	January 15, 2010	\$ 114,320
29	January 15, 2011	\$ 110,740
30	January 15, 2012	\$ 107,160
31	January 15, 2013	\$ 103,580.
32		

33 The Town will need to budget these annual payments in the General Fund budget if the existing EMS station is not
34 sold prior to January 15, 2009. This schedule provides a total of approximately 15 months to sell the existing EMS
35 station before any payments are due. The Board should note that it is our intention to begin marketing the existing
36 EMS station for sale within the next month. The best-case scenario would be to have the existing EMS station under
37 contract to be sold before completion of the new EMS station, and we will be striving to meet this goal.

38
39 The Board should note that the Town solicited proposals for financing in the amount of \$500,000 (as opposed to the
40 \$450,000 amount anticipated from the sale of the existing EMS station) as a precautionary measure in case the
41 construction bids came in higher than anticipated and could not be reduced. Because the proposed construction
42 contract is within budget, the Town will not require the additional \$50,000 included in the proposed installment
43 financing agreement. This \$50,000 can either be used to reduce the debt amount initially, or can be held and reserved
44 for the initial debt service payment scheduled for January 15, 2009. The use of this \$50,000 to reduce the debt
45 amount initially would result in a slight reduction in the annual debt service payment amount noted above.

46
47 Resolution Authorizing Filing of an Application for Approval of a Financing Agreement (NC Local Government
48 Commission)

49 The proposed installment financing agreement must be approved by the NC Local Government Commission prior to
50 closing on the financing. The attached resolution authorizes the Town Manager to submit the appropriate application,
51 and also outlines the need for the EMS station project and the reasons for utilizing an installment financing agreement.
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MINUTES OF THE REGULAR MEETING
OF THE EMERALD ISLE BOARD OF COMMISSIONERS
SEPTEMBER 11, 2007

Page 6 of 15

1 The NC Local Government Commission (LGC) will consider the Town's application at its October 2 meeting in Raleigh.
2 We do not anticipate any difficulty in receiving the LGC's approval due to the fact that the Town maintains a solid
3 financial position, has no outstanding debt other than the remaining beach nourishment bonds, and because of the
4 necessity of the project. Assuming LGC approval on October 2, the closing on the installment financing agreement
5 would occur sometime prior to October 29. RBC Centura's rate proposal is valid until that date.
6

7 Resolution Authorizing Installment Financing Agreement With RBC Centura

8 This attached resolution formally authorizes the Town Manager and other Town officials to execute the installment
9 financing agreement described above with RBC Centura.

10
11 This attached resolution indicates that the installment financing agreement will be consistent with RBC Centura's
12 proposal dated August 28, 2007 (attached), indicates that the debt will be secured by the new EMS station property,
13 and also notes that the installment financing agreement is a qualified, tax-exempt obligation (i.e., the Town will not
14 issue more than \$10 million of debt in 2007, which would jeopardize the tax-exempt nature of this installment financing
15 agreement).
16

17 Long-Term Lease Agreement – Town of Emerald Isle / Emerald Isle EMS, Inc.

18 The attached "EMS Building and Lot Lease" would formalize agreements on ownership and use issues associated with
19 the new EMS station.
20

21 As you know, the new EMS station is being constructed on Town-owned land and the Town is providing \$150,000
22 toward the construction cost. EI EMS, Inc. is providing \$200,000 toward the project cost plus the proceeds from the
23 sale of the existing EMS station. Because the new EMS station is a joint venture, it is necessary to resolve ownership
24 and uses issues before proceeding with the construction of the new building.
25

26 The intention of both parties is for the Town to retain ownership of the land and the new building once constructed.
27 The Town, as owner, would then enter into a long-term lease agreement with Emerald Isle EMS, Inc. for the use of the
28 building at essentially no cost and for as long as desired by EI EMS, Inc.. From a practical standpoint, the lease
29 agreement was intentionally drafted to provide assurances that the new EMS station is available for EI EMS, Inc.'s use
30 in much the same manner as if it was in fact under their ownership. For a variety of reasons, however, it is much
31 easier and cleaner for the Town to retain official ownership of the new EMS station.
32

33 The substantive provisions of the attached long-term lease agreement are as follows:
34

- 35 • the term of the lease is 50 years, with automatic 10-year renewal periods,
- 36 • the annual rent payment due is \$10,
- 37 • if Emerald Isle EMS, Inc. ceases to exist or can no longer provide EMS services then the Town may
38 terminate the lease with 12 months written notice and recover possession of the property,
- 39 • the Town will provide property and liability insurance on the new EMS station,
- 40 • EI EMS, Inc. will be responsible for routine maintenance on the new EMS station, including
41 anything less than \$1,000 in value, and
42 • the Town will be responsible for major maintenance on the new EMS station, including anything greater than
43 \$1,000 in value.
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MINUTES OF THE REGULAR MEETING
OF THE EMERALD ISLE BOARD OF COMMISSIONERS
SEPTEMBER 11, 2007

Page 7 of 15

1 The attached long-term lease agreement was drafted by Town Attorney Richard Stanley, with slight modifications
2 made by the Joint EMS Committee. The lease agreement has been reviewed by EI EMS, Inc.'s leadership, and they
3 have expressed their concurrence with the substantive provisions of the lease agreement. The attorney for EI EMS,
4 Inc. is currently reviewing the lease agreement, however, we do not expect any significant modifications to the lease
5 agreement as a result of that review.

6
7 Agreement to Transfer EMS Property – Town of Emerald Isle / Emerald Isle EMS, Inc.

8 The attached "Agreement to Transfer EMS Property" formalizes the arrangement between the Town and Emerald Isle
9 EMS, Inc. to use the sale proceeds from the existing EMS station for a portion of the construction costs.

10
11 This agreement stipulates that Emerald Isle EMS, Inc. will convey the existing EMS station at 218 Cedar Street to the
12 Town upon completion of the new EMS station next summer. The Town will then continue to market the property for
13 sale and will receive all sales proceeds from the existing EMS station (to retire the proposed installment financing
14 agreement).

15
16 The Town and Emerald Isle EMS, Inc. will actually begin marketing the existing EMS station within the next month.
17 The attached agreement stipulates that the Town must approve any sales agreement to a third party that may be
18 reached prior to completion of the new EMS station. Because the Town is ultimately responsible for the outstanding
19 debt for the new EMS station, it is imperative that the Town have the authority to ultimately determine an acceptable
20 sales price for the existing EMS station.

21
22 The attached agreement also stipulates that in the unfortunate event of fire or other casualty, that the Town will be
23 entitled to the insurance proceeds associated with the existing EMS station. The Town would then also market the
24 property as a vacant lot in an attempt to secure the expected \$450,000 total amount of proceeds.

25
26 The attached agreement was drafted by Town Attorney Richard Stanley, and has been reviewed and approved by EI
27 EMS, Inc.'s leadership.

28
29 Resolution Authorizing Construction Contract With Bluewater Builders

30 The attached resolution authorizes a construction contract with Bluewater Builders in the amount of \$774,444. This
31 amount is within the established project budget of \$800,000.

32
33 As you know, Bluewater Builders is an Emerald Isle construction company, and we are very pleased that a local
34 company was the successful bidder during our recent bid process completed on August 31. The Town received a total
35 of 5 bids for the construction of the new EMS station. The low bid submitted by Bluewater Builders was actually
36 \$856,500 (for the base bid), and the Town's architect has since worked with Bluewater to reduce the overall
37 construction cost to the \$774,444 amount included in the attached resolution. The other 4 bids received for the project
38 are indicated on the attached bid tabulation, and ranged from \$867,026 to \$916,380. The competition for this
39 construction contract was obviously very close.

40
41 The total contract amount of \$774,444 includes a \$16,000 contingency amount within the contract, thus providing a
42 small contingency for unexpected opportunities and challenges during the construction process. The Board should
43 note that there were a total of 5 alternates bid for the project, and the attached resolution does not include any of these
44 alternates. One or more of the alternates may be considered during the construction process if the limited contingency
45 funds remain available. The attached resolution authorizes the Town Manager to approve change orders up to
46 \$10,000, and any change orders greater than \$10,000 would need to be approved by the Board of Commissioners.

47
48 The attached memo from Robert Brown (project architect with EDA-Morehead) to me and Ben Dadd (EI EMS, Inc.'s
49 lead representative) dated September 6 indicates the various reductions made to reduce the bid amount (\$856,500) to
50 the contract amount included in the attached resolution (\$774,444). The overall effect of these reductions on the
51 functionality and the quality of the building is minimal, and we are confident that the end product will be a first-class
52 facility for our EMS squad. The most significant changes involve the reduction of pre-established contingency amounts
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MINUTES OF THE REGULAR MEETING
OF THE EMERALD ISLE BOARD OF COMMISSIONERS
SEPTEMBER 11, 2007

Page 8 of 15

1 and a revised strategy for addressing storm water management on the site. The revised strategy will rely more heavily
2 on natural swales rather than pre-constructed storm water chambers.
3

4 The contract stipulates a total of 270 days (9 months) for construction, and we expect to issue a notice-to-proceed no
5 later than mid-October (to allow for LGC approval of the financing, required revisions to the storm water plan, the
6 execution of all contract documents, the issuance of building permits, and the issuance of an NCDOT driveway permit).
7 This schedule would result in completion by mid-July 2008, and EI EMS, Inc. would relocate to the new EMS station at
8 the most convenient date thereafter. The contract documents stipulate liquidated damages of \$350 per day beyond
9 the established completion date.
10

11 The construction contract is a standard construction contract drafted by the American Institute of Architects (AIA), but
12 the contract has not yet been reviewed by Town Attorney Richard Stanley. Assuming that the attached resolution is
13 approved, the contract will not be executed until it has been reviewed and approved by the Town Attorney.
14

15 Capital Project Ordinance

16 The FY 07-08 budget and 5-Year Capital Replacement / Improvement Program adopted by the Board in June 2007
17 contemplated the \$800,000 project budget indicated above. This project budget has not been formally adopted in an
18 official capital project ordinance, however, and this action is also included on the September 11 agenda.
19

20 The attached capital project ordinance actually establishes a total construction budget of \$806,000 for the project. On
21 the expenditure side, a total of \$781,000 is allocated for construction - \$775,000 for the Bluewater contract and \$6,000
22 for previously completed site clearing and grading. A total of \$14,000 is allocated for additional design and
23 construction administration services by EDA-Morehead. You may recall that the Town's contract with EDA-Morehead
24 stipulated a total fee equal to 8% of the construction contract, but only \$48,000 was allocated for this contract last year
25 due to the hope that the total construction cost would be in the \$600,000 range. With the actual construction cost at
26 \$775,000, this equates to a total fee for EDA-Morehead of \$62,000, an increase of \$14,000 from the original fee.
27 Finally, the capital project ordinance also includes an additional and separate \$11,000 contingency amount. The
28 combination of this amount plus the \$16,000 contingency included in the construction contract will result in a total
29 project contingency of \$27,000.
30

31 On the revenue side, the capital project ordinance reflects the Town's \$150,000 contribution from the General Fund
32 and the \$450,000 from the proposed installment financing agreement (ultimately from the sale proceeds from the
33 existing EMS station). The capital project ordinance also reflects a \$206,000 contribution from Emerald Isle EMS, Inc.
34 The Board should note that this amount is slightly higher than the \$200,000 quoted earlier for two reasons. First, with
35 Emerald Isle EMS, Inc. already providing \$24,000 for design expenses last year this resulted in EI EMS, Inc.'s
36 understanding that only \$176,000 would be transferred to the Town for construction. Additionally, and more
37 importantly, the \$206,000 amount includes the reallocation of \$30,000 from the FY 07-08 EI EMS, Inc. budget from EI
38 EMS, Inc.'s vehicle reserve fund to the construction budget. This reallocation will not have an impact on EI EMS, Inc.'s
39 operations this fiscal year, and the only impact of this change will be a one-year delay in the replacement of an existing
40 ambulance. The existing ambulance is in satisfactory condition and it is not critical that it be replaced at this time. EI
41 EMS, Inc. will adjust their strategy to replace this ambulance sometime in FY 08-09.
42

43 The Board should also note that Emerald Isle EMS, Inc. will be responsible for funding desired new furnishings for the
44 new EMS station. Emerald Isle EMS, Inc. is expected to have sufficient remaining funds in its building reserve fund to
45 cover these expenses upon completion of the new station next summer.
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47 I look forward to discussing these action items with the Board at the September 11 meeting. Ben Dadd from Emerald
48 Isle EMS, Inc. and Robert Brown from EDA-Morehead will also attend and be available for comments and questions.
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MINUTES OF THE REGULAR MEETING
OF THE EMERALD ISLE BOARD OF COMMISSIONERS
SEPTEMBER 11, 2007

Page 9 of 15

1 **Motion was made by Commissioner Hoover to open the Public Hearing on**
2 **the proposed installment financing agreement. The Board voted**
3 **unanimously 5-0 in favor. Motion carried.**

4
5 There were no comments from the Public.

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

9
10 **Motion was made by Commissioner Wootten to approve the Resolution**
11 **Authorizing the Filing of an Application for Approval of a Financing**
12 **Agreement. The Board voted unanimously 5-0 in favor. Motion carried.**

13
14 **Motion was made by Commissioner Wright to approve the Resolution**
15 **Authorizing an Installment Financing Agreement with RBC Centura. The**
16 **Board voted unanimously 5-0 in favor. Motion carried.**

17
18 **Motion was made by Commissioner Hedreen to approve the Long Term**
19 **Lease Agreement Between the Town and Emerald Isle EMS, Inc. The Board**
20 **voted unanimously 5-0 in favor. Motion carried.**

21
22 **Motion was made by Commissioner Hoover to approve the Agreement to**
23 **Transfer EMS Property Between the Town and Emerald Isle EMS, Inc. The**
24 **Board voted unanimously 5-0 in favor. Motion carried.**

25
26 **Motion was made by Commissioner Messer to approve the Resolution**
27 **Authorizing a Construction Contract with Bluewater Builders. The Board**
28 **voted unanimously 5-0 in favor. Motion carried.**

29
30 **Motion was made by Commissioner Wootten to approve the Capital Project**
31 **Ordinance for the New EMS Station project. The Board voted unanimously**
32 **5-0 in favor. Motion carried.**

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34
35 **Note: A copy of all above noted items including Resolution 07-09-11/R2, 07-09-11/R3, and 07-09-**
36 **11/R4 are all incorporated herein by reference and hereby made a part of these minutes.**

37
38 Mayor Schools thanked the Board and everyone for working together on what will
39 be an outstanding project. Town Manager Rush also wished to publicly thank
40 Ben Dadd in particular for his work on this as he has been the point person
41 during this process.

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MINUTES OF THE REGULAR MEETING
OF THE EMERALD ISLE BOARD OF COMMISSIONERS
SEPTEMBER 11, 2007

Page 10 of 15

10. OFFICIAL “NO WAKE ZONE” REQUESTS

- a. **Public Hearing – Bogue Sound Drive Canal**
- b. **Resolution Requesting Official No Wake Zone for Bogue Sound Drive Canal – (07-09-11/R5)**
- c. **Public Hearing – Coast Guard Channel**
- d. **Resolution Requesting Official No Wake Zone for Coast Guard Channel – (07-09-11/R6)**

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

The Board of Commissioners is asked to consider two resolutions requesting the establishment of official No Wake Zones along two waterways adjacent to Emerald Isle. The authority to establish official No Wake Zones rests with the NC Wildlife Resources Commission, and these resolutions, if approved, would be forwarded to that agency for review and potential action. Public hearings are required before Board consideration of the attached resolutions, and have been scheduled for the September 11 meeting.

The first resolution pertains to the canal adjacent to Bogue Sound Drive. This canal is approximately .6 mile long, and runs adjacent to Bogue Sound Drive (located off of Kelly Lane near mile marker 16.5 on NC 58). Residents along the canal have expressed interest in the establishment of a No Wake Zone in this area, and the alignment and depth of the canal appear to warrant a No Wake Zone. The canal is approximately 30 feet wide and approximately 4 feet deep along the entire length of the canal, and there are numerous private docking facilities and boat launching facilities along the canal. Boats traveling at excessive speeds in this environment present a safety hazard in this area.

As you know, the Board approved a previous resolution regarding the establishment of a No Wake Zone along this canal at the August 14 meeting. That resolution requested that the Carteret County Board of Commissioners make a formal request for this No Wake Zone to the NC Wildlife Resources Commission. The August 14 resolution was structured in that manner as a result of incorrect guidance provided to the Town that indicated that all such requests must be originated by County governments and that a public hearing was not required at the local level. We have since learned that municipalities may convey their own requests directly to the NC Wildlife Resources Commission, but must conduct a public hearing prior to making such requests. As a result, the attached resolution pertaining to the canal adjacent to Bogue Sound Drive is presented for the Board’s consideration again at the September 11 meeting.

The second resolution pertains to Coast Guard Channel. Coast Guard Channel is approximately .5 mile long, and runs adjacent to Channel Drive between the Bogue Inlet connecting channel and US Coast Guard Station – Emerald Isle. Residents along Channel Drive requested the establishment of an official No Wake Zone upon learning of the Town’s request for the Bogue Sound Drive canal last month. The reopening of the southern end of the Coast Guard Channel during Hurricane Ophelia in 2005 has resulted in a significant increase in boat traffic in this area, and the channel is also the home base for US Coast Guard Station – Emerald Isle. The increased boat traffic has resulted in potentially unsafe conditions when boats travel at excessive speed. This channel includes the US Coast Guard Station’s docking facilities and a new boat launching facility, as well as numerous private docking facilities and boat launching facilities.

The Board should note that both of these waterways currently have No Wake Zone signage in place, however, neither of these areas are official No Wake Zones as designated by the NC Wildlife Resources Commission and can not be legally enforced. The signage in place may also not comply with the standards established for official No Wake Zones, and may need to be replaced if official No Wake Zones are established. The Board should note that it will be the

MINUTES OF THE REGULAR MEETING
OF THE EMERALD ISLE BOARD OF COMMISSIONERS
SEPTEMBER 11, 2007

Page 11 of 15

1 Town's responsibility to install and maintain signage for official No Wake Zones. We do not believe, however, that this
2 responsibility will result in a significant burden on the Town's budget or staff resources.
3

4 As noted earlier, public hearings are required prior to Board action on the attached resolutions, and have been
5 scheduled for the September 11 meeting. If the Board approves the attached resolutions, these requests will be
6 forwarded to the NC Wildlife Resources Commission (NC WRC) for review and consideration. The Board should note
7 that this process can take up to 18 months, and involves NC WRC field visits to determine potential hazards, public
8 input procedures, review by the NC Rules Review Commission, and ultimately approval by the NC Wildlife Resources
9 Commission. It is likely that a final decision would not be made until mid-2008 at the earliest. The Board should also
10 note that the only factor considered by the NC Wildlife Resources Commission in the decision-making process is water
11 safety.
12

13 I do not anticipate any opposition to the establishment of an official No Wake Zone at either location. All adjacent
14 property owners along both waterways will benefit from the official No Wake Zone. In the case of Bogue Sound Drive
15 canal, it is my understanding that there is minimal non-resident boat traffic in the canal. In the case of Coast Guard
16 Channel, there is significant non-resident boat traffic, thus the potential for opposition is greater. However, based on
17 the presence of existing No Wake Zone signs, the common belief that this area is already an official No Wake Zone,
18 and the proximity of the US Coast Guard Station – Emerald Isle, I would anticipate minimal controversy. I am
19 optimistic that the NC WRC will ultimately approve official No Wake Zones for both locations.
20

21 Town Manager Rush pointed out that any no wake zones currently in place in
22 those locations are currently not official and therefore may not be legally
23 enforced by North Carolina Wildlife Resources Commission's marine patrol
24 agents, nor the Coast Guard or any other law enforcement agency. The benefit
25 of the official no wake zone is to give the enforcement authority to those
26 agencies. Mr. Rush clarified that he didn't envision our Police Department
27 getting into the enforcement business for these kinds of things. The Town would
28 be relying completely on state agencies and the U.S. Coast Guard to enforce
29 these no wake zones.
30

31 **Motion was made by Commissioner Wootten to open the Public Hearing on**
32 **the proposed Coast Guard Channel No Wake Zone request. The Board**
33 **voted unanimously 5-0 in favor. Motion carried.**
34

35 Jim Osika, resident in the Coast Guard Channel area, thanked the Board for
36 considering this in the Coast Guard Channel area. There were four other
37 citizens from this neighborhood in attendance also to show their support.
38

39 Commissioner Wright, spoke of correspondence received from the Point /
40 Wyndtree area that had all been in support, with no negative responses received.
41

42 **Motion was made by Commissioner Hoover to close the Public Hearing.**
43 **The Board voted unanimously 5-0 in favor. Motion carried.**
44

45 **Motion was made by Commissioner Wootten to adopt the Resolution**
46 **Requesting an Official No Wake Zone for Coast Guard Channel. The Board**
47 **voted unanimously 5-0 in favor. Motion carried.**
48

MINUTES OF THE REGULAR MEETING
OF THE EMERALD ISLE BOARD OF COMMISSIONERS
SEPTEMBER 11, 2007

Page 12 of 15

1 **Motion was made by Commissioner Hoover to open the public hearing on**
2 **the proposed Bogue Sound Drive canal No Wake Zone request. The Board**
3 **voted unanimously 5-0 in favor. Motion carried.**

4
5 Commissioner Hoover stated that he could say he knew of no one that is not in
6 favor of a no wake zone there. He added that boat traffic is very damaging to
7 both the walls of the canal and also to the boats that moor and connect to the
8 canal which is why they would like to keep it no wake or below 5 mph.

9
10 **Motion was made by Commissioner Messer to close the public hearing.**
11 **The Board voted unanimously 5-0 in favor. Motion carried.**

12
13 **Motion was made by Commissioner Messer to adopt the Resolution**
14 **Requesting an Official No Wake Zone for Bogue Sound Drive Canal. The**
15 **Board voted unanimously 5-0 in favor. Motion carried.**

16
17 **Note: A copy of Resolutions 07-09-11/R5 and 07-09-11/R6 are all incorporated herein by reference**
18 **and hereby made a part of these minutes.**

19
20 **11. APPOINTMENTS – FIREMEN’S RELIEF BOARD**

21
22 **Summary of this Item:** The terms of two members of the Firemen’s Relief
23 Board will soon expire, and the Board should appoint two individuals for a two-
24 year term on this Board. The Firemen’s Relief Board is established to administer
25 a special fund designed to assist firefighters in need of special financial
26 assistance. The special fund is separate from the Town of Emerald Isle’s
27 accounts, and is derived from fire insurance premiums collected in the Town.

28
29 **Motion was made by Commissioner Wright to reappoint Jack Weidman and**
30 **Ted Williamson to two-year terms on the Firemen’s Relief Board. The**
31 **Board voted unanimously 5-0 in favor. Motion carried.**

32
33 **12. COMMENTS FROM TOWN CLERK, TOWN ATTORNEY AND TOWN**
34 **MANAGER**

35
36 There were no comments from the Town Clerk or the Town Attorney.

37
38 Town Manager Frank Rush asked the Board for their direction on the Doe Drive
39 storm water easement. To follow is an excerpt from his memo to the Board:

40
41 **Potential Use of Eminent Domain for Storm Water Easement**

42 As you know, Town staff have been working to connect the Town’s existing storm water pump on Doe Drive to the
43 Deer Horn Drive pond and pump in order to relay storm water to Emerald Isle Woods. Funds were budgeted for this
44 purpose in FY 06-07, and a reasonable quote was secured to complete this work.

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MINUTES OF THE REGULAR MEETING
OF THE EMERALD ISLE BOARD OF COMMISSIONERS
SEPTEMBER 11, 2007

Page 13 of 15

1 In order to construct this connection, the Town must secure four 5-ft. wide storm water easements from four property
2 owners along the most direct route from the Doe Drive pump to the Deer Horn pond. Recognizing the benefits to their
3 properties, three of these property owners have agreed to provide these easements at no cost to the Town.
4 Unfortunately, one property owner will not provide the easement.

5
6 I have attached a copy of a map indicating the proposed storm water pipe route. The Town's plan is to secure 5 ft.
7 wide easements along the common boundary of two properties on Doe Drive and two properties on Deer Horn Drive.
8 This alignment would provide a total of 10 ft. of width overall, and reduces the burden on any one property owner. In
9 order to keep the easements along property lines it is necessary to traverse diagonally along the southeast corner of
10 one property, which happens to be the lone holdout. (See attached map.) The area traversed is larger than the area
11 provided by other properties, however, this area consists entirely of wetlands making that area of little practical use. In
12 short, the provision of an easement in this area should not have an adverse impact on the development of this vacant
13 lot.

14
15 The Board discussed this issue with staff earlier this year during budget deliberations, and advised staff to make one
16 more attempt to secure the easement, and that the Board would then consider using eminent domain to secure the
17 easement. An additional letter was mailed to the owner, Mr. Frank Smith, on June 27, 2007 (copy attached). Mr.
18 Smith has not responded to this letter, nor has he had any contact with Town staff. In the meantime, Town staff have
19 considered other routes to connect the Doe Drive pump to the Deer Horn pond, but all other routes are less direct, will
20 be more expensive, and will still require easements from affected property owners.

21
22 The use of eminent domain is legal to acquire the necessary storm water easement. If the Board would like to proceed
23 with the use of eminent domain to secure the required easement with the "quick take" method, the following process
24 must be followed:

- 25
26 1. The Town must file a written notice with the owner of the property at least 30 days prior to filing a complaint
27 for condemnation in Superior Court. The written notice should state the Town's intent, the purpose for which
28 the property is being taken, the amount of compensation estimated to be provided, and the date the
29 complaint will be filed.
- 30 2. The Town would then file the complaint for condemnation in Superior Court and deposit the amount of
31 estimated compensation.
- 32 3. The Town would then become the owner of the property.
- 33 4. The original owner has 120 days to file an answer to the complaint regarding the amount of compensation. If
34 no answer is filed, then the original owner is deemed to have admitted that the deposit filed is just
35 compensation, and the case is complete. If an answer is filed, then a process is involved with appointed
36 commissioners making a determination of just compensation. If the original owner is not satisfied with that
37 result, the decision on the amount of compensation is made by the court.
- 38 5. If the original owner challenges the sufficiency of the public purpose for the taking or any matters other than
39 the amount of compensation, the court will become involved in the case.
- 40

41 Town Attorney Richard Stanley, Public Works Director Artie Dunn, and I will be prepared to discuss this issue with the
42 Board at the September 11 meeting and await your direction. If the Town hopes to complete this project, it will be
43 necessary to secure the appropriate easement from Mr. Smith.

44
45 The Board should note that the other three property owners have agreed to provide the easement at no cost. If the
46 Town proceeds, I would like to make the case that no compensation is due to Mr. Smith because of the overall storm
47 water benefits that will accrue to Mr. Smith and other nearby properties. If we are unable to make this case and
48 provide a deposit of some amount for compensation, it would be prudent to also provide the same compensation to the
49 other three property owners. The Board should consider this potential cost when making a decision on this matter.

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MINUTES OF THE REGULAR MEETING
OF THE EMERALD ISLE BOARD OF COMMISSIONERS
SEPTEMBER 11, 2007

Page 14 of 15

1 Town Manager Rush noted that the practical impact on this property owner is
2 that after construction, without looking at a survey, he didn't think anyone would
3 ever realize there is a storm water pipe underground. In response to a question
4 from Commissioner Hedreen, Mr. Rush stated that the easement area would be
5 completely within the building setback and also within the setback required for
6 septic systems so it shouldn't prevent the person from building a home or using
7 the yard, some of the area is actually wetland area.

8
9 The Board indicated their agreement with this process. Town Manager Rush
10 said he would proceed and would expect to return to the Board by the November
11 or December meeting with the official action.

12
13 Town Manager Rush also requested the Board's direction on the Crew Drive
14 Extension project. To follow is an excerpt from his memo to the Board:

15
16 **Status of Crew Drive Extension Project**

17 I recently sent a letter to the Howe Family (attached) establishing a September 1 deadline for their input on the design
18 of the Crew Drive Extension project. I subsequently received an email from the Howe Family attorney indicating that
19 there had been a death in the family and that there would be a slight delay in responding. As of September 7 I have
20 not yet received a response from the Howe Family on this matter.

21
22 This project has now drug on for many months, with the last substantive communications about the design of the Crew
23 Drive Extension occurring in April. As you know, the Howe Family has objected to the location of the cul-de-sac, which
24 has been designed to be located as close to the water as regulations will allow.

25
26 The Town will need to either 1) reach an acceptable understanding with the Howe Family on the design of the road and
27 proceed, or 2) cancel our prior agreement to secure a 30 ft. conservation easement along the Gateway on NC 58 in
28 exchange for the construction of Crew Drive Extension.

29
30 Following discussion the Board directed the Town Manager to give notice of an
31 October 1st deadline further indicating that the Town plans to proceed according
32 to their contract.

33
34 Town Manager Rush noted that they did receive the advisory opinions from the
35 Attorney General's office regarding the Phase II Stormwater decision. He felt
36 generally they confirmed what the Town's interpretation was of the session law
37 regarding the Phase II designation. Mr. Rush said it was his opinion that the
38 Town has a very good case that we should not be designated as a Phase II
39 community. Mr. Rush said he will be attending their meeting Thursday; a
40 decision should be made that day and he will report to the Board.

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MINUTES OF THE REGULAR MEETING
OF THE EMERALD ISLE BOARD OF COMMISSIONERS
SEPTEMBER 11, 2007

Page 15 of 15

1 Mayor Schools asked Ron Marks, EMS member, who was in attendance, how
2 things went with EMS this past summer and also how the reflective green sign
3 program was going. Mr. Marks said the summer was busy with over 100 calls in
4 August. Mr. Marks noted that events such as the individual surviving a cardiac
5 arrest is a result of steps set in place in the Town; the dispatch system, Police
6 Department, Fire Department, EMS, and two hospitals. Mr. Marks added that
7 the reflective green sign program was going well. Mayor Schools thanked Mr.
8 Marks and the whole squad for their work.

9

10 **13. COMMENTS FROM BOARD OF COMMISSIONERS AND MAYOR**

11

12 There were no comments from the Board of Commissioners or Mayor.

13

14 **14. ADJOURN**

15

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

18

19 ***The meeting was adjourned at 6:55 pm.***

20

21 Respectfully submitted:

22

23

24

25 Rhonda C. Ferebee, CMC

26 Town Clerk

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