

Action Agenda

REGULAR MEETING OF THE EMERALD ISLE BOARD OF COMMISSIONERS TUESDAY, OCTOBER 8, 2002 7:00 PM - EMERALD ISLE TOWN HALL

1. Call to Order
2. Roll Call
3. Pledge of Allegiance
4. Adoption of Agenda
(Approved 5-0)
5. Public Announcements
6. Consent Agenda
 - a. Minutes of Regular Meeting – September 10, 2002
(Approved with correction)
 - b. Minutes of Special Meeting – July 16, 2002
 - c. Minutes of Special Meeting – August 19, 2002
 - d. Minutes of Special Meeting – September 27, 2002
 - e. Minutes of Special Meeting – September 30, 2002
 - f. Tax Refunds / Releases
 - g. Resolution Authorizing Electronic Advertising for Bid Proposals
 - h. Resolution Designating the Town Manager to Make Recommendations to the NC Alcoholic Beverage Commission on ABC Permit Applications
(Approved 5-0)
7. Public Comment
8. Emerald Isle Land Use Plan (LUP)
 - a. Citizen Participation Plan
(Approved 5-0)
 - b. Appointment of Steering Committee Members
(See List)
9. Eastern Phase – Beach Nourishment Project
 - a. Update – Easement Acquisition / Condemnations
 - b. Discussion of Permit Issues / Sediment Quality Monitoring Issues
(No Action)
 - c. Capital Project Ordinance Amendment – Eastern Phase
(Approved 5-0 as revised)
 - d. Resolution Authorizing Award of Contract to Weeks Marine, Inc.
(Approved 5-0)

10. Bogue Inlet / Western Phase Beach Nourishment
 - a. Status Report
 - b. Capital Project Ordinance Amendment – Western Phase
(Approved 5-0)
11. Commercial Site Plan Review – Sea Oats Village
(Approved 5-0)
12. Ordinance Amending Chapter 19 – Zoning – Regarding Building Heights in Residential Zones
 - a. Public Hearing
 - b. Consideration of Ordinance
(Approved 3-2 vote Eckhardt, McElraft, Messer For, Farmer, Marks Opposed - Will be on November agenda for 2nd reading)
13. Appointment – Planning Board
(Brad Fischer)
14. Comments from Town Clerk, Town Attorney, and Town Manager
15. Comments from Board of Commissioners and Mayor
16. Adjourn

UNAPPROVED
MINUTES OF THE REGULAR SCHEDULED
MEETING
OF THE EMERALD ISLE BOARD OF
COMMISSIONERS
TUESDAY, OCTOBER 8, 2002 – 7:00 P.M. – TOWN
HALL

Mayor Arthur Schools called the meeting to order at 7:00 p.m. Present were Mayor Schools, Commissioners Eckhardt, Messer, Marks, Farmer and McElraft. Staff members present were Town Manager Frank Rush, Assistant Town Manager Georgia Overman, Town Attorney Derek Taylor, Town Clerk Carolyn Custy, Inspections Department Head Carol Angus, Building Inspector Jimmy Taylor, Parks & Recreation Director Alesia Sanderson, Fire Inspector Dean Griffin.

The Pledge of Allegiance was recited after roll call.

Carol Angus thanked everyone for their prayers, thoughtfulness and support during the sickness and loss of her husband Jim. She especially thanked the town staff for their considerations and understanding.

ADOPTION OF AGENDA

Commissioner Farmer made a motion to adopt the agenda. The board voted unanimously. Motion Carried.

Alesia Sanderson gave an update on the Community Center. A water line going to the ice machine broke sometime on Sunday, September 29. The ice machine has been in place for approximately 10 years and there had not been any problems with it. The leak was not discovered until 6:30 on Monday morning. The Aerobics room, weight room, bathrooms, utility room, Frank Johnson's office and the gym were flooded with approximately 3 inches of standing water. The insurance company was contacted and they recommended a company out of Wilmington that takes care of matters like this and they have been going 24 hours a day trying to get things dried out until this past Monday. The flooring in the aerobics room was also destroyed because it would never dry out, the gym floor had to be taken up, the weight room flooring had to be removed. The Community Center has been shut down since the 30th of September. Upon tearing out ceiling tiles and sheetrock damaged by the water, other damage was found such as termite damage and rot from leaking water, especially under the windows around the perimeter of the building that runs North and South. This has to also be fixed. A reciprocal agreement with the Acquatic Center which went into effect 10-8-02 where they will take any of our current members at their facility at no charge to them. The town will pick up the tab on that and hopefully the insurance company will reimburse us. Ms. Sanderson hopes by late next week the weight room will reopen. By the 19th of the month the gym will probably be open again. There is no idea on when the aerobic room will reopen.

Commissioner McElraft asked about a termite contract. Ms. Sanderson related that 3 years ago we discovered that we had termites and we placed a termite contract on the building at that time. We did have a pesticide contract but not a termite one. This damage was prior to that.

Mr. Rush will be bringing a budget amendment to the board in order to get the repairs done.

Ms. Sanderson asked the public not to go over to the center because of safety reasons.

PUBLIC ANNOUNCEMENTS

Mayor Schools announced another Blood drive this coming Friday. He asked people to come give blood and that they need volunteers to help with the drive.

The Merchants Association is doing a "Taste Of The Town" which will be held in the gymnasium. This function is to get all the restaurant owners together and sample some of their dishes. This is a first for this type of function.

Volunteers are being sought for the Voluntary Fire Department, Rescue Squad and the Coast Guard Road Park. Anyone interested is to contact Mayor Schools.

Commissioner Eckhardt and Mayor Schools attended the JLUS Meeting. Both feel pretty good about the draft report that is coming out. There is a meeting scheduled for October 24th to go over the draft.

October is breast cancer awareness month and AARP month.

CONSENT AGENDA

- a. Minutes of Regular Meeting – September 10, 2002
- b. Minutes of Special Meeting – July 16, 2002
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- h. Resolution Designating the Town Manager to Make Recommendations to the
NC Alcoholic Beverage Commission on ABC Permit Applications

Commissioner McElraft made note of a correction in the Minutes of the Regular Meeting of September 10, 2002, page 21, concerning her motion for approval of the 14 members for the Land Use Plan Steering Committee. **The motion should read Commissioner McElraft made a motion that these 14 members be approved for the Land Use Plan Steering Committee.** Correction is noted and made in those minutes.

Commissioner Marks made a motion to adopt the agenda with the correction noted above and the board voted unanimously. Motion Carried.

PUBLIC COMMENT

None.

EMERALD ISLE LAND USE PLAN (LUP)

- a. Citizen Participation Plan
- b. Appointment of Steering Committee members

The Board of Commissioners is asked to take two additional actions at the October 8 meeting regarding the development of an updated Emerald Isle Land Use Plan. First, the Board is asked to approve the Citizen Participation Plan for the LUP, which is required

under the CAMA land use planning program. Second, the Board should appoint the members of the LUP Steering Committee so the committee can begin work on the LUP.

The Board has agreed to the following composition for the Steering Committee.

- 1 - Resident from eastern 1/3 of town limits
- 1 - Resident from central 1/3 of town limits
- 1 - Resident from western 1/3 of town limits
- 1 - Member of Town Planning Board
- 1 - Member of NC 58 Committee
- 1 - Commercial developer who resides in Emerald Isle
- 1 - Residential developer who resides in Emerald Isle
- 2 - Retail establishment owners who reside in Emerald Isle
- 1 - Real estate / rental company owner who resides in Emerald Isle
- 1 - Oceanfront property owner who resides in Emerald Isle
- 1 - Soundfront property owner who resides in Emerald Isle
- 1 - Member of the Board of Commissioners
- 1 - Non-resident property owner.

Mr. Bill Farris commented the Citizen Participation Plan is part of the required process element of the Land Use Plan process. Once the discussion had at the last meeting on the Steering Committee is gone over, the rest is pretty much straightforward. There are requirements for content. (1) the board must appoint a lead planning committee and (2) there must be an initial public information meeting which is tentatively scheduled for December 11, 2002. There is a requirement for the plan to state how the public will be informed as to the progress on the land use plan. There must be at least two methods used. A summary of each meeting of the Steering Committee will be posted on the Town's website and summaries of those meetings will be provided to Town Hall.

The plan must outline the methods that will be used to solicit community participation in the planning process and again, there must be two of those. At least one opportunity must be scheduled for non-resident property owners to be able to address the land use plan.

Mr. Farris went on to say that if the board adopts the Resolution tonight, early in January there will be a community wide land use plan meeting where there will be an opportunity for the community to express its ideas about issues and concerns and also generate a single list of the most important issues and concerns and opportunities that the people attending that meeting see. The Steering Committee will use that as an input for its work on issues and concerns, opportunities, visions and goals, etc.

At the draft stage, two "Open Houses" are planned. These will provide an opportunity to come in to see their policies in the draft stage, the maps, the future land use map, etc. and to be able to talk informally with the planning advisory staff and the Steering Committee about what they like about it, what they do not like about it, what they think would be effective, and through that process further adjustments can be made in getting something ready for the board to see. One of the "Open House" will be on a Wednesday, which will be a normal Steering Committee Meeting day and the other will be held on the following Saturday which would be an opportunity for non-resident property owners to come in and see the process as well.

A required Public Hearing that would be held at the end of the process along with advertisement requirements for public hearings. Another requirement is that a tentative schedule of events in the plan.

Commissioner Marks remarked that she understood that Mr. Farris is not in favor of surveys. She feels this is a unique community with over 6,000 property owners, with a population of somewhere between 3,000 and 3,500. Many of those are not property owners. She felt that a survey is the way to get the thoughts of the non-resident property owners.

Mr. Farris replied he and Mr. Rush have been working on an idea but one of the problems has not been solved yet. What they have been looking at is the process of actually putting a survey on the website which is technically possible and fairly simple to do. Security is an issue that they are trying to deal with at present. Security is one person with one opinion or one household with one opinion. If the board feels strongly that a survey needs to be done, then a mail out could be performed. Mr. Rush implied it could be added to the plan if the town decided to do a survey.

Commissioner Farmer agreed with the survey and felt that is the only way we are going to have an opportunity of reaching people. She had the same concerns about putting the survey on the website as Mr. Farris.

Mr. Farris thought the town could reach all of those people they are concerned about. He did say that surveys have been very popular but does not know if they were actually required.

Commissioner Messer asked about the cost to the town and Mr. Farris said it was not a significant amount. If someone were brought in to do a scientific statistical survey it would be \$10,000 but just a mail out to the property owners is not going to be that much. He suggested trying to get volunteers from the retired folks to help compile the results.

Mr. Rush suggested the possibility of using a University student to help because they sometimes get credit for doing things like this and Commissioner Eckhardt suggested Mr. Rush look into this matter.

Mayor Schools asked about the Technical Planning Team and who they were. Mr. Farris remarked it included Carol Angus, Frank Rush and himself. Mr. Farris also made note that the meeting time is the 2nd Wednesday of every month at 6:00 P.M. for the Steering Committee.

Commissioner Farmer made a motion to adopt the Resolution Authorizing the Citizens Participation Plan of the Emerald Isle Land Use Plan, with the addition of a resident/property owner survey under 2.0 Participation Methods. The board voted unanimously. Motion carried.

Election of members to the Steering Committee was done by written ballot by the board and tallied by Frank Rush and Georgia Overman. Those members are:

Eastern 1/3 of town limits – Phil Gagnon
Central 1/3 of town limits – Brownie Trainham
Western 1/3 of town limits – Anne Erikson
Member of Planning Board – Art Daniel
Member of NC 58 Committee – Mark Brennesholtz
Commercial Developer who
resides in Emerald Isle - Georgia Murray
Residential developer who
resides in Emerald Isle – Mike Johnson
Retail Establishment Owners – Eddie Barber and Nita Hedreen
Real estate/rental Company who
lives in Emerald Isle - Julia Wax
Oceanfront property owner – Vincent Oliveri
Soundfront property owner – Ben Dadd
Member of Board of Commissioners – Doje Marks
Non-resident property owner – Jenny Godwin

Ballots are on file in the Clerk's office with the Minutes of this meeting.

EASTERN PHASE – BEACH NOURISHMENT PROJECT

The Board is scheduled to consider four issues related to the Eastern Phase of the Beach Nourishment Project, including the formal authorization to award the construction contract.

Update – Easement Acquisition / Condemnations

At the September 27 special meeting, the Board was informed that there were still 89 outstanding easements necessary for the Eastern Phase. The Board has already approved a

resolution authorizing the Town Attorney to initiate condemnation proceedings for any easements not received. The town continues to receive additional voluntary easements daily.

Mr. Rush indicated a Capital Projects Budget Ordinance for the Eastern Phase Beach Nourishment is being presented to the board, which will possibly need approval at this meeting. The town has received a copy of the CAMA permit modification, a copy of the draft from the Corps of Engineers permit modification which for all intended purposes has been approved but this is not the final version and is lacking the signature of Mickey Sugg of the Corps of Engineers. A copy of a letter from Weeks Marine, Inc. where they are indicating they will complete the entire project within the town's time frame of November 15th to April 1st of 2003.

Attorney Derek Taylor elaborated on the condemnation process of easements for those people who have not signed nor sent back their forms for recording. There is now a list of 102 owners that easements have not been recorded for. Some of those have been because the easements were returned with no notary signature, some because the wife did not sign it, some because another owner who has interest in the property has not returned the easements. In some cases those owners are hard to find because they are not property tax payers having no address could be found. There are some problems associated with those 102 that will probably be resolved. Nevertheless, the law requires the town to notify anyone that we are going to potentially condemn an easement for 30 days in advance of actually filing that action. For that reason it was Attorney Taylor recommendation that the town go ahead and proceed with notification. Attorney Taylor also gave Ms. Overman a spreadsheet to verify against what Attorney Taylor has and to make sure the records are properly in place. The Mayor has already created a letter that will be used as the cover letter with the addition of two pieces of information Attorney Taylor will add to that letter, one will be the official notification for condemnation of easement according to Statute and the second document will be a new easement. It is hoped there will be nowhere near the number of people on the list that we will actually be filing condemnation proceedings against them. Attorney Taylor will continue with condemnation proceedings after the 30 days notice and those letters are going out Friday.

Mr. Rush noted that Attorney Taylor referenced a number of 102 easements. There are around 12 or 13 that fall outside the project

Attorney Taylor interjected these are a little bit of soft figures because the engineers and he are discussing where the taper is going to go. He is not sure of those in the 11 or 12 that will be included in the project. He is going to go ahead and notify all of them while the determination is being made so that the 30-day notice will be completed when that determination is made.

Discussion of Permit Issues / Sediment **Quality Monitoring Concerns**

Mr. Rush discussed permit issues. He pointed out that in the Corps of Engineers Permit Modification, one of the concerns that was addressed by Commissioner Farmer at the last meeting, was whether or not that would change the standards for shell content. The current modification from the Corps of Engineers has provided basically holds the town to the standards outlined in the original permit using a Hopper dredge.

Dr. Tim Kana addressed the issue of sediment quality. They have performed some additional tests on the samples. Dr. Kana said when the town was going for the permit modification to 6 feet they had previously integrated to the whole length of core but now that we have a Hopper operation, they wanted to get a more accurate determination of the sediment in the upper 4 feet which is the limitation of the borrow area B2. They did resample the cores and recomputed the sediments for those areas.

Dr Kana continues with if the elimination of the areas that have high shell or higher mud they are optimizing for lowest mud percentage, lowest percentage shell and came up with two scenarios. The good news is under the first scenario they show 2 million yards in an area that is fairly convenient for the hopper dredges to work in B2. The second scenario gives about 1 ½ million yards in B2. It should be noted that the Hopper dredge cannot put the arms down, take sand, skip over a place and take more sand very easily. This gives more of a chance for taking turtles.

Dr. Kana recapped that they are trying to select from the revised, updated, more accurate data because it is more reflective of what is in the borrow area. They are trying to optimize around the key sediment quality parameters and monitor those as they go.

Dr. Kana discussed monitoring. One way of monitoring the sediment under construction is on the dredge and one is on shore. He recapped those. Monitoring on board the dredges is quite problematic. It would be very time consuming and expensive. Also the way the sediment comes into the Hopper, it is sorted out in piles but the question becomes how do you sample that. There is also an issue of danger on the dredge because you cannot physically go down in the Hopper and walk around while they are pumping in. He did not recommend sampling on the Hoppers as a means of determining sediment quality. Monitoring on shore, if it were desired to monitor every hopper, about 10 per day, a sampler could be taken and go down where the pipe is injecting into the beach and every couple of minutes or so grab a sample. Those samples could be consolidated into one sample and analyze it. This would also be expensive and time consuming. Dr. Kana did not recommend doing the sampling this way either because of danger to people right by the discharge pipe and the expense.

A more practical way to sample would be to wait until a section is finished right behind the pipe and then sample. You do not have to worry about personnel getting in harms way. The downside is you have to wait about 24 hours before you can access a section that has been completed because they are building 500 feet or so at a time.

It is up to the board to give Dr. Kana some guidance on how much detail they want to implement.

Commissioner Eckhardt asked how that compares to what they would normally do based on the Corps requirements and Dr Kana answered normally they would sample just a grab at random across the beach on a daily basis and analyze that 24 hours later. They have proposed for this project sampling of transects across which will more accurately determine what is actually placed. If this is done every hundred feet, that would mean three or four samplings per day. Normally there would be only one transect sampled every three hundred or four hundred feet.

Commissioner Farmer related to Mr. Rush's comment that the Corps is holding to the original values that was in the original permit. Mr. Rush indicated that was correct. Commissioner Farmer only sees where they are holding the shell to 35 percent and she does not see anything about all the others. Mr. Rush commented that it deals with shell content only.

Commissioner Farmer remarked the Corps is saying that we will be held to 35% shell but you have 38% and 40%. What do you do in a situation like this? Dr. Kana replied you pump that on the beach because once it is on the beach it will mix and the final shell content that we will be exposed to will be most of that. That has been proven in the Phase I part. He related that the shell content in Pine Knoll Shores, in Phase 1 and Indian Beach, was running in all those transects was 24% in June and 19% in September.

Commissioner Eckhardt said one of the things he thinks needs to be gotten into is they are not looking at mix, they are looking at samples from a newly constructed beach. Dr. Kana was not sure how the value was arrived at. He is not aware of any data in the literature that states 35% shell is the optimal percentage or the maximum that you are allowed on any beach.

Commissioner Farmer agreed with Commissioner Eckhardt and stated that the Bogue Banks natural shell content is 15% to 20% according to the EIS so we are already over 35% and the Corps must be looking at taking these samples as you go based on what goes on the beach because Pine Knoll Shores got a notice saying you are high. Dr. Kana submitted that 20% quoted in the EA is not necessarily what is on Bogue Banks because the sampling was done by taking surficial sample across the beach. He is not aware of any samples that have cored through the beach other than a couple that has been done and included in the literature. Standard operating procedures for a project of this type is to sample the surficial beach base sediments.

In answer to a question by Commissioner McElraft if the 1.4 million cubic yards would be enough, Dr. Kana said no it would not. They have not looked at borrow area A yet. There are still other exceptions that are permitted that would be used there.

Commissioner Eckhardt related to a statement by Mr. Rush about the sand, which was what we get, is what we get. He is struggling with changing or lowering the bar. He asked what do we get by going to the modified permits because all the numbers, the carbonate, the mud, the percent over 2mm and the mean grain size all increased. All of the things associated with quality have increased. Dr. Kana disagreed that the bar will be lowered in every respect. The most important parameter from a stability standpoint is the overfill ratio and those overfill ratios that is being obtained with this optimizing is very good, at 1.3, is considerably better than what the EIS first put out. For borrow area B2 the EIS put out an overfill ratio of about 2.0, which was very high. A second round of borings reduced that ratio to about 1.6 in B2. This optimization is getting it even further down. Each time we get lower and lower means we don't have to put as much sand there to have longevity of this project.

The percent gravel, 10%, is a desirable output to again make the project more stable. The percent mud has gone from the EIS report of about 4% up to 6% which is a 50% increase in mud but we are still talking about a small amount of mud in the borrow area. By going with the Hopper operation, most of the mud will be discharged back into the borrow area before it gets to the beach. Dr. Kana clarified that mud spans a spectrum just like sand does and the mud that most people are worried about is the clay that stays in suspension. Mud also consists of silt like particles and a lot of this percentage, well over half, is in the silt size range. A lot of the silt will go out to the outer bar and reside on the shelf. It does not stay in suspension long.

Dr. Kana implied that before anyone gets stuck into a percentage, these are still well within a standard that is more than acceptable for the beach.

Commissioner Farmer shares Commissioner Eckhardt's concerns. There are two goals that Emerald Isle has. One is to protect the property on the oceanfront and the other issue is to what cost to the aesthetics of the beach do we have now. She thinks that what went on in Pine Knoll Shores is terrible and she would hate to see that happen here. She also thinks the percentages are worse. They may be better for stability but they are worse in terms of aesthetics than the original permit. She would love to know how the agencies that are supposed to be protecting these resources are changing these numbers when the only EIS work that has been done was lower numbers. She asked how do they know this is all right?

Commissioner Eckhardt felt it is important for people to know that we are going ahead with the nourishment project. There is no question about that. He hopes that people who live on the beachfront will look at Pine Knoll Shores and feel that is exactly what they would want. They want that wide beach but he has had concerns with quality since last January.

Commissioner McElraft indicated two options, one is stop the project and the other is put the sand on that we have been permitted for. She reminded citizens it was going to cost \$75,000 per day for downtime for tires. The reason for the permit modification is so we can use an

extra borrow area, which has a little higher shell content, but it is minimal compared to what is on Pine Knoll Shores or Indian Beach.

Commissioner Farmer disagreed with Commissioner McElraft about not doing the project and said the choices are if the town is going to go with the original permit or the permit modification. The major difference is that the material on the permit modification is worse.

Commissioner Marks commented that people need to be aware of what we are getting. There is shell out there and there will be shell on the beach. The shells and larger grain sizes make the beach more stable.

Dr. Kana said they are planning to have sampling daily, as soon as the sections are finished and process it as quickly as they can. There will be some days the dredge will be shut down for weather or whatever and no samples will be taken for those days.

Commissioner Marks, asked, in reference to the turtles, if daily monitoring of water temperature is going to be done? Dr. Kana's answer was that it would be continuous monitoring aboard the dredge.

Mr. Rush reported that keeping within the budget is going very well. The bid came in for exactly what was budgeted for. Two Budget Ordinances are presented to the board for approval. The total bid was 9 Million Fifty Thousand Dollars by Weeks Marine Inc. at \$5.00 per cubic yard. Demobilization and mobilization was 1.5 Million, which was exactly within budget. Total amount of bid was 10 Million Five Hundred and Fifty Thousand Dollars.

The budget presented reflects that because of the shifting funds from the Western Phase Project to the Eastern Phase Project that was originally planned. The bonds were sold on October 8th, today, and the town received an interest rate of 2.8%. This will also save \$772,000.00 in interest costs over the life of the bonds. Initially it was assumed that the town would receive 4.5% rate.

The project will start at the Indian Beach Town line and finish up somewhere around the 6800 block around Santa Maria Drive.

Commissioner Eckhardt made a motion to adopt the Capital Project Budget Ordinance for Beach Nourishment – Eastern Phase Project as Revised based on 1 million eight hundred and ten thousand cubic yards. The board voted unanimously. Motion carried.

Mr. Rush noted that Weeks Marine, Inc. was the lowest bidder. CSE has reviewed the Contract and has recommended approval. The Contract is based on 1 million eight hundred and ten thousand cubic yards of sand for 9 million 50 thousand dollars. Two bids were received for Cutter head dredges and two for Hopper in which Weeks Marine was the lowest. There have been concerns in the last few weeks about Weeks Marine being able to

complete the project in the time frame but Weeks Marine has addressed that on how they can accomplish the project within the time frame prior to March 31st. If they do not start until January the water temperatures will be lower thus making it safer for turtles.

Tom White, CSE, said the big concern and the thing that can stop the project is the turtles. The draft of the permit just reviewed today is more restrictive than it was thought it would be and they are going back again to ask them to look at the turtle provisions again. As it is now, we can go ahead with the project but if there is a turtle take it will be expensive. Turtle trawling will be required if 1 turtle is taken according to the federal permit and CSE has requested that it be reconsidered. It is a higher standard than anyone else in the country is held to. Mr. White said he has never seen turtle trawling do any good. When it was supposed to be trawling in front of the dredge, it wasn't and sometimes when the dredge was dredging the trawler was not trawling and it did not seem to be effective. Mr. Rush interjected that if the town is required to do trawling, the cost would be around \$5,000 per day. Mr. Rush does not feel it is going to be a big problem since the water should be below 58 degrees in January.

Mr. White said it is not the trawling that is expensive, it is the time the dredge is shut down waiting for the trawling which costs \$75,000 per day.

Commissioner Farmer said she thought part of the bid was in fact for turtle trawling. Mr. Rush interjected that part of it is for turtle trawling but the trawling provided by Weeks was excessive. It will be the town's approach to use another turtle trawler at a rate it thinks will be somewhere in the \$5,000 range. Mr. White reminded the board that March is when Week's production will be heaviest and sometime in March the waters are going to get warm enough to potentially take turtles

Mr. White said regardless if we think there is going to be a turtle take or not, if the big cost we are worried about is having the dredger standby then we don't make him standby if we get the trawler there. Mr. White also said it does not make any difference how many dredges there are, it is \$75,000 per day not \$75,000 for dredge.

Mr. White informed the board there are a few other things they are doing that they hope will help. One is they are monitoring the conditions that are thought to be correlated with turtle migrations so we will have some warning. If a turtle migration is spotted then you can choose to shut the operation down for a day while the turtles come through at \$75,000 a day. The other thing that may have happened in Pine Knoll Shores the double digging of trenches. If a trench is dug and you come back right away to dig again, the turtles are feeding on the sides of the trenches and you get a turtle take. They are going to keep an eye on the trenches to make sure that double digging does not occur this time.

There are several other issues that are technically in conflict with the specifications for this project that have to be resolved. One is dealing with the State Permit and another has to do with a turbidity standard.

Mr. Rick Smith, Chief Civil Engineer, Weeks Marine, Inc. remarked that he goes to a job if there is a production yards per day issue. Otherwise, when the contract is signed, he is looking three to four months ahead of today. Mr. Smith said Weeks is a general Marine Construction Company out of New Jersey. It is a family owned company, made up of several small entities of a construction division, a dredging division and a equipment/rental division. They have sea going tugs and barges. The dredging division is operated out of New Orleans. They work on the Gulf and East Coast. They have Hopper dredges, pipeline dredges and bucket dredges and do about 200 million dollars a year along the coast. The Hopper dredging they do is mainly beach nourishment. This is a pretty routine beach nourishment job for them so there should be no major hurdles.

Mr. Smith said the ship is a sea going vessel, all of the fellows on board are mariners and they live on board. You will never see them because they do not touch land. A separate gang of guys will receive on the beach, they sleep on the beach, they will come and rent apartments. The surveys and the administrative guys will be on land. About 20 to 25 will be on land. One-third of the guys will be on time-off all the time. You have day crews and night crews and they all rotate.

Most likely there will be two pipes on land since there will be two dredges working. This will enable each one to hook up to a pipe when they have a load and not be on downtime waiting for one to unload. They can both unload.

Mr. White noted that once the dredge gets here it is committed to do this project. It will be up to the Weeks Marine to bring in another dredge if they want to.

Commissioner Farmer said she does not see anything in the contract about dozers on the beach in trying to avoid the problem that was up at Pine Knoll Shores where individual property owners were paying the dredging contractor to put sand on their property. Mr. White said that is specifically prohibited in the specifications of these contracts. Last time around it was prohibited in a sense that they had to obey all of the local ordinances and no one bothered to tell Great Lakes about it.

Commissioner Farmer also wanted to know about the “no mixing of borrow areas” as there was in PKS. Mr. White replied there is no required mix. The dredgers will go to whatever lanes they are told to for the sediments. The only restriction is a section of B2 that is in front of Emerald Isle that they can use and part of A that is North of where it was dredged from before.

Commissioner Marks made a motion to approve the Resolution Authorizing Award of Contract to Weeks Marine, Inc. for the Eastern Phase – Beach Nourishment Contract revised as of 4:30 p.m. this date (Oct 8th). The board voted unanimously. Motion carried.

A 10-minute break was taken at 9:10 P.M. and the meeting resumed at 9:20 P.M.

BOGUE INLET / WESTERN PHASE – BEACH NOURISHMENT

Mr. Rush informed the board there is a Capital Project Budget Ordinance for the Western Phase of Beach Nourishment. This ordinance is for a total of 5 million and Forty Thousand dollars for the Western Phase of the project including the GIS, engineering and construction, mobilization etc. Included in that figure is the separate \$300,000 that will be available for anything that might arise.

Mr. Tom Jarrett informed the board they have prepared a Notice of Intent to prepare an EIS. It has been presented to the Corps and that Notice of Intent will be published this Friday. A Scooping meeting has been scheduled by the Corps of Engineers for October 29, 2002 at the White Oak Elementary School beginning at 6:30 P.M. This meeting will include a structured opening session in which the project will be presented and then there will be breakout sessions for individuals who want to go to a certain area of concern for example, monitoring, sediment quality, etc. This session will be a no debate session but will be a gathering of comments and concerns. The Geotechnical Investigations are finished. Based on the vibacores and other studies the material is basically beach material down to below 16 feet. The compatibility ratios are at 1 to 1.03. Shell content is generally 5% or less. CPE feels very comfortable at this point based on the uniformity of the grain size material from one side of the proposed channel to the other and from the outside to the inside. It is very uniform sand from medium to course, minimal shell, minimal fines.

The Channels dept is 13.5 feet below the mean low water which is at 15 feet below mean sea level and extends out to the ebb tide delta and then stands to a width of 500 feet as it moves across the ebb tide delta and then narrows again toward the outer end to a width of 200 feet. The reason for this variable cross sectional design is an attempt to immutate the cross sectional area of the existing inlet so that once the channel is opened and the existing channel closed that there will be the same flow area basically in and out of the inlet as it is today. Mr. Jarrett commented that they have found it will be necessary to close the existing channel, which will be somewhat of a challenge. Hopefully it can be done with a dredge but may require the building of a temporary wall to close the flow off, fill the sand dike and then remove the wall.

Mr. Jarrett looked at the shoaling characteristics. The new channel will be deeper than the existing channel but it will shoal and will eventually turn back to a natural recurring depth across the ebb tide delta. The numerical modeling of the inlet has been constructed and

is up and running. The Geomorphic Analysis of the inlet has been completed. An assessment of the future condition of the Pointe subdivision in the absence of the channel relocation project has been initiated. A draft biological assessment of the project impacts on endangered and threatened species was provided to the Corps in mid September. A Biological Monitoring Plan is being developed with the assistance of the Land Management Group of Wilmington, N.C. Once it is completed it will be provided to the Corps, various state and federal resources agencies, and other members of the Project Delivery Team for review.

After the scoping meeting, major efforts will be directed toward preparing a draft EIS. Mr. Jarrett presented a schedule for the EIS, which is attached at the end of these Minutes with the document entitled Bogue Inlet Channel Relocation Project Statue Report.

Mr. Jarrett gave a summary of what would happen if the inlet is not relocated. There would be a loss of \$2,000,000 after the first two years, \$5,000,000 after the first 4 years to close to \$8,000,000 in 6 years. This is the tax value only. He also factored in utilities that are going to be lost, the roadways that would be lost, Bogue Court would be cut off and you would have to have some temporary access to those properties. There would be a pitch to try to slow things down in the 6 years and all of that needs to be factored in to try to get some concept of what the impacts would be. In 8 to 10 years the town is looking at some substantial potential losses. The channel could relocate itself and save the town \$5,000,000 dollars. No one can say this would occur.

Commissioner Eckhardt noted there have been some drastic changes at the Pointe and asked if the modeling showed that at all? Mr. Jarrett replied that the modeling they are using does not move the shoreline around. It can give you some idea but they cannot use the models to predict shoal movement. The best thing that can be done is to take Mother Nature and see what has happened and possibly make some future projections.

Commissioner Farmer expressed a concern that we would be advertising a contract December 1st 2003 and we would not start until January at the earliest. Mr. Jarrett said if the actual construction period is, like 120 days for the actual construction which runs into June, is a concern right there. You have to relocate the turtles and what have you. This is not to say it cannot be done but there is a good chance it won't be allowed.

Commissioner Farmer also expressed a concern that if we are advertising it in November all the dredges are going to be taken. We advertised for a cutter dredge in August and could not get one.

Mr. Jarrett will be back next month with a more detailed Geomorphic changes. The board may want to consider a Special Meeting for this instead of taking the time on the regular agenda. Mr. Jarrett did say it would take about 120 days to pump 1.2 million cubic yards.

Commissioner Messer made a motion to approve the Capital Projects Budget Ordinance for Beach Nourishment – Western Phase and the board voted unanimously. Motion carried.

COMMERCIAL SITE PLAN REVIEW – SEA OATS VILLAGE

Sea Oats Village is a proposed, two-building commercial shopping center fronting on NC 58, Holly Street, and Bogue Inlet Drive. The applicant is Mr. Larry Watson, Coastal Land Ventures, Inc. Copies of the site plan, storm water plan, and architectural plans are in place. A copy of the required lighting plan is on file in the Planning and Inspections Office. The project is located on a 2.9 acre tract, most of which is in a B-3 zone. A small portion of the tract is zoned R-2, and the property abuts R-2 zoning to the north. The project consists of one building that is a total of 9,750 sq. ft., and another that is a total of 8,450 sq. ft. The east building includes a total of 7 units, including a proposed restaurant, while the west building includes a total of 5 units. There are a total of 80 parking spaces on the site. The Planning Board unanimously recommended approval of the project at its September 23 meeting. Among the issues raised during a staff and Planning Board review were:

- The Town's requirement for building wall offsets every 40 feet. The Planning Board determined that the use of a covered porch with dormer features satisfies this requirement.
- The initial plans included a non-structural roof feature that extended above the main roof line. The plans have been revised to comply with the Town's ordinance.
- One proposed sign has been eliminated to comply with the Town's ordinance.
- Parking spaces have been eliminated or reconfigured to address safety concerns, and bicycle racks have been added.
- Fire lanes and loading / unloading zones have been delineated and will have appropriate signage.
- The 15% natural area requirement has been met with the designation of a 50 foot vegetative buffer and Piney Creek between the project and single-family residences.

The Fire Department has reviewed the plans with the applicant on multiple occasions, and has contacted the NC Department of Insurance for additional guidance. The Fire Department has determined that the project meets the applicable fire codes with the designation of fire lanes at the rear of both the west building and the east building.

One change has been made to the plans that was not discussed by the Planning Board. The Health Department has mandated a slight change in the configuration of the wastewater system, however, this change has not impacted the layout of the project in any way. The exact same area is designated for the wastewater system, and should not affect the Board's review of the project.

Section 19-107 (7) of the zoning ordinance, which is very poorly written, appears to require either a vegetated buffer or 6 ft opaque fence between commercial properties that abut residential or institutional lots. This project appears to meet this requirement behind the west building by maintaining natural vegetation within the 15 ft setback from the R-2 zoning on the same tract. However, there is also a tract zoned R-2 behind the east building, although this tract is currently a well site for Bogue Banks Water Corporation. It gives the Board of Commissioners discretion on the issue of requiring a vegetative buffer or 6 ft opaque fence. In this instance, Mr. Watson can not provide a vegetative buffer with the current layout, but could potentially install a fence between his project and the R-2 site occupied by Bogue Banks Water Corporation.

Commissioner Farmer questioned a sidewalk on the back drive for people walking through. Mr. Larry Watson replied there was not enough room to put in a sidewalk there. The street will be 25 foot wide, which is wider than a normal street and will allow walking traffic and bicycling without being in danger of being hit by a vehicle. A normal street is 20 foot wide.

Commissioner Marks questioned the underbrush. Ms. Angus of the Inspections Department had mentioned clearing out underbrush. Ms. Angus said she was talking about clearing the underbrush on the North side off the Bogue Inlet side. Mr. Watson said the only thing he would do there is just the edges of the buffer. He would not be going deep into the 50 foot but would be doing just the edges that would be overhanging the parking area. Commissioner Marks said it mentions a vegetation buffer in the ordinance yet the plans do not mention anything about vegetation so he should be providing a 6-foot fence. She has been up on Holly Street which, is all residential and to her a 6-foot fence is meaningless as a buffer between the residential area and the back of Mr. Watson's store. Mr. Watson said they are backing up against the water company and there is probably 100 feet from the center of that to the property line and about 75 foot of that is woods that has never been touched.

Commissioner McElraft made a motion to approve the Commercial Site Plan Review for Sea Oats Village.

Commissioner Eckhardt noted that at the Planning Board session there was a lot of discussion about fire safety. Dean Griffin, Fire Inspector, said the fire department does not have any problems that cannot be addressed during construction. Everything has been addressed including the roads around the buildings.

Commissioner Farmer asked what would happen if someone tore down the bar and built on the lot line. Mr. Griffin said it is his understanding that they could build on the property line and that is addressed in the new building and fire codes which says there has to be a fire wall. Mr. Watson's building will have to have a firewall and if he buys property next to it, he will have to have a firewall if he should build on that property.

The board voted unanimously. Motion carried.

ORDINANCE AMENDING CHAPTER 19 – ZONING – REGARDING BUILDING HEIGHTS IN RESIDENTIAL ZONES

Mr. Rush explained that the substance of this ordinance amendment was originally requested by local builder Curtis Estes, who submitted plans earlier this year for a two-story house above pilings (the piling area is considered a story under the Town's current zoning ordinance) with an additional level above the top floor that also qualified as a story according to the Town's zoning ordinance. The overall height of the house was less than the 40 ft mean roof height limit in the zoning ordinance, but due to the Town's definition of a story and a 3 story limit in residential zones, Mr. Estes was denied a building permit for this house. Mr. Estes correctly cited other similar houses already in place in Emerald Isle, and requested that the Town staff, Planning Board, and Town Board consider an ordinance amendment to allow similar houses to be legally constructed in Emerald Isle.

Town staff then discovered that the limit of 3 stories in residential zones was adopted in error by a previous Board of Commissioners (it was apparently only intended to apply to commercial structures), and began work on a simple ordinance amendment to correct this error. It was then realized, however, that the current zoning ordinance also includes additional setback requirements for structures greater than 2 or 3 stories in residential zones, and that these setbacks would apply to Mr. Estes' situation and other similar situations. Town staff then determined that these additional setback requirements had not been applied to residential structures in the past. Additional research indicated that the requirement for additional setbacks was included in the original zoning ordinance, and it appears that this requirement was included to offset impacts of significantly taller structures, up to 100 feet high, that were permitted up until an ordinance amendment reduced the absolute building height in 2000.

Town staff and the Planning Board subcommittee have met several times over the past few months to address these issues. One key issue is that the Town's current zoning ordinance includes a different definition of a story than the NC Building Code and the International Building Code, and this disallows the construction of certain residential designs, including Mr. Estes', in Emerald Isle that are permitted under the NC Building Code and the International Building Code. The attached ordinance amends several definitions, including that of a story, to be consistent with the NC Building Code and the International Building Code. The ordinance amendment also includes additional definitions, most notably an attic story, that are consistent with the NC Building Code and the International Building Code.

The ordinance amendment would essentially allow the same residential designs allowed by the NC Building Code and the International Building Code. The following summarizes the different designs that would be allowed under the new ordinance:

- A 3 story house built above a slab, plus an additional attic story.

- A 3 story house built above pilings, plus an additional attic story. The piling area could be enclosed with break-away walls (can not be habitable) and not count as a story. Relatively small ground floor access enclosures and elevator shafts would not count as a story.

The ordinance does retain the language regarding the 3 story limit, but does include language allowing an attic story.

The ordinance also eliminates the requirement for additional side and rear yard setbacks. Town staff (including the Fire Chief), the Planning Board subcommittee, and the Planning Board all agreed that the 40 ft absolute height limit negates the need for additional side and rear yard setbacks associated with additional stories.

This ordinance amendment does not change the absolute building height limits in any zoning district. These absolute height limits remain at 35 feet and 40 feet for residential structures, and 35 feet and 50 feet for commercial structures. This ordinance amendment also does not change the story limits for commercial structures. Commercial structures remain subject to a limit of 3 stories, with no provision for an attic story.

Commissioner Farmer said the problem here is more zoning than anything else. Mr. Rush has indicated that these changes will not apply to commercial structures. There are commercial structures in Residential, Hotel/Motel and Residential Multi-Family. Her concern is for the neighbor who built their house and has a lot or 5 lots next door and the next thing this person knows is that there is a motel that goes up right next to them. She would not remove the number of stories on commercial uses in residential zoning.

Mr. Rush said hotels are allowed in RMH. They are not allowed RMF.

Commissioner Farmer said another issue is the dominance of the building when landscaped and mentioned Best Western in Cedar Point and how it dominates the neighborhood if put by homes.

Commissioner Farmer said what happened, there was a transcribing error where it was supposed to apply to commercial uses but the three story limit was carried over the single family. A discussion took place on how difficult it would be to change this ordinance.

Art Daniel, Planning Board Chairman, interjected the zoning ordinance is very cumbersome. The type of thing that is being proposed is that the definitions align with the building code, the local ordinances building code definitions so someone could make a determination if this has taken place. In looking at the actual construction of a motel within the areas where they are allowed, he does not believe the current lot structure will allow you to put a large motel on it and he does not believe the current economy is such for people who do a Mom and Pop type motel operation to build and run a facility on a small lot.

Mr. Daniel said the definitions in the ordinance does not belong in the zoning ordinance in the first place but the only way to address the issue with building heights and the number of stories allowed, the Planning Board thought this was the place for them. Mr. Daniel said he thought the Zoning Ordinance would be done after the Land Use Plan and that is 18 months away.

Commissioner Farmer admitted there really is an error that needs to be fixed now.

Attorney Taylor said someone could ask for a variance but it would not meet the criteria for allowing it. It cannot be something someone created. It would have to be something peculiar about this particular property to meet either one of the criteria for a variance.

Attorney Taylor reminded the board that this subject is up for a Public Hearing and that Public Hearing should relate to whatever changes there are going to be that the board wants to vote on. If there are going to be some changes between what the board has before them tonight that have been published for a Public Hearing, then evaluation will need to be done to see if those changes are going to be significant enough that it has to be republished and another hearing done.

Mr. Rush clarified one thing he said earlier about where commercial buildings are allowed. Some are some very limited uses that are allowed in RMH such as barber shops.

Commissioner Eckhardt thinks the exposure that is being discussed is minimal. He had rather go ahead and take the Planning Board's recommendation and go back and address any exposure there might be.

Mr. John Odum, Prestiege Engineering, related that every commercial project has to come before the town for three or four months and you can address individual commercial projects as they come before the board.

Mr. Odum also said it needs to be changed. It is terrible the way it is.

Commissioner McElraft made a motion to open the Public Hearing and the board voted unanimously. Motion carried.

No public comments.

Commissioner McElraft made a motion to close the Public Hearing and the board voted unanimously. Motion carried.

Commissioner Eckhardt made a motion to adopt the Ordinance Amending Chapter 19 – Zoning – Regarding Building Heights in Residential Zones. The board voted with a split

vote 3-2. Voting for adoption was Commissioners Eckhardt, McElraft and Messer. Voting against adoption was Commissioners Farmer and Marks.

NOTE: This item will be placed on the November agenda for a 2nd reading as it did not receive a 2/3 vote tonight.

APPOINTMENT TO THE PLANNING BOARD

Commissioner Farmer nominated Brad Fischer to the Planning Board. The board voted unanimously. Motion carried.

COMMENTS FROM TOWN ATTORNEY, TOWN MANAGER, TOWN CLERK

There were no comments from the Town Clerk and Town Attorney.

Mr. Rush announced NC JLUS Public Hearing was scheduled for October 21 and has been changed Thursday October 24th at 7:00 P.M.

Mr. Rush had informed the board a few weeks ago that Michael Harvey with Benchmark would not longer be assigned to Emerald Isle. Approximately 1 week after that Mr. Rush received a phone call from the President of Benchmark who indicated there had been a miscommunication and that Mr. Harvey is still assigned to the Town of Emerald Isle.

The town has ordered a remote microphone so that when people are walking around giving presentations, they can carry it with them.

The town is in the process of finding a building inspector at this time. Mr. Rush, Ms. Angus and Jimmy Taylor are evaluating the best strategy for filling that position. Approximately 25 applications have been received at this time.

COMMENTS FROM THE BOARD

There no comments from board members.

ADJOURN

Commissioner Marks made a motion to adjourn and the board voted unanimously. Motion carried.

The meeting was adjourned at 10:45 P.M.

Respectfully submitted,

Carolyn K. Custy
Certified Municipal Clerk