

ACTION AGENDA
REGULAR MEETING OF THE EMERALD ISLE
BOARD OF COMMISSIONERS
TUESDAY, JUNE 11, 2002
7:00 PM - EMERALD ISLE TOWN HALL

1. Call to Order
2. Roll Call
3. Pledge of Allegiance
4. Adoption of Agenda
(Approved with changes 5-0)
5. Consent Agenda
 - a. Minutes of Regular Meeting – May 14, 2002
 - b. Minutes of Special Meeting – April 23, 2002
 - c. Tax Refunds / Releases
 - d. Resolution Authorizing Town Manager to Amend Waste Industries Contract
 - e. Resolution Authorizing Town Manager to Extend Hadnot Creek Kennels Contract
 - f. Stormwater Project Fund Budget Amendment FY 2001-2002 - (Added)
(Approved 5-0)
6. Public Comment
7. FY 2002-2003 Budget
 - a. Public Hearing
 - b. Potential Consideration of Budget Ordinance and Fee Schedule
(Interim Budget for July 1 through July 31 - Approved 5-0)
8. Rezoning Request – Property Located Near Bogue Inlet Drive and NC 58 – R-2 to B-3
 - a. Public Hearing
 - b. Potential Consideration of Rezoning Request
(3-2 vote - 2nd Reading Required at July meeting)
9. Final Plat – West End Subdivision
(Approved 5-0)
10. Final Plat – Reed Drive Commercial Park
(Approved 5-0)
11. Ordinance Amending Chapter 5 – Beach and Shore Regulations – to Regulate Beach Bulldozing Activities
(Tabled for further study 5-0 vote)

12. Ordinance Amending Chapter 18 – Subdivisions - Regarding Final Plat Approval
(Approved 3-2 Marks, Farmer, Eckhardt For, McElraft, Messer Against)
13. Resolution Adopting Carteret County and Emerald Isle Hazard Mitigation Plans
(Tabled)
14. Discussion - Ordinance Amending Chapter 19 – Zoning - to Revise the Dunes and Vegetation Ordinance
(Tabled)
15. Resolution Authorizing the Town Manager to Submit a NCDOT Transportation Enhancement Grant Application for Bicycle Paths Along NC 58 - (bike path budget)
(Approved 5-0)
16. Request from Sound of the Sea Owners' Association to Amend the Boundaries of the Primary Benefit Municipal Service District
(Denied 5-0)
17. Resolution Urging the General Assembly and the Carteret County Board of Commissioners to Enact an Additional ½ Cent Sales Tax for Local Governments
(Approved 5-0)
18. Comments from Town Clerk, Town Attorney, and Town Manager
19. Comments from Board of Commissioners and Mayor
20. Adjourn

MINUTES OF THE REGULAR SCHEDULED MONTHLY MEETING OF THE TOWN OF EMERALD ISLE BOARD OF COMMISSIONERS

TUESDAY, JUNE 11, 2002 – 7:00 P.M. – TOWN HALL

Mayor Arthur Schools called the meeting to order at 7:00 P.M. Board members present were Commissioners “Doje” Marks, Pat McElraft, Floyd Messer, Dick Eckhardt and Emily Farmer. Staff members present were Town Attorney Derek Taylor, Town Manager Frank Rush, Assistant Town Manager/Finance Officer Georgia Overman, Town Clerk Carolyn Custy, Parks & Recreation Director Alesia Sanderson, and Building Inspector James Taylor.

After Roll Call, the Pledge of Allegiance was recited.

ADOPTION OF AGENDA

Mr. Rush asked that a Budget Amendment to the Storm Water Project for Fiscal year 2001/2002 be added. This is a procedural Amendment that deals with the Storm Water Fund

and is simply a clean up of that fund. He asked that it be included as “item f.” under the Consent Agenda.

Another change is to remove the Public Hearing from Item 14 – the Zoning Ordinance Amendment related to the Dunes and Vegetation Ordinance. It has been advertised as a Public Hearing but is not in a form at this time to go to a Public Hearing.

Another change is that Item 17 “Resolution Urging the General Assembly and the Carteret County Board of Commissioners to Enact an Additional ½ cent Sales Tax for Local Governments” be moved to Item 7 c. FY 2002-2003 Budget. This is very important because of the impact it will have on the FY 2002-2003 budget.

Also the Potential Consideration of Budget Ordinance and Fee Schedule should be changed to be entitled “Consideration of Interim Budget Ordinance for Fiscal Year 2002-2003”.

Commissioner McElraft made a motion to adopt the Agenda with the above noted changes and the board’s vote was unanimous, 5-0.

ADOPTION OF CONSENT AGENDA

- a) Minutes of Regular Meeting – May 14, 2002
- b) Minutes of Special Meeting – April 23, 2002
- c) Tax Refunds / Releases
- d) Resolution Authorizing Town Manager to Amend Waste Industries Contract
- e) Resolution Authorizing Town Manager to Extend Hadnot Creek Kennels Contract
- f) ADDED ITEM – Storm water Project Fund Budget Amendment for Fiscal Year 2001-2002.

Commissioner McElraft questioned the Hadnot Creek Kennels Contract and asked if that is for 6 months? Mr. Rush replied it is a one-year extension to that contract, with the same terms, as opposed to 6 months. She also had a question about Kennels holding the town harmless and the town holding Kennels harmless and asked who is held liable?

Attorney Taylor replied there is one section that deals with something that was cleared up in the past via an ordinance change, when it come to the aid of an injured animal and it appears to be primarily injured while being captured, they have a right to go to court with anything they need to get attention for that animal. He thinks it might be a good idea to give some consideration in the ordinance that if it occurs, the owner needs to pay for any medical services were provided to that particular animal. The board might want to make a decision whether or not they want that included in the Contract as the town’s expense.

As to the “Hold Harmless Section” in the Contracts, they are saying they are held harmless from anything the town does wrong and the town is held harmless from anything they do wrong. They get responsibility for their own liability. If they do something wrong and they get sued, we are not involved and vice versus. Attorney Taylor said how are we going to deal

with an animal that was injured in the process of capture and how are we going to pay for that is still open.

Commissioner McElraft made a motion to adopt the Consent Agenda as written and the board's vote was unanimous, 5-0.

PUBLIC COMMENT

Mr. Frank Vance, 2302 Ocean Drive, came forward with three items of concern. He referred to the house at the corner of 15th Street and Emerald Drive. He said he saw four children, two up on the deck and two down underneath the deck close to the old utility room. He went back and asked the children if their parents owned the property and their answer was "No". Mr. Vance asked them where they were staying and one motioned down toward Ocean Drive. He explained that the house was condemned and in poor shape and they might get hurt in it. They were very polite and they left. He suggested putting yellow tape around that house. He goes by there about twice a day and has never seen anyone at that house that he can ever remember. It could be a dangerous situation.

Mr. Vance brought up the issue of garbage cans and trash. He tried several years ago to get something done about those trashcans and nobody would do anything about it. He was glad to see the Ordinance written because when you go back and he was on the Planning Board, talk was about the Gateway and wanting the property to look good. The garbage cans and racks are one of the sore-eyed things in this town. He keeps his garbage racks up and he takes care of his trash but he lives here. He spent the money to build new racks. He tore up too good ones and rebuilt and bought new trashcans so he would meet the regulations of the new Ordinance. A lot of other people have. Mr. Vance related that up in his area this past weekend, garbage was on top of the racks and people were using other peoples garbage cans. Mr. Vance talked to the Mayor and he and the Mayor got a little excited. The Mayor asked Mr. Vance to go and bring him some house numbers. Mr. Vance said he did not think that was his job, he thinks that is Frank Rush's job. Mr. Vance did go to the immediate area in his neighborhood and he found 13 where the racks do not meet this ordinance. He did not count the roll-out recycle cans. He just counted the garbage racks. He gave the Mayor a list of the house numbers. Mr. Vance said he thinks that whoever is responsible for this should get off their "can" and start taking down the numbers and getting these things enforced. He would like to see it done. He would like to see some of the old garbage racks that removed and proper racks put in.

Mayor Schools interjected that he thinks everyone agrees with Mr. Vance and the town is working on that. The Mayor gets phone calls from people too. The town is not doing as much as Mr. Vance wants but it is making some progress.

Mr. Vance related that when the two parking lots (Eastern and Western Regional Accesses) were complete, the town was going to charge for using them. He has seen where Atlantic Beach has raised their prices on parking and they are in-line with other beach resorts and when he goes by the Eastern Regional Access, it is full of cars, using the water and facilities and throwing beer cans out and cigarette packs and etc. and he does not see anything wrong with trying to get a little income to meet some of the budget needs. Mr. Vance thanked the board for hearing his concerns.

Gregory Rudolph, Carteret County Shores Protection Manager made note that Emerald Isle hosted the Coastal Dunes and Re-Vegetation Workshop. It was a huge success and will go

a long way toward shore protection efforts. He thanked the sponsors, The Town of Emerald Isle, The Town of Emerald Isle Re-forestation and Re-Vegetation Committee and the North Carolina Shore and Beach Preservation. He thanked Commissioner Marks for her “behind the scene work”, Commissioner McElraft for planting the seed for this meeting, Alesia Sanderson for coordinating the program and all the speakers and those who attended.

FY 2002-2003 BUDGET

. FY 2002-2003 Budget

- a. Public Hearing
- b. Potential Consideration of Budget Ordinance and

Fee Schedule

A Public Hearing was scheduled on the fiscal year 2002-2003 at this meeting in hopes that the people in the audience would share their views on the budget. To bring the public up to date on what the Mayor and Board of Commissioners have accomplished on the Budget since it was present on May 15th. That recommended budget was put together by staff and included a recommended General Fund rate of 20 cents for next. That is a 2 ½ cents tax increase over the current tax rate of 17 1/2 cents. The Board has met four different times, very long Special Meetings, and have worked hard to cut that tax rate. As of tonight, the board has agreed to several budget adjustments that have the tax rate at 18 ½ cents at this point in time. The changes that have been agreed to thus far are using some reserve funds, the beach nourishment reserve funds and the storm water reserve funds, which are old funds that are not related to the beach nourishment project that is coming up later this year or the Coast Guard Road Storm Water Project. They are reserve fund that have been set aside in the past and would be available to the board to balance the budget with some portions of them. They have made several miscellaneous additional budget cuts and have tweaked the budget revenue estimate for next year in order to get down to the 18 ½ cent tax rate. The Governor’s budget for next year did not include reimbursements. For Emerald Isle that was very significant in that it means \$175,000 that will not be received next year. That money is not included in the town’s budget at this time. In exchanged for the State withholding of the reimbursements, the Governor recommended that the State allow Counties to levy an additional ½ cents Sales Tax effective next year. That proposal is pending at this time. The Senate did include the additional ½ cents in their budget that was released as of this date, 6-11-02. This will be a challenge in the House where there is a lot closer division in the House Members. If that additional ½ cents Sales Tax does come through it will result in as much as \$175,000 and possibly \$200,000 in additional revenue for the town next year depending on the effective date of that Sales Tax. If this money does come in, it will enable Emerald Isle to cut its tax rate even further.

The town board intends to wait a little longer to see what the State does. The town board intends to adopt an Interim Budget Ordinance Amendment that will allow the town to continue operation for the month of July. This will provide a little more time for the State to

make a decision on the Sales Tax issue. When this comes through, the board will meet sometime in July and attempt to finalize the budget again with the goal of trying to get to 17 ½ cents tax rate. If this does not come through, the board will have to deliberate to see what else can be cut out to lower the tax rate.

Commissioner Farmer commented that the Town Manager is giving the board way too much credit. The Town Manager and department heads have been wonderful. They are the ones who have enabled the board to get this far.

Commissioner McElraft also thanked the staff and Town Manager Rush. Some commitments were added this year, i.e. EMS, and the board members have agreed on 18 ½ cents but that is not where she wants to stop. She does not want to give any tax increase this year and will not support an increase. She has a way to balance the budget without the local option sales tax but she does not think her fellow Commissioners will agree on it. It would be taking the Storm Water Project and instead of paying it off in two year paying it off in four.

Commissioner Farmer made a motion to open the Public Hearing on the Fiscal Year 2002-2003 Budget and the board's vote was unanimous, 5-0.

There were no public comments made.

Commissioner Marks made a motion to close the Public Hearing and the board's vote was unanimous, 5-0.

Commissioner Marks remarked on the people who are on fixed incomes are not really on fixed incomes. Those who are on Social Security will be getting a cost of living increase. This budget includes all expenses for Fire and EMS. Other EMS organizations in the County are asking for increases. Cape Carteret is asking for a combined tax rate for Fire and EMS to go from 12 cents per hundred to 16.6 cents per hundred and that is to keep the same staffing they have this year (two firemen and two EMS workers 24 hours a day 7 days a week). Beaufort is going from 9 cents per hundred to 12.2 cents per hundred. When this picture is looked at, 1 cents per hundred is not that much.

Commissioner Messer commented on something he has said at a couple of the workshops. Mr. Rush and the staff have done a fantastic job with the loss of revenue from the State to get the budget where it is. He will not support a budget that has a tax rate in excess of 17 ½ cents. The reason for that, if the petition for a referendum on the storm water issue had been brought to the people and the people had voted for it and the 2 cents that would have costs, if that had happened and the people had voted for it there would be a 19 ½ cents tax rate and he would have voted for it. With the petition not being acknowledged, he cannot vote for anything that will reflect a tax rate of over 17 ½ cents.

Commissioner Farmer clarified that with or without a referendum, the storm water project is not increasing the current tax rate. The 2 cents that is paying for the storm water project is already in the budget.

Commissioner McElraft said the plan she has would not do anything to change the storm water project. It will only extend the payments from two years to four years. If she had cash in her pocket, she would be paying for her house and car but that is not the case. The town does not have cash in its pocket and has to pay this out. It is not going to hurt anything. You do not have to go to the Local Government Commission. This can be done without the local option sales tax if it does not go through. She reminded everyone that \$125,000 is coming out of beach nourishment fund, \$125,000 we are getting a rebate on our sale tax. That rebate will continue on for about \$400,000 to \$500,000 for a maximum of 9 years. This is helping the taxpayers to pay the \$.03 cents and the \$.48 cents for beach nourishment.

Commissioner Eckhardt saved his comments for the July meeting.

Mayor Schools asked for a motion on Consideration to adopt an Interim Budget.

Commissioner Marks made a motion to adopt the Interim Budget as prepared by Town Manager Frank Rush that will be in effect July 1 through July 31, 2002 and the board's vote was unanimous with a vote of 5-0.

RESOLUTION URGING THE GENERAL ASSEMBLY AND THE CARTERET COUNTY BOARD OF COMMISSIONERS TO ENACT AN ADDITIONAL ONE-HALF CENT LOCAL GOVERNMENT SALES AND USE TAX

This resolution urges the General Assembly to follow the Governor's recommendation and enact the additional half-cent sales tax one year earlier than planned in order to replace lost local government reimbursement revenues, and also urges the County Commissioners to act locally to enact the additional half-cent sales tax, effective at the earliest possible date.

As has been discussed previously, the additional half-cent sales tax would result in an approximately \$175,000 - \$200,000 of additional revenue annually for the Town of Emerald Isle, and would more than offset the lost reimbursement revenues (equal to approximately \$75,000). Carteret County and each of the municipalities in the County would also receive more revenue with the additional half-cent sales tax than with the reimbursements.

There is strong support at both the County level and among the County's municipalities for the additional half-cent sales tax. It is hopeful that all of the County's local governments will communicate their position on this matter to our elected representatives in the General Assembly. If the Board adopts the proposed resolution, copies will be forwarded to Representatives Smith and Preston, and Senators Ballantine and Thomas.

**RESOLUTION URGING THE GENERAL ASSEMBLY AND
THE CARTERET COUNTY BOARD OF COMMISSIONERS
TO ENACT AN ADDITIONAL ONE-HALF CENT
LOCAL GOVERNMENT SALES AND USE TAX**

WHEREAS, the Governor has recommended that counties have the authority to levy an additional half-cent local sales and use tax one year earlier than originally planned in order to replace local government reimbursements that would not be distributed in FY 02-03, and

WHEREAS, Carteret County and the municipalities within Carteret County will lose approximately \$1.65 million if the local government reimbursements are not included in the State budget in FY 02-03, and these funds are sorely needed to provide local government services and minimize the property tax burden on our taxpayers, and

WHEREAS, Carteret County and the municipalities within Carteret County would receive approximately \$3.3 million in new revenues generated by an additional half-cent sales tax, which would enable Carteret County and the municipalities to enhance local government services and/or minimize the property tax burden on our taxpayers, and

WHEREAS, the General Assembly will consider the Governor's recommendation during the development of the State budget, and will make the final decision on the additional half-cent sales tax, and

WHEREAS, if the General Assembly approves the additional half-cent sales tax one year earlier, or if the additional half-cent sales tax becomes effective according to the previously approved schedule (in FY 03-04), the individual counties will be charged with locally enacting the additional half-cent sales tax,

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Town of Emerald Isle that:

- (1) The Town of Emerald Isle urges the General Assembly to adopt the Governor's recommendation and enact the additional half-cent sales tax one year earlier to replace the local government reimbursements.
- (2) The Town of Emerald Isle urges the Carteret County Board of Commissioners to act as soon as possible to locally enact the additional half-cent sales tax in Carteret County, effective at the earliest possible date approved by the General Assembly.

Adopted this ____ day of _____, 2002.

Arthur B. Schools, Jr., Mayor

Attest:

Carolyn K. Custy, Certified Municipal Clerk

Commissioner McElraft made a motion to approve the Resolution Urging the General Assembly and The Carteret County Board of Commissioners To enact An Additional One-Half Cent Sales and Use Tax.

Commissioner Farmer asked where the Carteret County Board of Commissioners is with this? Mr. Rush said he believes they are conducting a Public Hearing in considering a local Resolution on Monday evening. He has been told there is strong support for it.

Commissioner Eckhardt asked if it would take effect in July? Mr. Rush replied that any decision they make would have probably a month or so implementation time to give the merchants time to get set up for collection. It all depends on when the decision is made. If the decision is made tomorrow (Wednesday, June 12) it is felt there will be an early July effective date.

The Board voted unanimously with a vote of 5-0.

REZONING REQUEST – PROPERTY LOCATED NEAR BOGUE INLET DRIVE AND NC 58 – R-2 TO B-3

- a. Public Hearing
- b. Consideration of Rezoning Request

BACKGROUND: The Board of Commissioners is scheduled to consider a rezoning request from Mr. William Farrington to rezone approximately 2.0 acres of land on the east side of Bogue Inlet Drive near NC 58 from R-2 (Residential-2) to B-3 (Business-3). A public hearing has been scheduled and advertised, and adjacent property owners have been notified.

The total size of the tract is approximately 3.1 acres, however, approximately .8 acres of the tract is already zoned B-3, and approximately .3 acres would remain in the R-2 zone. The balance of the tract, approximately 2.0 acres, is under consideration for rezoning. The tract to

be rezoned is bordered by B-3 zoning to the south, B-3 and MH-1 (Mobile Home – 1) to the west, R-2 to the north, and R-2 to the east. Existing land uses are commercial to the south (seafood restaurant, motel, bar), commercial (surf shop) and residential (mobile homes) to the west, residential (single family stick-built homes across the creek) to the north, and a water storage tank to the east. This tract is located one lot back from the NC 58 commercial corridor.

The Planning Board discussed this request at its March, April, and May meetings, and unanimously recommended approval of the rezoning request at its May meeting, provided that a 50 ft. vegetated buffer is implemented on the north end of the tract adjacent to the creek, across from existing single family homes, and that the creek itself remains in R-2 zoning. Mr. Farrington agreed to these requirements, and indicated his intentions to record deed restrictions to maintain the 50 ft. vegetated buffer. After the Planning Board meeting, I performed additional research on the ability of the Town to require a 50 ft. vegetated buffer as a condition of rezoning, and was advised by both the Institute of Government and Town Attorney Derek Taylor that this practice could be considered contract zoning and that the 50 ft. buffer condition would not be legally enforceable. I have attached a copy of an excerpt from a book entitled Introduction to Zoning by David Owens, the planning and zoning expert at the Institute of Government, that addresses this issue. To summarize, the Town cannot impose additional conditions on one property in a zoning district that it does not apply to all properties within that zoning district.

In light of this development, an alternative solution is suggested that will achieve the same desired result (a buffer adjacent to the existing single family residences). The Town's existing zoning ordinance already requires a 15 ft side and rear yard width between commercial and residential zones, with a requirement for a vegetated buffer / fence in that area. In this case, The suggestion is that a total of 35 ft of width on the south side of the creek remain zoned R-2, so that this 35 ft added to the 15 ft side and rear yard requirement will provide the desired 50 ft buffer for the existing single-family residences. Because this 35 ft R-2 area is not large enough to accommodate a single-family home, and because commercial uses are not permitted in the R-2 zone, this area should remain as a buffer. This approach has been discussed with Mr. Farrington, and he is comfortable with this approach. This approach has been discussed with both David Owens and Town Attorney Taylor, and both agree that this is a legal and effective solution.

Two rezoning maps are attached at the end of these Minutes. The first map is labeled "Revised Proposal – June 5, 2002", and reflects the solution discussed above. The second map is the rezoning map recommended by the Planning Board, and is labeled "Planning Board Recommendation – May 28, 2002".

One other minor issue associated with this property is that several years ago, the Town constructed perpendicular on-street parking spaces in the right-of-way adjacent to this tract. The construction of these parking spaces encroached slightly on to this tract, and the Town will remove the portion of the spaces that are encroaching. At a minimum, the spaces will need to be realigned diagonally if the Town wishes to retain these parking spaces. Depending on the

actual use of this tract, and other parking solutions for the nearby businesses, the Town may remove these parking spaces altogether at some point in the future.

Commissioner Farmer asked if the Water Company takes up the whole parcel? Mr. Rush implied a corner of it was and also 100-foot radius around the well is.

Commissioner Eckhardt asked if the residents to the North of this parcel had been contacted? Mr. Rush replied that we are required to contact all adjacent property owners and a notice of the Public Hearing was mailed to them.

Those across Bogue Inlet Drive have not been mailed a notice.

Commissioner McElraft made a motion to open the Public Hearing on to Rezoning Request for Property Located at Bogue Inlet Drive near NC58 from R-2 to B3 and the board's vote was unanimous, 5-0.

There were no public comments on this issue.

Commissioner Eckhardt made a motion to close the Public Hearing and the board's vote was unanimous, 5-0.

Commissioner McElraft made a motion to approve the Rezoning Request by Mr. William Farrington to Rezoning Request for Property Located at Bogue Inlet Drive near NC58 from R-2 to B3 with the revised proposal.

Commissioner Farmer said the Planning Board worked very hard on this trying to satisfy the residences that were across the creek and she appreciated that. She also knows that the Planning Board unanimously approved this. The problem she has is that what the Planning Board didn't look at was really anything beyond this lot. They did not look at the broader question as to if we should be increasing commercial zoning in Emerald Isle. Much of the commercial district that is present now is not developed and we have a lot of vacant store-fronts too. She is not really convinced that there is a need for more. According to the Emerald Isle Town Survey that was sent out in the year of 2000, property owners are less than enthusiastic about more commercial development in town. 632 wanted areas zoned for business to remain the same and only 60 wanted to see the commercial district increase in size. For that reason, she felt that voting for this change would be going against what property owners have said they want. Commissioner Farmer's other concern is for what is residential across the street, across Bogue Inlet Drive.

Commissioner McElraft commented when the survey was done, it was probably thought that the parcel behind Jordan's Seafood was commercial since it is surrounded by commercial property there. She did not think that you could absolutely go by a survey when you don't have all the facts. In looking at this, she felt it was quite proper as the Planning Board recommended it. She does not know that the Planning Board didn't take all the other adjacent properties into consideration. She thinks they did.

Mayor Schools commented that the way it is now, there is not much property between the residential and commercial and what they have proposed will require a buffer. Mr. Rush said this is correct. The buffers are discussed in the Background information above.

Commissioner Messer said he could not imagine anyone wanting to build a house that would back up to Jordan's and to the Bar with a 15-foot set-back. The property will probably stay just like it is. It makes no sense to build a house there.

Mayor Schools implied this looks like a good way to get away from the 15-foot setback to a 50 foot plus buffer.

Commissioner Farmer questioned having a driveway if there were a 15-foot setback? Mr. Rush replied there could be one.

Mayor Schools asked for a vote.

The board's vote was split, 3-2, with Commissioners Eckhardt, McElraft and Messer voting for and Commissioners Marks and Farmer voting against approval. Motion carried for first reading.

NOTE: This item will require a second reading on July 9, 2002 for final approval.

FINAL PLAT – WEST END SUBDIVISION

BACKGROUND: The Board of Commissioners is scheduled to consider the final plat for West End subdivision at the June 11 meeting. The applicant, Mr. Jerry Cook, is seeking final plat approval for a 23 lot residential subdivision on the north side of Coast Guard Road near the southern curve of Coast Guard Road near the Point.

The Planning Board discussed the final plat for West End at its March and April meetings, and recommended a one-year time extension for Mr. Cook to complete required subdivision improvements (5-1 vote). Mr. Cook has not yet initiated required common driveway improvements and the removal of an old road bed in the subdivision, but is seeking final plat approval by posting a surety for the value of the improvements, as authorized in Section 18-22 (a) (3). The majority of the Planning Board felt strongly that Mr. Cook should be required to at least initiate completion of the required improvements before utilizing the surety option, and for that reason they did not recommend final plat approval, but rather a one-year time extension. Mr. Cook is not satisfied with a one-year extension, and is requesting that the Board of Commissioners consider his request for final plat approval regardless of the Planning Board's recommendation.

Although the majority of the Planning Board felt strongly about the fact that Mr. Cook had not yet initiated the required improvements, the Town's ordinance does allow Mr. Cook to

post a surety in lieu of the required improvements. This matter has been discussed with Town Attorney Derek Taylor, and he and Mr. Rush are both of the opinion that Mr. Cook has the option to utilize that provision in the Town's ordinance, and that his final plat can not be denied for that reason. Mr. Cook has posted a letter-of-credit in the amount of \$65,000 to cover the cost of these improvements. Public Works Director Bob Conrad has estimated the cost of the required improvements at approximately \$40,000, and the amount of the letter of credit is set at \$65,000 to 1) cover any potential cost over-runs, and 2) cover Town administrative costs to manage the construction of the required improvements in the event that Mr. Cook does not complete the improvements by May 14, 2003. If the Board grants final plat approval, Mr. Cook will have a period of one year to install the required improvements. If the required improvements are not installed by May 14, 2003, the Town can redeem the letter-of-credit anytime between May 15 and September 14, 2003. The Town would then complete the required improvements associated with the subdivision.

There have been several concerns expressed about this subdivision. Mr. Rush has worked closely with Mr. Cook to address the concerns that are valid with regard to compliance with the Town's development ordinances. The known remaining concerns were outlined in an email to Mr. Cook on May 23, 2002, and Mr. Cook has addressed each of these concerns in the documents submitted for final plat approval.

There are two wetlands area, one larger one located in the corner close to the bend and there is also an area of isolated wetlands in the southeastern corner of the tract. The applicant has submitted that he plans to fill approximately 9400 square feet of wetlands for this subdivision and in accords with the town's new Storm Water Ordinance, he is proposing to construct at least 9400 square feet of new wetlands on the tract directly across from the 23 lot subdivision on Coast Guard Road. The tract is currently classified as wetlands. There is about an acre of upland area and there will be a minimum of 9400 square feet of new wetlands created on the site. This tract has been included on the final plat of the West End Subdivision in order to meet the storm water requirements for wetlands filling issues associated with the subdivision.

Mr. Jerry Cook came forward and introduced John Odum, Surveyor and Attorney John Wessel, who is also town attorney for Wrightsville Beach who are here to help answer any questions.

Commissioner McElraft asked if Mr. Cook was complying with the ordinances? Mr. Cook said he has tried to comply with all town ordinances and his intention is to do that and in fact he will go way beyond most of the ordinances.

Commissioner Messer asked what date the preliminary plat approval was received on this project? Mr. Cook answered the preliminary plat approval, and he may be off a month, occurred in April 1999. Just after that time the town got involved with the storm water and trying to do something with it. Then Town Manager Pete Allen asked Mr. Cook if he was willing to include his property as part of the solution and he acknowledged he was and the town said "Go away, don't come back, don't talk to us, until we solve the storm water problem". When he heard Pete Allen was leaving as Town Manager, he took Mr. Allen to lunch to wish him good luck. Then Commissioner John Wootten came along and told Mr. Cook that his year was up. Mr. Cook asked what Mr. Wootten meant because he was told to go away. That was when Mr. Cook returned a year ago and asked for an extension that was granted by the board

for a year. Mr. Cook related he was doing what the town asked him to do and didn't know that he needed the extension until Mr. Wootten said something to him.

Mr. Cook related that one of the reason for having a "Letter of Credit" is that just after the approval of the preliminary plat in 1999, he sent a check to the Health Department in Carteret County to get their written approval and he finally received that in March of this year. Almost three years went by before the Health Department answered his request. Without the Health Departments approval, he did not feel like he could do anything development wise and that was the reason for putting up the "Letter of Credit".

Mayor Schools asked when Mr. Cook anticipated starting and finishing it? Mr. Cook said he did not think it would take too long to finish. (1) He is not sure the town wants him to do it until September or October when the crowds thin out a little before they start doing very much work there and (2) the landscaping cannot be done until fall. He would anticipate having worked on it by late fall.

Commissioner Marks was concerned about the driveways on Coast Guard Road and asked about the 8 entrances on to Coast Guard Road. Mr. Cook said he understood her concerns and explained that by having the semi-circular driveway it allows the fire trucks and EMS trucks work well for them if you have a one-way in and one-way out. No one ever backs into Coast Guard Road, which makes it much safer. It gives a place for trash cans, mail boxes, etc., and a truck can pull off the road and never have to back out onto the road. Everything is always going forward and the driver can always see the traffic. If a single driveway where all four lots come off of, if someone pulls in and realizes they are in the wrong spot, they only way to get back onto Coast Guard Road is to back out

Commissioner Farmer said the preliminary plat was approved even before she and Commissioner McElraft were on the Board.

Commissioner Eckhardt commented that he assumes the wetlands area that was used to mitigate the flooding problems in the area is no longer available to the town. Mr. Cook said he would not assume that. Mr. Cook said the area on the South side of Coast Guard Road is probably still available just as it has been in the past.

Commissioner Farmer said it was her understanding that the wetland that is on the sound side in Mr. Cook's property was part of the mitigation for the flooding that was in Wyndtree of which Mr. Cook was a part of the developers. It was used to bring storm water from that subdivision on Coast Guard Road. Mr. Cook said personally he did not give that permission. He was not aware of that permission until Pete Allen gave him a copy of the letter but he never gave that permission. He does not have a real problem with what has been done in the past. The town also put a berm on old Coast Guard Road without asking and he does have a problem with that. Mr. Cook said from the very beginning he has always been willing to push the wheel and as far as the storm water on the west end of the island, it can be worked out.

Commissioner Eckhardt asked of the north and south were connected? Mr. Cook said he has been told there is a pipe under the road.

Commissioner McElraft made a motion to approve the final plat of the West End Subdivision and the board's vote was unanimous, 5-0.

FINAL PLAT – REED DRIVE COMMERCIAL PARK

BACKGROUND: The Board of Commissioners is asked to consider the final plat for the Reed Drive Commercial Park subdivision at the June 11 meeting. The applicant, Mrs.

Paxon Holz, is seeking final plat approval for a 2 lot commercial subdivision on the west side of Coast Guard Road near its intersection with NC 58.

The Planning Board discussed the final plat for Reed Drive Commercial Park at its April and May meetings, and unanimously recommends approval of the final plat. All required subdivision improvements have been completed, and Public Works Director Bob Conrad and Chief Building Inspector Jim Taylor have verified that the construction is consistent with Town standards and the preliminary plat.

When the preliminary plat was approved in December 2001, most of the concerns associated with this subdivision were regarding traffic patterns near the Reed Drive / Coast Guard Road intersection. As a result, the preliminary plat was approved with a right-turn-in only feature at this intersection. The board has stressed the importance of constructing this feature in such a manner so that it is effective in preventing illegal straight-through movements from Reed Drive and illegal left-turn movements off of Coast Guard Road. The applicant's representatives have worked diligently to maximize the effectiveness of the right-turn-in only feature. The entrance to Reed Drive contains a larger turning area for vehicles exiting Coast Guard Road entering the subdivision, the entrance to the subdivision is offset from existing Reed Drive across Coast Guard Road, and decorative landscape boulders have been placed in the areas adjacent to the new roadway to further prevent vehicles from making a straight-through movement from Reed Drive. There will also be several traffic control signs and markings installed in this area. These signs are on order and should arrive within the next month. If these approaches do not prove to be effective, the Town may want to consider installing barriers in the center of Coast Guard Road to prevent illegal turn movements. Bob Conrad, Public Works Director has devised a plan for the placement of barriers that may be effective and acceptable if the need arises in the future. Mr. Conrad's proposal would not limit any other turning movements at this intersection.

Because the property is currently undeveloped, we do not anticipate any immediate traffic impacts associated with the new subdivision. The Town will have the opportunity to review specific commercial development plans for the lots in the subdivision as development is proposed. One item that the Board may want to consider when the lots are developed is a requirement for the developer to install a right-turn lane on Coast Guard Road into the subdivision between Reed Drive and NC 58. Additional research will be necessary to insure that the Town has the appropriate ordinances in place to require such an improvement.

In accordance with town ordinances it is required that the developers present documents creating the Home Owners Association, the By-Laws of the Restrictive Covenants and a budget for that Owner's Association. The developers have provided those documents. Everything appears to be in accordance with the town ordinances.

Mr. John McLean, associated with the developers, provided Pictures of the roadway and they were asked to show the alignment of the road on the final plat within the right-of-way on Coast Guard Road and which has been done that also.

Commissioner Farmer asked about signs being installed. Mr. Rush said the signs have been ordered and received within the last day or so but have not been installed yet. The town ordered the signs but will be reimbursed by the applicant for the cost of the signs.

Commissioner Eckhardt asked why, at this time, is the town requesting signs?

Mr. Rush replied that several concerns were raised about the traffic patterns that might occur for this new subdivision and it is to make an effort to direct people in the appropriate manner.

Commissioner Eckhardt thanked Mr. McLean for taking him around the property as it helped tremendously. He suggested more of that should be done. One thing he questions was almost the direct drive out on Coast Guard Road from the Reed Drive Extension. Mr. McLean assured him that was town property, not the owners property and that in the future, depending on what the usage of that property is, that direct link from Reed Drive across Coast Guard Road into the subdivision could be alleviated and Commissioner Eckhardt asked if this were true? Mr. Rush answered "Yes". Mr. Rush went on to say the design of that intersection at this time does an adequate job of prohibiting people from making a direct connection from Reed Drive into the subdivision or making a left hand turn from Coast Guard Road into the subdivision. In the event problems are found there, a plan for centerline dividers are planned to enhance the assurance that people could not make those moves. Mr. Rush suggested monitoring the situation and seeing if this is something the board would like to proceed with.

Commissioner Messer made a motion to approve the final plat for Reed Drive Commercial Park and the board's vote was unanimous with a vote of 5-0.

ORDINANCE AMENDING CHAPTER 5 – BEACH AND SHORE REGULATIONS – TO REGULATE BEACH BULLDOZING ACTIVITIES

BACKGROUND: The attached ordinance amendment would prohibit future beach bulldozing activities in Emerald Isle, except in situations in which the structure is imminently threatened. This ordinance is presented in anticipation of the Emerald Isle beach nourishment project, which is scheduled to begin construction in November 2002. After initial discussion at the May 15 meeting, the ordinance is now presented for formal consideration. The attached ordinance amendment reflects the changes discussed by the Board at the May 15 meeting.

CAMA authorizes beach bulldozing through a 3-year minor permit. This permit authorizes beach bulldozing in areas experiencing erosion, but structures need not be imminently threatened. (CAMA regulations are scheduled to change in August 2002, and beach bulldozing permits will then expire after 30 days.) As of April 16, there were 156 currently authorized 3-year minor beach bulldozing permits in Emerald Isle, with the vast majority (123) of these are set to expire on December 31, 2002. With the beach nourishment project set to begin, there exists the possibility that oceanfront property owners will seek to bulldoze prior to the nourishment project, thereby increasing the necessary volume of sand on the berm and/or decreasing the overall effectiveness of the nourishment project. The adoption of this ordinance would prevent this from occurring, except in situations in which the structure is imminently threatened. The attached ordinance will also prevent the bulldozing of newly placed nourishment sand after the nourishment project is complete, and will help to ensure that the nourished beach maintains its design profile. Although CAMA does permit beach bulldozing,

the adoption of this ordinance would take precedent over the CAMA permit, as it would be more restrictive than CAMA regulations.

The Emerald Isle ordinance, as it is currently written, classifies a structure as imminently threatened if the foundation of the structure and / or the septic system is within 20 feet of the toe of the erosion scarp. The Board should note that this language has been changed as a result of the Board's discussion at the May 15 meeting. The May 15 version did not include 'the septic system' in the definition of imminently threatened. The NC Division of Coastal Management has been consulted and their definition of imminently threatened does actually include 'the septic system'. The Board and the public should note, however, that classification of a structure as imminently threatened does not automatically guarantee that the owner will be allowed to engage in beach bulldozing activities. Depending on the availability of dry sand beach to be used as the borrow source, the position of the high water mark, and turtle nesting concerns, the owner may have to secure additional permits in order to engage in beach bulldozing activities.

The Board also received public comment at the May 15 meeting requesting different effective dates for different areas of the beach strand. The rationale for this request was that the beach nourishment project will be conducted over two winter seasons, and that a storm may impact the western phase properties after the eastern phase is completed. As noted in the ordinance language, there is a provision whereby the Board of Commissioners can grant a general waiver of the beach bulldozing prohibition following a natural disaster. Rather than establishing different effective dates for the ordinance, the Board may wish to utilize this authority if it becomes necessary or desirable to allow beach bulldozing after a major storm event.

Commissioner Eckhardt commented he was concerned that the board has to deal with the ordinance by making the changes. He agrees, especially when it comes down to the west end, that bulldozing needs to be allowed to protect the septic system because these owners are not going to get any beach nourishment until 2003-2004. The problem is if the septic systems through to the Eastern Regional Access that are not 20 feet from the toe of the dunes. This leaves it open November 1st, nourishment or no nourishment, it really doesn't matter, the bulldozers can be out there given a CAMA Permit. He feels the door has been left open. Commissioner Eckhardt indicated what he would like to see done is take a breath, this time, and somehow come up with some language that will address Phase I and Phase II. Pine Knoll Shores came up with what they thought to be a solid ordinance and people are violating it anyway. Commissioner Eckhardt is afraid Emerald Isle will get the same thing from 1st Street through 30th Street.

Mr. Rush indicated he would be happy to do additional research to the ordinance in any way the board desired.

Commissioner Farmer asked if it was possible to write an ordinance effective for a time? Attorney Taylor said he guesses you could write one and amend it later but he has never seen one. What it would say is for this period of time he thought. Attorney Taylor suggested if the

board wants to establish the effectiveness of the ordinance for a particular geographical area and justification of the reason for it can be done, then the board could probably do that.

Attorney Taylor addressed Commissioner Eckhardt's concerns about enforcement. He said one of the problems in Pine Knoll Shores, he and Mr. Whitford discussed it, was the fines were light and it didn't address the 20 feet. Emerald Isle's ordinance has more teeth in it and it is a daily recurring fine so it is expensive to violate this ordinance. The issue of the 20 feet may have just have a geographical area that is greatly affected than other areas and it could be defined with some sort of certainty. The board could see if they can create an ordinance for that purpose.

Commissioner Farmer said she does not think it would be so much the area that is more greatly affected as the fact that one part of town is getting re-nourishment one year and the other part has a whole year to wait before their part of the project is done.

Attorney Taylor said he has not seen an ordinance of this type. He would need to check this outlandish statement he has just made to be sure he is right but his feeling is that you can do that as long as there is a reason for the classification differences between the properties. The other thing to consider in this situation is, as one Commissioner has pointed out, you will have bulldozing to save homes if they are in the 20 foot area or they will be condemned. That will happen. As to what this board wants to do with those properties down there is really the crutch on which this ordinance should be drawn. Do you want to allow them to save their homes waiting for re-nourishment or not. The way this ordinance is designed will directly bear upon that particular factor.

Commissioner Farmer stated she wished it were that black and white but the problem is that the amount of sand the town will be getting is based on the beach profile and by having a lot of beach bulldozing, you are changing the profile so that that project ends up being less effective than it would have been without the beach bulldozing. She went on to say that you are taking sand that was lying on the beach and pushing it up.

Commissioner McElraft said this would be prohibiting that.

Commissioner Farmer went on to say there are likely to be a lot of properties that would qualify under that 20 foot for septic.

Mr. James Taylor said about 40 per-cent to 45 per-cent of lots on the ocean on the numbered streets have septic systems that are seaward.

Commissioner Farmer reasoned that if what we are talking about is waiting one month to get sand put on the beach in front of those so the project would be more effective overall then this is what should be done.

Commissioner Messer said the way he read the article about the people in Pine Knoll Shores who were in violation were not trying to save or protect anything. They were trying to

get a jump on nourishment to get more sand. He thinks this board could prohibit that from happening.

Mayor Schools said nothing could be done until November 1st. If a hurricane arrives, they will have to wait until November 1st to do anything.

Commissioner Farmer suggested having the ability to say, “When such work is authorized by the issuance of a general waiver of this section by the Board of Commissioners following a natural disaster”. This language would take care of that problem.

Commissioner Marks suggested tabling this item for now until some work could be done on it. There is no rush on doing this right now.

Commissioner Marks made a motion to table the Ordinance Amending Chapter 5 – Beach and Shore Regulations – To Regulate Beach Bulldozing Activities for further study. The board voted unanimously with a vote of 5-0.

Mr. Rush asked for clarification if the additional information the board wanted was a count of the structures where the septic systems are currently located seaward to the house in relation to the total number of properties? Commissioner Marks said she has a feeling that most of the dwellings on the west end itself is really in no danger but would like to get an idea of what the situation is.

Commissioner Farmer said the argument was that it could not be made a blanket. It cannot be done the way Pine Knoll Shores did it because Emerald Isle’s is a two-year project and not a one-year and the people who are not getting re-nourishment the first year should be able to bulldoze if they need to.

Commissioner McElraft reminded Commissioner Farmer that is why there should be a general waiver, so the board can, after a natural disaster, go in and give a general waiver.

Mr. Rush said if there is no natural disaster, you would not allow any bulldozing in the western area of town unless they are within 20 feet of the septic field.

Commissioner Messer made note that most of the ones on the western end is on the sound side and most on the eastern end is on the sea side.

Commissioner Eckhardt interjected he does not think the numbers are important whether it be 6 or 60. He thinks the board is trying to get at the question of can the ordinance be written so that it addresses the fact that the west end properties are not going to be nourished for another year and address those properties on the east end which probably, based on what is here, could begin to plow November 1st.

Mr. Rush clarified “You want to allow the eastern end properties to bulldoze if they are imminently threatened”? Commissioner Eckhardt said he does not know that they want to do

that. All he wants is to write the ordinance so that the board can control beach bulldozing for the east end because it seems there is a loop hole now.

Commissioner McElraft said if someone's house is imminent threatened, if there is sand there and they have not had nourishment yet, absolutely they should be able to protect their house before that nourishment gets there.

Commissioner Eckhardt made note he does not think at this time there is any reason to argue that because it has been covered in the ordinance. What he is saying, there is a loop hole as far as whether someone is threatened or not threatened, they can get the bulldozer out November 1st.

Mr. Rush asked if the board was looking to tighten up the ability to bulldoze? Make it more stringent than it is currently in the ordinance before the board?

Commissioner McElraft asked who would make the decision of a property is imminently threatened and Building Inspector Jimmy Taylor answered he would. The way it would be determined would of course be a site visit and would it also would apply to the building foundation and well as the septic system with the erosion escarpment is within 20 feet or less, then they would quality under this ordinance for assistance.

Commissioner McElraft does not want it to get any stricter. This is as strict as she wants it to get. If the structures and septic fields are threatened within 20 feet then they bulldoze. She thinks the ordinance is written exactly as the board wanted it to start with.

Mayor Schools interjected this item had been tabled and the board needs to figure out what Mr. Rush needs to do between this meeting and the next one next month.

Commissioner Eckhart is not trying to tighten up the ordinance. He is only trying to take the loop hole out. The loop hole is that on November 1st someone can go to CAMA and get a permit to bulldoze, danger or no danger, because right now, today, their septic field is within 20 feet of the toe of the dune. November 1st they go to CAMA and get the permit no matter what this board says. Nourishment or no nourishment! This would be before the nourishment.

Commissioner Farmer posed the question of how far is the edge of the septic field from the foundation and Jimmy Taylor replied it would be hard to say. It would be based on the dates the houses were built and most of the time the Health Department has no record of them and they have to go out and evaluate them.

Commissioner Farmer does not think anyone is arguing protecting the structure. The problem is that when the re-nourishment project is imminent, the concern is that a lot of these houses are already going to comply because their septic fields are going to be within 20 feet. Basically, the town is just letting everybody bulldoze.

Mr. Taylor relayed to the Commissioners he had a couple of applicants this past Spring who proposed for a beach push under the exemption. They were imminently threatened; in fact they were a little less than 20 feet, based on where the mean high water mark was which determines the area that you have left to push. In this particular instance, where the mean high water mark was, there was not enough available material landward of the mean high water mark to achieve the push. Therefore, that would require going below mean high water, which at that point in time, would take a Major CAMA Permit and a State Dredge and Fill Permit. Based on the time frame and when the moratorium became effective, he was not able to pursue that and therefore he was not able to push. The town does have structures that are imminently threatened.

Mr. Rush said there are other structures on the beach that are not imminently threatened; they can currently procure a CAMA Permit for beach bulldozing. This ordinance would not allow them to do that anymore.

Commissioner Farmer said, again, the issue is infrastructure. She thinks anyone should be able to push to protect their structures even though beach bulldozing does nothing to protect them at all. The issue is that when there is a re-nourishment project coming in on the east end where a lot of these septic fields are so close to the beach, does the town want people pushing up sand that is going to be the basis of its project when if they wait a month they would have enough sand in front of them and they would not be imminently threatened anymore. The problem would be taken care of.

Mayor Schools questioned about the people who have to wait 4 to 5 months. Some will get sand starting December 1, and others in the first phase will have to wait until March.

Mr. Rush said the original version did not mention the septic field. It only mentioned within 20 feet of the structure. Based on the discussion in May where the language was amended, the board can go back to the original language if that clearly indicates the board's intent. Mr. Rush offered to come up with some alternatives to be a little more stringent and close the loop hole if the board wants him to.

Mr. Rush stated he thinks he is to come up with language that would not make it as easy or not allow bulldozing in as many instances as would be allowed under this ordinance and asked if this was a fair statement. Commissioner Farmer answered, not from her. Her septic field must be 25 feet from her house or maybe 30 feet from her house. She would like Mr. Rush to take a look at this.

Building Inspector Taylor input that you have your septic tank and distribution box and then the drain field as part of the system. A lot of those cases, where most are currently imminently threatened, the septic tanks are not exposed but he would venture they are not more than 30 feet otherwise, they would be exposed. All repairs the Health Department does approve, they do require it be at least landward of the structure.

Commissioner McElraft asked, for those who have septic systems within 20 feet, right now could beach bulldoze. With this ordinance stating it has to be imminently threatened, it is

any more likely or less likely that they would be able to beach bulldoze. Mr. Taylor answered that in most cases, if they are within 20 feet they do not know that until it becomes exposed, to say that they are within 20 feet, there would have to be some type of evaluation to find out where the system is.

Commissioner McElraft said if it was that close, she wants that house protected until we get beach nourishment.

Mr. Taylor answered a question that Commissioner Marks asked regarding alternatives, saying that one thing about beach bulldozing and the way the CAMA Regulations refer to that activity, it is only to reinforced the suffered dunes that has been eroded. It is just to reinforce those dunes and to try to protect them from continuing to erode. There is one other alternative to protect your structure. The only other one would be to sandbag at that time. That is truly a protection of the structure. Beach bulldozing activity only reinforces the erosion escarpment dune.

Commissioner McElraft stated she is fine with beach bulldozing for those that are imminently threatened but we have been having those who are not threatened doing bulldozing. This is why she is in favor of this. She is not in favor of taking someone's property that is imminently threatened and allowing it to go into the water before the nourishment project. That is what they are going to be paying big dollars for.

Commissioner Farmer agreed with Commissioner McElraft that she is not either. The issue is the septic system.

Attorney Taylor asked that a few things be clarified because he is going to have a part in the development of this ordinance. He said he knows there is one problem with the issue of the 20 foot setback from the septic system but he also thinks he heard Commissioner Eckhardt say that if they got the permit and then the re-nourishment came that they could push the nourished sand up. He asked if this was the loop hole Commissioner Eckhardt wanted closed? Commissioner Eckhardt replied he had not even thought of that.

Attorney Taylor said from that respect, the language could be made clear as long as that imminent problem exists, they could do it, but if that ever changes they could not. If by chance we got a little wind and built up the sand that would invalidate the permit. They would have to remain in this imminent situation.

Jimmy Taylor indicated there are three ways to permit bulldozing, (1) currently with an exemption, which is by CAMA definition if you are imminent threatened, (2) a General Permit which would be a one time push and (3) a Minor Permit which is a 3 year push. Mr. Taylor said he thinks the rules will change in August on the 3-year push and the 3-year will be taken out of it.

Commissioner McElraft asked if right now you have a 3-year permit and it is not imminently threatened you are not allowed to beach bulldoze are you? Jimmy Taylor answered that there is a moratorium at this time based on the sea turtle nesting, however any erosion

would give you an escarpment. If you have the escarpment present you would qualify for the push currently.

ORDINANCE AMENDING CHAPTER 18 – SUBDIVISIONS – REGARDING FINAL PLAT APPROVAL

BACKGROUND: The Board is being asked to consider an ordinance amending the subdivision ordinance regarding final plat approval. The proposed ordinance adjusts the deadline for completing required subdivision improvements for certain subdivisions and establishes more stringent criteria for the use of a surety in lieu of completing required subdivision improvements.

Commissioner Farmer expressed concern at the May meeting about the fact that the Town’s subdivision ordinance allows a subdivider to utilize a surety to meet the requirements for final plat approval. The Board referred this matter to the Planning Board for further study and a recommendation, and the Planning Board discussed this issue at their May meeting and again at a special meeting on June 3. The Planning Board developed the recommendations included in the attached ordinance, and I drafted the language in the ordinance for the Board to consider at the June 11 meeting.

The Planning Board has recommend that a subdivider no longer have the option of utilizing a surety in lieu of completing the required improvements, unless the required improvements are substantially complete, with only punch list items remaining. The attached ordinance specifies that if a subdivider utilizes this option, a letter-of-credit must be utilized, and the amount must be equal to 150% of the estimated cost of the remaining improvements. In light of concerns about the length of time necessary to secure state and federal permits for projects within the CAMA Area of Environmental Concern, the Planning Board also recommends that the deadline for completing required subdivision improvements for projects in the AEC be extended to 2 years, compared to the 1 year limit currently included in the ordinance. The 1 year limit would continue to apply to all projects not in the AEC.

**ORDINANCE AMENDING CHAPTER 18 - SUBDIVISIONS –
REGARDING FINAL PLAT APPROVAL**

Whereas, the Emerald Isle subdivision ordinance, as it is currently written, allows a subdivider to post a surety to secure final plat approval in lieu of constructing the required subdivision improvements, and

Whereas, it is the intent of this ordinance to allow this practice only when required improvements are substantially complete, and not to enable a subdivider to post a surety for the entire value of required improvements, and

Whereas, the Planning Board has recommended the proposed ordinance amendment, by a unanimous vote,

Now, therefore, be it ordained by the Emerald Isle Board of Commissioners that Chapter 18- Subdivisions is hereby amended as follows:

1. Section 18-21 Preliminary plats (b) is amended to read as follows:

Sec. 18-21. Preliminary plats

(b) Approval of a preliminary plat shall constitute tentative approval of a final subdivision plat. Such approval shall be valid for a period of one (1) year, with the exception of preliminary plats for subdivisions located within the NC Coastal Area Management Act Area of Environmental Concern (AEC), for which such approval shall be valid for a period of two (2) years. A preliminary plat shall be drawn at a scale of not less than one hundred (100) feet to the inch and show the following:

- (1) *Name.* The subdivision name, the names and addresses of the owners and the designer of the subdivision and his qualifications.
- (2) *Date, etc.* Date, approximate north arrow and scale
- (3) *Boundaries.* The boundary line of the tract to be subdivided drawn accurately to scale and with accurate linear and angular dimensions.
- (4) *Location map.* A map with a scale of not less than one (1) inch equals one thousand (1,000) feet showing the location of the subdivision.

- (5) *Contours and interval.* Contours with a vertical interval of two (2) feet refer to sea level datum, except that contours shall not be required in subdivisions not involving new street right-of-way dedications.
- (6) *Primary dunes.* The location of the primary dunes as established by CAMA.
- (7) *Existing property lines, etc.* The location of existing and platted property lines, streets, buildings, watercourses, railroads, bridges, water mains, sewers, culverts, drainpipes, and public utility easements, both on the land to be subdivided and on the land immediately adjoining and any other pertinent characteristics of the land. The names of adjoining subdivisions or the names of record owners of adjoining parcels of unsubdivided land.
- (8) *Proposed improvements.* The names, proposed locations, and approximate dimensions of all proposed improvements.
- (9) *Proposed changes.* In all cases, shall be shown in a manner that will distinguish them clearly from the existing characteristics of the land
- (10) *Drainage.* The preliminary plat shall also indicate and show surface water drainage plans and methods.

2. Section 18-22 Final plat (a) is amended to read as follows:

Sec. 18-22. Final plat

Upon approval of the preliminary plat by the town board of commissioners, the subdivider may proceed with the preparation of the final plat, and the construction of required improvements in accordance with the approved preliminary plat and the requirements of this chapter. Prior to approval of the final plat, the subdivider must complete the construction of all required improvements, or substantially complete all required improvements and guarantee completion by posting a letter-of-credit in accordance with Section 18-22 (b)(3).

(a) The town planning board shall review the final plat to insure that the subdivision is equal to or exceeds the standards of this chapter and the applicable zoning regulations. Upon determination that these standards have been achieved, the planning board shall recommend to the town board of commissioners that the final subdivision plat be approved.

- (1) *Submitting final plat.* After the preliminary plat has been approved, the final subdivision plat, as described in section 18-24, shall be prepared and submitted for final approval within one (1) year after approval of the preliminary plat, with the exception of the final subdivision plat for subdivisions located within the NC Coastal Area Management Act Area of Environmental Concern (AEC), which shall be prepared and submitted for final approval within two (2) years after approval of the preliminary plat. Such owner or subdivider shall submit an original linen, film, or other permanent material tracing, one (1) print on cloth, one (1) sepia, and two (2) blueprint copies of the final plat, properly signed and executed as required for recording in the office of the register of deeds of the county along with the necessary probate and recording fees to the planning board chairman. Upon approval by the town board of commissioners, the planning board chairman, or designee, shall forward the final plat to the register of deeds for recording.
- (2) *Conformity with preliminary plat.* The final plat shall conform with the preliminary plat as approved, and, if desired by the owner or subdivider, it may constitute only that portion of the approved preliminary plat which he proposes to record and develop at the time provided; however that:
 - a. The planning board shall find that the subdivision is reasonably located with respect to existing roads and utility lines, and
 - b. Such portion shall conform to all requirements of this chapter
- (3) ~~Surety bonds may be required.~~ Letter-of-credit may be utilized to meet requirements for final plat approval if improvements are substantially complete. If the required improvements and utilities are substantially complete, not with only punch list items remaining installed before the

~~final plat is submitted for approval, the owner or subdivider shall have the right to provide a letter-of-credit town board of commissioners shall require a surety bond in such an amount equal to 150% of the estimated cost of the remaining improvements to insure the installation of improvements and utilities. Such sureties~~ The letter-of-credit shall guarantee the installation construction of required improvements and utilities within a specific period of time to the standards set forth within this chapter and shall satisfy the requirements of this section to secure final plat approval. The expiration date on the letter-of-credit shall be established by the town board of commissioners at the time of final plat approval.

~~(b) Upon approval of the preliminary plat by the town board of commissioners, the subdivider may proceed with the preparation of the final plat, and the installation or arrangement for required improvements in accordance with the approved preliminary plat and the requirements of this chapter. Prior to approval of the final plat, the subdivider shall have installed improvements specified in this chapter or guaranteed their installation, as provided.~~

3. The Town Clerk is authorized to number the section set forth above and insert the same as appropriate in the Town Code.

4. This ordinance shall become effective immediately upon its adoption. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

DULY ADOPTED THIS _____ day of _____, 2002 by a vote of

Commissioner(s) _____ voting for,

Commissioner(s) _____ voting against and

Commissioner(s) _____ absent.

Arthur B. Schools, Jr., Mayor

ATTEST:

Carolyn K. Custy, Town Clerk, CMC

Mr. Rush commented that to clarify “substantial”, means the subdivision improvements are essentially complete with only corrective actions required to make the final completion. This decision would be placed on the Inspections and Public Works Department.

Mayor Schools relayed his concern that when you are talking about a “Letter of Credit”, he would think that most people would want to put up cash rather than a “Letter of Credit”. It is not practical to obtain a letter-of-credit for a small amount.

Commissioner Farmer complimented the Planning Board for the good job they did on this issue. She has no problems with the 2-year AEC.

Commissioner Messer asked if there is any known incident when a bond or cash had to be used to finish a project for non-performance and the answer was no.

Commissioner McElraft noted she has researched the issue of Surety Bonds without total completion or 50% completion is pretty normal. She reminded the board that Mr. Cook has just said it has taken him 3 years to get Health Department approval so the town is going to make him put his roads in before he even knows if he can get a Health Department Permits or if he can get septic tank permits? She thinks this is another taking of people’s property and she will not go along with it.

Commissioner Farmer made a motion for adoption of the Ordinance Amending Chapter 18 – Subdivisions – Regarding Final Plat Approval with the amendment of “Letter of Credit or Cashier’s Check”. The Board’s vote was split 3-2. Commissioner Eckhardt, Marks and Farmer voted for approval and Commissioners McElraft and Messer voted against approval.

NOTE: This item will return to the July meeting for a second reading.

RESOLUTION ADOPTING CARTERET COUNTY AND EMERALD ISLE HAZARD MITIGATION PLANS

BACKGROUND: The Board of Commissioners is asked to adopt the Emerald Isle Hazard Mitigation Plan at the June 11 meeting. Because the Emerald Isle plan references the Carteret County Hazard Mitigation Plan, the Board is also asked to adopt the Carteret County

Hazard Mitigation Plan. A resolution formally adopting both the County and Town plans is attached for the Board's consideration.

As discussed at the May meeting, recent state legislation mandates that all local governments adopt a hazard mitigation plan by August 1, 2002 in order to remain eligible for federal and state disaster assistance. Emerald Isle is fortunate in that it has already implemented many hazard mitigation measures over the years, including the flood damage prevention ordinance, other development ordinances, and emergency preparedness plans. The formal Hazard Mitigation Plan essentially summarizes the various programs already in place in Emerald Isle, indicates our intent to continue these programs and update as necessary, and includes additional goals to minimize the impacts of natural hazard events. Among the specified goals in our plan are public education initiatives, continued participation in the National Flood Insurance Program, the installation of generators at the Public Works building and the Community Center, and the construction of the Coast Guard Road storm water project to alleviate flooding in that area. Each of the specified goals are easily attainable or represent initiatives that the Town is already pursuing.

The Emerald Isle plan is relatively short because it essentially considered a sub-component of the Carteret County Hazard Mitigation Plan, which is a 214 page document that was prepared by a consultant for a cost of approximately \$100,000. A CD-ROM copy of the Carteret County plan was distributed to each Board member after the May meeting. In response to questions raised at the May meeting, Carol Angus contacted the appropriate officials, and was advised that the Town must either adopt the County plan or undertake an effort similar to Carteret County's plan on its own. With the August 1 deadline approaching, it would be very difficult for the Town to undertake this work and meet the deadline. Mr. Rush also does not believe we have the necessary staff resources to complete such a plan, and would need to enlist the services of a consultant, which would result in additional Town expense. Given the impending August 1, 2002 deadline, the fact that hurricane season is now upon us, and the importance of having a plan in place in order to retain eligibility for federal and state disaster assistance, therefore, Mr. Rush recommends that the Board adopt the resolution adopting both plans now, and, if desired, the Town can pursue amendments to the plans at a later date.

RESOLUTION ADOPTING THE CARTERET COUNTY AND EMERALD ISLE HAZARD MITIGATION PLANS

Whereas, Emerald Isle is subject to periodic natural and man-made events, with the potential to cause damage to properties in Emerald Isle, and

Whereas, the Town of Emerald Isle desires to prepare and mitigate for such circumstances, and

Whereas, the legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143 and Parts 3, 5, and 8 of Article 19 of Chapter 160A, of the North Carolina General Statutes delegated to local governments the responsibility to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry, and

Whereas, the legislature of the State of North Carolina, in Section 1 Part 166A of the North Carolina General Statutes (adopted in Session Law 2001-214 – Senate Bill 300, effective July 1, 2001), states in Item (a) (2) a 3 “For a state of disaster proclaimed pursuant to G.S. 166A-6(a) after August 1, 2002, the eligible entity shall have a hazard mitigation plan approved pursuant to the Stafford Act”, and

Whereas, it is the intent of the Emerald Isle Board of Commissioners to fulfill this obligation in order that the Town will be eligible for state assistance in the event that a state of disaster is declared affecting the Town of Emerald Isle,

Now, therefore, be it resolved by the Emerald Isle Board of Commissioners that Emerald Isle hereby adopts the Carteret County Hazard Mitigation Plan and the Emerald Isle Hazard Mitigation Plan, and

- 1) Vests the Town Manager with the responsibility, authority, and the means to
 - a. Inform all concerned parties of this action, and
 - b. Cooperate with federal, state, and local agencies and private firms which undertake to study, survey, map, and identify floodplain or flood-related erosion areas, and cooperate with neighboring communities with respect to management of adjoining floodplain and/or flood-related erosion areas in order to prevent aggravation of existing hazards, and
 - c. Upon occurrence, adjust the boundaries of the community which have been modified by annexation or for which the community has otherwise assumed or no longer has authority to adopt and enforce floodplain management regulations for a particular area in order that all Flood Hazard Boundary Maps (FHBMs) and Flood Insurance Rate Maps (FIRMs) accurately represent the community’s boundaries, and include within such notification a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished floodplain management regulatory authority. This information is to be provided to concerned parties.

- 2) Appoints the Town Manager to monitor any amendments to the Carteret County Hazard Mitigation Plan, and to review the Emerald Isle Hazard Mitigation plan at least annually and develop and present any needed amendments to the Emerald Isle Hazard Mitigation Plan to the Board of Commissioners for consideration.

- 3) Agrees to take such other official action as may be reasonably necessary to carry out the objectives of the Emerald Isle Hazard Mitigation Plan.

Adopted this the _____ day of _____, 2002.

Arthur B. Schools, Jr.,

Mayor

Attest:

Carolyn K. Custy, CMC, Town Clerk

Commissioner Farmer, referring to the County's Hazard Mitigation Plan, said that Section 6-13 talks about mitigation approaches and recommendations and it talks about beach re-nourishment, which is fine, and it talks about sand scraping, which is fine, and it talks about dredging and then it gets into seawalls, bulkheads, off-shore breakwaters, jetties, groins, and geotextile sand dunes all of which are illegal in the North Carolina and she does not feel these should be in the document. Furthermore, the Town of Emerald Isle has a Land Use Plan that supports the State prohibition on all of these structures. The town needs the money, it also needs to adopt a plan. She knows that the General Assembly is looking at having the State dates moved to the Federal dates due for these Hazard Mitigation Plans. The Federal date is February 2003. Mr. Rush implied there has been a request by the Council of Governments to extend that deadline also. Commissioner Farmer said "There has been a Bill". That may help but in the meantime she would like to see if the board would agree to Mr. Rush talking to Carteret County to see if that part could be removed from their plan.

Mr. Rush said he does not know if it can be removed from the Carteret County Plan or if our town can adopt their plan with some concessions. He will have to explore that further and will.

Commissioner Eckhardt commented he was surprised to see this in the County Plan since it was written at the County level.

Commissioner Farmer suggested maybe putting something in the town's plan saying that we oppose or do not support or whatever. We could pickup the language from the Land Use Plan, which says "The town objects to the construction of permanent stabilization structures in ocean hazard areas and any changes in State Standards which would allow such structured". She does not think the town can adopt the County Plan with without that language in it because it is directly contrary to the town's Land Use Plan.

This item was tabled to be investigated further.

**DISCUSSION – ORDINANCE AMENDING CHAPTER 19 – ZONING – TO REVISE
THE DUNES AND VEGETATION ORDINANCE**

BACKGROUND: The Board is asked to consider proposed revisions to the Dunes and Vegetation ordinance. Although the Board has discussed this ordinance at a prior workshop meeting, this item is scheduled as a discussion-only item, with formal consideration anticipated during the July 9 meeting or later. A public hearing has been advertised for the June 11 meeting, but I am now recommending that the public hearing be cancelled and rescheduled for either the July 9 meeting or a special meeting. Upon closer review of the proposed revisions, it is believe there is not enough time to put the ordinance is in a form sufficient for formal public comment at this time.

The proposed revisions were drafted by a Planning Board subcommittee consisting of Ed Dowling, Frank Erwin, and Pat Patteson. Carol Angus, Planning and Inspections Director, assisted the subcommittee. The proposed revisions were discussed by the Planning Board at several full Planning Board meetings, and the Planning Board unanimously recommended approval at their May 28, 2002 meeting. Town Attorney Derek Taylor and I have reviewed the proposed ordinance, and have identified several areas that need further revision. Most of these additional revisions do not have policy implications, but are necessary to clarify the intent of the language, strengthen the legal position of the Town, and insure consistency. I will make these additional revisions, along with any other revisions suggested by the Board, prior to the public hearing and formal Board consideration of the ordinance.

The attached ordinance is prepared in a “strike-through” and “underline” format so that the Town Board and the public can easily identify the proposed revisions. The major revisions are as follows:

- The ordinance specifies that only hand-held equipment can be used to remove undesirable vegetation and trees with a diameter less than 3” at a height of 36”.
- Reduces the maximum diameter tree that can be removed without approval from 4” to 3”. (There is one inconsistency in the ordinance that requires approval for selective thinning of trees less than 3”, and this inconsistency must be resolved from both a policy and consistency standpoint.)
- Extends the requirement for a topographic map to all new development, including single-family residential (consistent with the requirements of the storm water management ordinance).
- Increases the required natural area to 50% of the lot area for single family residential, as opposed to the current 45% requirement.
- Includes two options to meet the 50% requirement – 1) retain 50% in a natural state, or 2) retain 45% in a natural state and re-vegetate an additional 5% with approved species.
- Includes a provision to post a deposit for required re-vegetation under the second option.
- Encourages, if the Carteret County Health Dept concurs, the preservation of existing vegetation in the septic repair area.

- Establishes a minimum 3:1 slope requirement for excavated areas; steeper slopes may require a retaining wall.
- Prohibits the clearing of lots prior to receipt of a building permit and installation of the septic tank. This will prohibit individuals from clearing a lot or installing a septic tank for marketing purposes.
- Increases the fine for violations to \$500 per day, with each day constituting a separate violation.

The proposed ordinance does retain language that makes a violation of the Dunes and Vegetation ordinance a misdemeanor. Over the past several months, the Town has shifted its focus to civil penalties rather than criminal penalties, and the Board may want to consider amending this ordinance to implement civil penalties for violations of the Dunes and Vegetation ordinance also. Town Attorney Taylor has suggested that the language recently used in the new Storm Water Management ordinance could be modified for use in the Dunes and Vegetation ordinance.

ARTICLE X. DUNES AND VEGETATION PROTECTION*

***Editor's note**--Ord. of August 13, 1991, amended Ch. 19, Art. X to read as herein set out. Prior to inclusion of said ordinance, Art. X pertained to similar subject matter and derived from Code 1983, §§ 9-9001--9-9006, 9-9011--9-9015, 9-9021--9-9032, 9-9041, 9-9051; Ord. of April 9, 1991, §§ 17--19; Ord. of Oct. 22, 1984 and Ord. of Oct. 24, 1986(1), § 1. See the Code Comparative Table for a detailed analysis of inclusion.

DIVISION 1. GENERALLY

Sec. 19-331. Title.

This article shall be and is referred to and cited as "The Dunes and Vegetation Protection Article of the Town of Emerald Isle."

(Ord. of 8-13-91)

Sec. 19-332. Purpose.

The purpose of this article is to set forth regulations designed to reserve, protect, and maintain natural or constructed dunes and the vegetation thereon, including interior dunes and maritime forest. Destruction of the existing topography and vegetation increases erosion and storm water flooding, and decreases surface and subsurface water retention and lessens the aesthetic and tax value of property within the town.

(Ord. of 8-13-91)

Sec. 19-333. Authority.

Section 160A-174 of the General Statutes authorizes and empowers the town under its general ordinance-making powers to regulate the protection of natural or constructed dunes within the town.

(Ord. of 8-13-91)

Sec. 19-334. Exemptions.

~~Exempted from this article is the removal of sand, seashells or similar small materials of souvenir value in such amounts as may be carried easily upon the person.~~

~~This exemption shall exclude the willful cutting or removal of any live vegetation such as dune grasses, brushes, shrubs, and trees or parts thereof for souvenir purposes. There is further from this article the normal maintenance of lawns, common areas, and commercial office and~~

~~institutional tracts which are already developed, including but not limited to the cutting of grass, the removal of dead trees and shrubs, and the cutting and/or removal of weeds and poisonous plants on lots, tracts, or parcels already developed. There is further exempted the cutting and/or removal of poisonous plants, briars, and similar harmful vegetation on any lot or parcel.~~
Exempted from this article:

- (1) Removal for personal use only of sand, seashells or similar small materials of souvenir value in such amounts as may be carried easily upon the person, so long as such act does not involve and is not for commercial or business and does not provide monetary gain to the person removing such materials.

- (2) The normal maintenance of lawns, commercial, office, and institutional tracts

which are already developed, the cutting and/or removal of weeds, poisonous plants, briars and similar harmful vegetation on any lot or parcel, dead trees and shrubs, and the removal of trees less than 3 inches in diameter (5.5 inches in circumference) at a height of 36 inches. Nothing more than hand held equipment may be used. Nothing herein shall be deemed to allow any acts which shall harm trees or shrubs or grasses in order to cause them to be damaged or render them dead so as to allow them to be included under this exemption. It is specifically the intention of this ordinance that any such action shall be a violation of this ordinance. Nothing herein shall be construed as allowing the willful cutting or removal of any live vegetation such as dune grasses, bushes, shrubs, and trees having a diameter of 3 inches (5.5 inches in circumference) or greater, or part thereof for any purpose.

(Ord. of 8-13-91)

Cross reference(s)--For other exemptions from the provisions of this article, see section 19-351.

Sec. 19-335. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) *Dunes and vegetation protection officer (DVPO).* ~~The DVPO is appointed by the town board of commissioners, serves at the pleasure of the board, and may be assigned other duties and functions under this article. The building inspector serves as DVPO and may be assigned other duties and functions under this article.~~ The building inspector shall serve as the DVPO.

- (2) *Dune.* The word "dune" as used in this article shall mean frontal or single dunes, dune ridges, and dune systems or any part thereof, both old and new, and shall include the vegetative cover related to these dunes. The primary dune is considered to be the largest or most stable dune or dune line, generally near the high tide line. The Coastal Area Management Agency defines a primary dune as "the first mounds of sand located landward of the ocean beaches having an elevation equal to the mean flood level for the area plus six feet. The primary dune extends landward to the lowest elevation in the depression behind that same mound of sand." Those interior properties having sand ridges are not considered primary dunes; however, these areas are also to be retained, if at all practical, to retain continuity with adjoining properties.

- (3) Maritime forest. Maritime forests were natural areas that played a significant role in long term maintenance, storm protection, and stabilization of shifting sand of the entire island's ocean frontal dune and primary dune system. The dunes structure and composition were the results of natural forces: wind, salt spray, and topography. Because of the close proximity to the ocean, the remaining trees in the shear zone will come under assault from building activities. As a result this zone is most vulnerable to the negative impact of salt spray. The tree canopy in the salt shear zone provides protection to the vegetation in the understory beneath it and the remaining forest trees to the towns leeward side. The loss of trees and vegetation in the shear zone will result in dune sand migration. Previous forest trees absorbed the force of rain and wind during hurricanes and provided the only protection for lot owners property during hurricanes. Interior lots: leave the canopy of trees in 50-75 square foot clusters. Failure to do so may result in the loss or damage to trees by salt spray; use retention bulkhead, retaining walls and foundations walls to accommodate grade and minimize clearing of existing vegetation and trees.

- (4) Natural area. The term “natural area” as used in this article shall mean those portions or areas of each lot, tract or parcel within the town which are designated, or required, to retain the original vegetation and existing topography. For those natural areas, or portions thereof, that do not have vegetation, the developer or property owner shall be required to stabilize the natural area with ground cover as specified in Appendix A or B, or other suitable ground cover.
- (5) *Ordinance.* "Ordinance" shall mean the dunes and vegetation protection ordinance of the town, as outlined in this article.
- (6) *Town.* Where the word "town" is used in this article, it shall mean the Town of Emerald Isle. ~~or DVPO.~~
- (7) *Vegetation.* “Vegetation” shall mean all natural vegetation in all areas of the town, to include “original vegetation” as defined in this article.
- (8) Original vegetation. The plant life that existed on the site at it’s first stage of existence.
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- (9) Natural vegetation. Any vegetation, whether original or planted, that is compatible with the property according to Appendix A or B.
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(Ord. of 8-13-91)

Secs. 19-336--19-350. Reserved.

DIVISION 2. PROTECTION

Sec. 19-351. Territorial application.

When this article conflicts with Coastal Resources Commission regulations and provisions of Coastal Area Management Act areas, defined as "Areas of Environmental Concern, (AEC)" the more restrictive rule shall apply.

(Ord. of 8-13-91)

Sec. 19-352. Permit required.

It shall be unlawful for any person or corporation, or their agents, to alter dune structure or to remove soil and/or vegetation, as defined in section 19-335 or part thereof, without first obtaining from the DVPO, a permit for such alteration or vegetation removal. The permit shall be purchased by the owner or the legally designated agent, in the owner's name.

(Ord. of 8-13-91)

Sec. 19-353. Designation of officials to perform the function of dunes and vegetation protection.

- (a) The DVPO shall enforce all aspects of dunes and vegetation protection under the provisions of this article, and will be responsible for the issuing of permits and making inspections as set forth generally in section 19-354.
- (b) The ~~police~~ inspections department is designated as the enforcement agency with the authority to ~~make arrests~~, issue citations ~~and warrants~~, and perform other enforcement functions as are necessary to enforce the provisions of this article.

- (c) The board of adjustment is hereby designated ~~as the board~~ to hear appeals from the decisions and requirements of the dunes and vegetation protection officer, and to render decisions thereon. Appeals in the nature of certiorari from the board of adjustment shall be to the Carteret County Superior Court.

(Ord. of 8-13-91)

Sec. 19-354. Permits affecting sand dunes and protected areas.

- (a) No permit to alter any sand dune or vegetation shall be granted by the DVPO unless the officer has first determined that his action does not violate the standards set forth in this article, or other applicable town, county, or state requirements.
- (b) With respect to every application for a permit under this section, the DVPO shall take the following steps:
 - (1) Review materials submitted in accordance with this article.
 - (2) Prompt inspection of the affected area, or site.
- (c) ~~With respect to the granting of a permit, under this article, the DVPO shall grant the permit either in person or by first class mail the DVPO shall grant the permit in writing.~~ Upon submission of materials and inspection, the DVPO shall grant the permit in writing.
- (d) The DVPO shall have the authority to attach special provisions and conditions to the permit if the prescribed actions and conditions will tend to strengthen the topography of the site as an effective barrier against the effects of wind and water or will serve to minimize the effects of these forces at the site.

- (e) The DVPO shall take the following steps in the event that a permit is denied:
 - (1) Notify the applicant ~~in person or by certified mail~~ in writing of his finding concerning the application, and
 - (2) Advise the applicant that he has the right of appeal to the board of adjustment, as outlined in section 19-355 below.

- (f) The property owner, as well as his agents, contractors, subcontractors, or employees, may be held liable for the proper execution of any portion of work performed under the permit or permits issued for such work in the event that the persons perform the work or supervise the work.

(Ord. of 8-13-91)

Sec. 19-355. Appeals procedure.

- (a) In the event that the DVPO denies a permit under this article, the applicant may within thirty (30) days of the denial, file an appeal with the board of adjustment for the town.

- (b) The body hearing the appeal shall fix a reasonable time for the hearing of the appeal, and shall notify all parties to the appeal by certified mail, of the following:
 - (1) The date of the appeal hearing, at least seven (7) days in advance thereof;

(2) The final disposition of the appeal.

- (c) As provided by general law, every decision of the board of adjustment on such an appeal shall be subject to review by the Superior Court of Carteret County by proceedings in the nature of certiorari. Pending the final disposition of such an appeal, no action will be taken which would be unlawful in the absence of a permit issued under this article.

(Ord. of 8-13-91)

Secs. 19-356--19-370. Reserved.

DIVISION 3. STANDARDS FOR ISSUANCE OF PERMITS

Sec. 19-371. Consideration of application.

The provisions of this article shall be considered by an applicant and the DVPO in determining whether the proposed project under consideration for construction for approval of the permit shall involve a material weakening of the dune, dune line, or dune system, shall involve a reduction of its effectiveness as a protective barrier against the actions of sand, wind and water, including those properties on the interior portions of the town, and whether the project shall comply with the purposes provision, as set forth in this article.

(Ord. of 8-13-91)

Sec. 19-372. Primary dunes.

Permits that involve alteration of the dune or dune line referred to as the primary dune(s) shall be issued only after the DVPO has determined that such action does not weaken the dune(s) or decrease the protective function of the dune(s).

(Ord. of 8-13-91)

Sec. 19-373. Project design.

No permit shall be issued for development of a lot in R-1, R-2, RMH or RMF or new subdivision and/or a commercial project, until a topographic map with a two-foot contour interval has been submitted. This shall determine that the proposed design utilizes the best advantage of the topographic contours of the existing property.

(Ord. of 8-13-91)

Sec. 19-374. Pedestrian access.

Any access across the primary dune to the beach area shall be by a method approved by the DVPO and shall not cause any weakening or damage to the dune or dune line. One such approved method is a boardwalk on stilts above the dune.

(Ord. of 8-13-91)

Sec. 19-375. Vehicular access.

No vehicles shall cross the primary dune, except where public access has been provided, approved, and is lawful.

(Ord. of 8-13-91)

Sec. 19-376. Natural areas.

(a) *Natural areas; defined.* This article requires that a certain percentage of each lot or parcel contain natural areas as defined herein in order to maintain the existing natural stability of the dune or dune system, to promote the aesthetic and tax values of the property, and to decrease erosion and stormwater flooding.

The term "natural area" as used in this article shall mean those portions or areas of each lot, tract or parcel within the town which are designated or required to retain the original vegetation and existing topography. For those natural areas or portions thereof that do not have vegetation, the developer or property owner shall be required to stabilize the natural area with ground cover as specified on Appendix or B or other suitable ground cover. Total site clearance, or clear cutting, of vegetation of less than 3 inches is strictly prohibited in the natural area. Approval must first be obtained from the DVPO prior to selectively thinning of trees less than 3 inches in this area.

(b) ~~Requirements for natural areas. The following requirements shall be adhered to with regard to natural areas.~~

~~The term "natural area" as used in this article shall mean those portions or areas of each lot, tract or parcel within the town which are designated or required to retain the original vegetation and existing topography. For those natural areas or portions thereof that do not have vegetation, the developer or property owner shall be required to stabilize the natural area with ground cover as specified on Appendix A or B or other suitable ground cover.~~

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Requirements for natural areas. The following requirements shall be adhered to with regard to natural areas:

(1) At all sites other than commercially zoned areas, a total minimum of ~~45%~~ 50% of the total square footage of the lot, or parcel, shall be left, or revegetated, as natural, in order to maintain the existing natural appearance and the natural stability that this vegetation and topography have on of the dune ~~or dune~~ system and surrounding area. ~~The DVPO is authorized to designate the location of these areas if the DVPO finds that it is necessary in order to adhere to the spirit and intent of this article. As to the remaining fifty-five percent (55%) of the total area or square footage of the lot or parcel, said areas except for the building site, driveway and parking area shall have a vegetative cover. Provided, this requirement shall not be applicable during the construction of roads, utilities, and amenities during the development of a subdivision.~~

This 50% total may be accomplished in one of two methods; the use of either method will be authorized by the DVPO as to adhere to the spirit and intent of this article:

-
(a) Leave a total of 50% of the lot undisturbed;

-
(b) Maintain a minimum of 45% undisturbed and revegetate 5% for a total of 50%. This revegetation of the 5% must be a minimum of 1 tree and 4 bushes or shrubs per 100 square feet. At planting trees must be a minimum of 9 feet tall and 3 inches, or greater, in diameter; bushes or shrubs shall be housed in three gallon containers, or greater. The species of vegetation is to be chosen from Appendix A or Appendix B of this article;

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(c) If, upon application for a Certificate of Occupancy, plan "a" of Sec. 19-376(b)(1) was used, the Certificate of Occupancy can be issued if the 50% natural area has remained undisturbed.

(d) If plan "b" of Sec. 19-376(b)(1) is used and the 5% area has not been revegetated as prescribed in this article, the owner shall have the right to obtain a

Certificate of Occupancy upon deposit with the town a sum of \$3,000 in the form of a bond or cashiers check. Notwithstanding the deposit, the owner is required to comply with the terms of section (a) within 180 days of the issuance of the bond or check. The owner shall be entitled to a refund of the of the deposit upon inspection of the lot or parcel and a finding by the DVPO that the owner is in compliance with section (a) above. The DVPO shall make an inspection of the lot or parcel upon the earlier of a request by the owner or within 180 days of the issuance of the certificate of occupancy. The deposit of funds required in this section shall not relieve the owner of any obligations of this ordinance and shall not be a payment in lieu of the owner's obligations to meeting the requirements thereof.

- (2) ~~The DVPO shall have the authority to designate and approve the removal of poisonous plants and other undesirable growth. The removal of trees having a diameter of four (4) inches or greater must have approval of the DVPO. The removal of live~~ vegetation such as dune grasses, brushes, shrubs and trees, having a diameter of 3 inches (5.5 inches in circumference), or greater at 36 inches above ground, must have the approval of the DVPO. Nothing herein shall be deemed to allow any acts which shall harm trees in order to cause them to be damaged or render them dead so as to allow them to be removed. It is the intention of this ordinance that any such action shall be a violation of this ordinance. Nothing herein shall be construed as allowing the willful cutting or removal of any live vegetation such as dune grasses, brushes, shrubs and trees or part thereof for any purposes.

- (3) Violators who fail to comply with the provisions of this article shall be required to plant new healthy replacement trees. Trees destroyed under these standards on site shall be replaced in like quantity, density, height, variety and measurement.

- (4) In commercial areas abutting Emerald Drive (Hwy 58) a minimum of five-foot buffer of green or natural area, consisting of grass, flowers and shrubs not exceeding three (3) feet height, within the sight triangle shall either be left bordering the street or planted in order to provide the required buffer. No improvements may be constructed in this buffer. Branches of trees retained or established in the five-foot buffer area may be trimmed or cut up to a maximum of ten (10) feet as authorized by the DVPO. Additionally, the DVPO may require that trees be retained or established every fifteen (15) feet in this area. The cutting of trees, having a diameter of 3 inches (5.5 inches in circumference), or greater at 36 inches above the ground, is prohibited in this buffer. Nothing herein shall be deemed to allow any acts which shall harm trees in order to cause them to be damaged or render them dead so as to allow them to be removed. It is the intention of this ordinance that any such action shall be a violation of this

ordinance. Nothing herein shall be construed as allowing the willful cutting or removal of any live vegetation such as dune grasses, bushes, shrubs and trees as part thereof, for any purposes.

(5) In all B-1 or B-2 zones, twenty-five (25) percent of the total square footage or area of each lot or parcel will be set aside or established as a natural area, and fifteen (15) percent of any lot or parcel located in the B-3 zoning district will be set aside or established as a natural area.

(c) *Natural area uses.* ~~Use of~~ The natural areas may include but not be limited to the following:

(1) Wastewater drain ~~fills and well sites~~ field, not including the septic tank, so long as all disturbed natural areas ~~used for the wastewater drain fills and well sites fields~~ are provided with ground cover as specified in Appendix A or Appendix B. Wherever possible, and with authority from Carteret County Environmental Health Dept. and the DVPO that the repair area be left in a natural state and only the required drain field be disturbed.

(2) Frontal dunes so long as the dunes are restricted from pedestrian traffic.

(3) Such other uses as deemed appropriate by the DVPO and/or the town board of commissioners. In approving other uses the DVPO or the board of commissioners may include or attach such conditions to the use of the natural areas as they deem appropriate in order to protect the integrity of the natural areas.

(d) Selection of building sites and designation of natural areas. When selecting the

Building site or designating the location of the natural areas, the following standards shall be complied with:

- (1) Existing un-forested land areas shall be considered as the most suitable building sites unless such a selection would threaten the health of the vegetation by simulating dune migration or causing extensive salt-spray intrusion into the woods or would involve alterations prohibited elsewhere in this article.

- (2) Where vegetation must be removed from a lot or parcel in order to provide the building site, the building site approved will be that site which will disturb the minimum number of healthy trees and vegetation. In approving the building site, the DVPO is to consider the density, height and variety of the vegetation to be removed so as to preserve those forest stands which provide the most protection from storm and salt spray and so as to maintain the unique natural diversity of the plant species. The angle of repose for all cuts to be 3.1 slope. A greater cut may require a wall.

- (3) The removal of vegetation, which provides storm and salt-mist protection or serves, to stabilize soil and/or limit dune migration shall be kept at a minimal amount and its removal discouraged. Such removal is allowed only for the placement of structures and a sewage disposal system when no other building site is available.

- (4) The sewage septic tank and other utilities shall be located to the maximum extent feasible within the area that has been cleared for access and building purposes, and in order to satisfy the rules and regulations of the county, state and federal authorities concerning sewage disposal and utilities use and location. In addition, the use of alternative septic systems that effectively may be located within a forest stand in satisfaction of subparagraph (3) above is suggested and encouraged.

(Ord. of 8-13-91)

Sec. 19-377. Revegetation.

Each plot plan submitted with a permit application shall indicate proposed plans for maintaining the existing vegetation or providing for re-vegetation. Within fifteen (15) days following the grading of a potential building site, the DVPO must prescribe restoration of a vegetation cover; if this is to be accomplished by seeding grass, the seed mixture used must consist of both annual and perennial species. Within ninety (90) days of beginning construction, efforts to re-vegetate areas exposed by grading and construction must be undertaken. Failure to comply constitutes a violation of this article as stated in section 19-334.

(Ord. of 8-13-91)

Sec. 19-378. Clearing for inspection.

No grading or clearing of a site shall be done prior to the issuance of a permit as stipulated in this article, except for minimal clearing for the purpose of a walk-through type inspection passage or sewage facilities inspection.

(Ord. of 8-13-91)

Sec. 19-379. Prohibited

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- (1) Arbitrary removal of sand/soil prior to construction or lot clearing for marketing or other purpose will not be permitted.

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- (2) A lot or parcel may not be graded until such time the septic tank is installed _____ and building permit is obtained.

Sec. 19-380. Plat plan.

All permit applications shall include a registered land surveyor's plat, current within one (1) year of date of application. ~~Exception: All new subdivisions may use county septic plat for septic tank and drain field clearing only.~~ Said survey plat shall clearly show the flood zone, block number (1--53), the lot number, section and property identification number (PIN) as shown on the Carteret County Tax Maps ~~Federal Emergency Flood Maps~~ for the Town of Emerald Isle.

(Ord. of 8-13-91; Ord. of 9-14-93, § 1)

Sec. 19-381. Site staking.

Prior to inspection by the DVPO for permit approval, staking shall have been completed in accordance with submission and in a manner directed by the DVPO, to show the location of all side lines, sewage facilities, structures, driveways, and parking areas.

(Ord. of 8-13-91)

Sec. 19-382. Subdivision permits.

A dunes and vegetation permit will be required for proposed subdivision approval by the DVPO.

(Ord. of 8-13-91)

Sec. 19-383. Inspection and permit fee.

The following fees shall be charged under the provisions of this article:

- (1) A fee will be required for the filing of a permit, initial inspection and final inspection upon completion of work, to be paid upon the filing of the application for the permit. An additional fee will be required for any other inspection that the applicant may request.

- (2) For every application for a permit for site or parcel on which there is proposed development of a subdivision, mobile home park, travel trailer park, condominiums, townhouses, apartments, or motel/hotels, the minimum fee shall be paid and every lot space, or unit, there will be an additional fee per space, lot or unit.

(Ord. of 8-13-91)

Secs. 19-384--19-400. Reserved.

Sec. 19-401. Compliance with provisions required.

- (a) ~~Violations. Failure to comply with the provisions of this article is a misdemeanor punishable upon conviction thereof as provided by the General Statutes of North Carolina. The applicable General Statute provision is G.S. 14-4, which provides for a fine of fifty dollars (\$50.00) to five hundred dollars (\$500.00) and provides that failure to repair damages to dunes or vegetation constitutes a separate violation for each ten (10) days that such failure continues after written notification to the violator from the dunes and vegetation protection officer (DVPO). For violations involving vehicles on any dunes, refer to beach and dunes vehicular control, as set forth in section 5-21 et seq.~~ Failure of an applicant and owner to comply with the provisions of this article is a

misdemeanor punishable upon conviction thereof, as provided by NCGS 14-4, including a fine of \$500.00. Each day will constitute a separate violation.

~~(b) *Civil penalties and sanctions.* Failure to restore any sand dune or vegetation which has been damaged, destroyed, or removed in violation of this article shall subject the offender to a civil penalty to be recovered by the town in a civil action in the nature of a debt for the costs of restoring or replacing same. In the event the offender has neither restored nor replaced the sand dune or vegetation which has been destroyed or removed within ten (10) days following the violation, the offender must post a surety bond equal to twice the estimated cost of such restoration or replacement as determined by the DVPO and the town.~~

Any person who has damaged, destroyed, or removed any sand dune or vegetation in violation of this ordinance, shall, at no cost to the Town, immediately undertake restoration thereof, at the direction and according to procedures as determined by the DVPO and Town. In the event such person shall fail to restore any sand dune or vegetation within 10 days from the initial violation, the Town may undertake such restoration and all such cost shall be recoverable as against the applicant and owner. Failure to restore any sand dune or vegetation which has been damaged, destroyed or removed in violation of this ordinance shall subject the applicant and owner and the person who has damaged, destroyed or removed any sand dune or vegetation to a civil penalty to be recovered by the town in a civil action in the nature of a debt for the costs of restoring same. In the event the sand dune or vegetation which has been destroyed or removed has neither been restored or replaced within 10 days following the initial violation, the applicant and owner will be required to post a surety bond equal to twice the estimated cost of such restoration or replacement, as determined by the DVPO.

(c) *Equitable and injunctive relief.* To enforce this article the town may apply to either the District or Superior Court Divisions of the General Court of Justice pursuant to General Statute 160A-175 for a mandatory or prohibitory injunction and order of abatement directing the offender to correct the unlawful condition upon the real property involved or to cease the unlawful use of such property.

(d) *Revocation of permits.* In the event of noncompliance with the requirements of this article, the town will have the authority to revoke any and all permits issued and also to issue stop work orders on the real property on which the offense occurred until such time as the offender has either restored or replaced the dune and/or vegetation thereon, or until such time as the offender has posted a surety bond with the town in an amount double the estimated cost of restoration as determined by the town.

(Ord. of 8-13-91)

Sec. 19-402. Other codes and ordinances.

All development proposals must comply with the North Carolina Building Code and with any other ordinances effective in the county or town.

DIVISION 4. VARIANCES

Sec. 19-402. Natural areas.

The board of adjustment shall have the authority to vary the percentage of the lot or parcel which shall be left in its natural state where, owing to special conditions, a literal enforcement of the provisions of the article will, in an individual case, result in practical difficulty or unnecessary hardship so that the spirit of the article shall be observed, public safety and welfare secured, and substantial justice done. A variance may be granted in an individual case of unnecessary hardship upon findings by the board of adjustment that the following conditions exist:

- (1) There are extraordinary and exceptional conditions pertaining to the lot or parcel in question because of its size, shape, or topography that are not applicable to other sites or parcels in the same area or zoning district.
- (2) Granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents of the area or zoning district in which the site or parcel is located.

- (3) A literal interpretation of the provisions of this article would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located.
- (4) The permitted variance will be in harmony with the purpose and intent of the article and the permitted variance will not materially weaken a dune or dune system, and the vegetation thereon, or will not materially alter the natural topography as to materially weaken its effectiveness as a protection against the effects of wind and water.
- (5) The special circumstances are not the result of the actions of the applicant and are not based on economic consideration.
- (6) The variance permitted is the minimum variance that will make possible the legal use of the site or parcel.

(Ord. of 8-13-91)

Appendix A

Commissioner Farmer asked if a Joint Meeting with the Planning Board and Town Board could be set up so this amendment could be gone through completely. She would like to hear the Planning Board's comments on it.

Attorney Taylor said he and Mr. Rush have discussed the ordinance and did not have any major problems with it but he thinks there were some inserts without definitions. The basis of what an ordinance should be is that an average individual of average intelligence, whomever that person might be, could walk in and understand what it says they have to do. There are some things that Attorney Taylor didn't quite know what they were trying to get done. He thinks he understood but he was not sure. He suggested putting it off for this reason.

Commissioner McElraft commented she thinks the board feels it should be done like the Storm Water was with those present who it would affect and let the Planning Board educate the town board at the same time.

Mr. Rush said he would try to work on something the first part of July when all board members could be present.

RESOLUTION AUTHORIZING THE TOWN MANAGER TO SUBMIT A NCDOT TRANSPORTATION ENHANCEMENT GRANT APPLICATION FOR BICYCLE PATHS ALONG NC 58

BACKGROUND: The Board of Commissioners is asked to approve the attached resolution authorizing a Transportation Enhancement Grant application to NCDOT for the construction of a bicycle path along NC 58. The total amount of the grant request is \$104,160, which represents 80% of the total estimated project cost of \$130,200. The grant application deadline for this program is June 28, 2002.

The NCDOT Transportation Enhancement Grant program provides funding to local governments and other non-profit groups for a wide range of transportation-related projects. Eligible categories include bicycle and pedestrian facilities, landscaping and scenic beautification, rehabilitation / operation of historic transportation facilities, control and removal of outdoor advertising, and others. (A complete list of project categories is attached.) The program has been extremely popular in North Carolina, and many local governments have received funding through the program. For the 2002 grant cycle, funding is allocated at the NCDOT Division level, and Emerald Isle is in Division 2, which encompasses 8 eastern NC counties. The total anticipated grant allocation for all of Division 2 is approximately \$591,000, so this year's grant process will likely be very competitive.

The proposed Emerald Isle project involves the construction of approximately 1.4 miles of asphalt bicycle path along the south side of NC 58 from Coast Guard Road to Merchants Park. The bicycle path would be constructed near the south edge of the existing right-of-way, and would meander around existing natural vegetation and the landscaping beds along NC 58. The proposed project budget also includes funds for additional landscaping and benches along the path, and the path would also be available for pedestrian use. The width of the bicycle path would be 10 ft, in accordance with NCDOT specifications. The exact alignment and location of the bicycle path would be determined during the detailed design phase, and if the grant application is successful it would be helpful to have NCDOT and the NC 58 Committee involved in the detailed design phase. Their involvement could result in modifications to the plans described in this memo, and any beneficial suggestions that would meet the spirit and intent of the grant program would be welcomed.

The bicycle path would link the central commercial area with the K&V Plaza, Emerald Plantation, and Islander Drive commercial areas, and would provide an alternative means of transportation for individuals visiting these shopping areas. The bicycle path would also link the Western Ocean Regional Access, Bogue Inlet Pier, and would connect near the new sidewalks in the central commercial area, which will run eastward to the Recreation Center and Blue Heron Park. The bicycle paths would also link with the existing bicycle paths along Coast Guard Road (which were also funded with NCDOT Transportation Enhancement Grant funds),

and provide a safer bicycle and pedestrian route for people in the center of town to access the Coast Guard Road corridor and the Point area.

The local match for this grant is \$26,040, and would be funded with Powell Bill reserve funds. As of June 30, 2001, the remaining balance in the Powell Bill reserve was approximately \$79,000. As you recall, \$30,000 of these reserve funds are earmarked for the NC 58 sidewalk project, leaving a balance of approximately \$49,000. The use of \$26,040 for the bicycle path project would still leave a balance of approximately \$23,000 in the Powell Bill reserve.

This grant program is expected to be very competitive. It will be important to solicit the support of our local General Assembly members and our regional Board of Transportation member. If the Board approves this grant application, we will seek out the support of these individuals.

The following is a Budget for this project.

PROPOSED BIKE PATH FROM COAST GUARD ROAD TO MERCHANTS' PARK
BUDGET FOR NCDOT TRANSPORTATION ENHANCEMENT PROGRAM GRANT
APPLICATION

Survey/Design	\$9,900	
Environmental Documentation		\$5,000
Grading	\$9,000	
1.4 mile 10' asphalt path		\$90,000
Signage	\$3,500	
Benches	\$2,800	
Landscaping	\$7,500	
Striping	<u>\$2,500</u>	
TOTAL	\$130,200	
NCDOT FUNDS REQUESTED		\$104,160

TOWN OF EMERALD ISLE POWELL BILL MATCHING FUNDS
\$26,040

RESOLUTION AUTHORIZING THE TOWN MANAGER TO SUBMIT A NCDOT TRANSPORTATION ENHANCEMENT GRANT APPLICATION FOR A BICYCLE PATH ALONG NC 58

WHEREAS, the North Carolina Department of Transportation provides grant funding to local governments and other groups for transportation enhancement projects, and

WHEREAS, a bicycle path would provide a safer transportation route for adults and children bicycling along NC 58, and also provide a walking path, and

WHEREAS, a bicycle path along NC 58 would encourage residents and visitors to use alternative forms of transportation to travel to commercial centers at Emerald Plantation, K&V Plaza, and the Islander Drive area, thereby reducing traffic congestion in this area, and

WHEREAS, a bicycle path along NC 58 would also provide a link to existing bicycle paths along Coast Guard Road, and provide a bicycle and pedestrian link to community facilities, including the Western Ocean Regional Access, Bogue Inlet Pier, the Recreation Center, and Blue Heron Park, and

WHEREAS, bicycle paths are an eligible activity for funding through the NCDOT Transportation Enhancement Program,

NOW, THEREFORE BE IS RESOLVED by the Board of Commissioners of the Town of Emerald Isle, North Carolina that the Town Manager is authorized to submit a NCDOT Transportation Enhancement Grant application for a bicycle path along NC 58 between Coast Guard Road and Merchants Park. The total amount of grant funding requested is \$104,460, which represents 80% of the total estimated project cost of \$130,200. The Town's

local match of \$26,040 will be provided with Powell Bill reserve funds in the Town's General Fund.

Adopted this ____ day of _____, 2002.

Arthur B. Schools, Jr., Mayor

ATTEST:

Carolyn K. Custy, Certified Municipal Clerk

Alesia Sanderson, Parks and Recreation Director explained that the long awaited call for Department of Transportation Enhancement money was received in April and she has attended a workshop in Wilmington on this. Emerald Isle is in Division II for DOT and there is \$591,000 available for Division II in funding. This is going to be a very competitive funding cycle because there is a great deal of interest from the 8 Eastern North Carolina counties who are involved in Division II. She has proposed the construction of a 10-foot wide asphalt bike path along the southern side within the southern most side of the right-of-way on Highway 58. It would be meandering behind all the flowerbeds of the beautification project and then widening without taking out any trees or other vegetation but grading so that it can be landscaped around and some native trees can be planted. It would be used as a connector from Coast Guard Road area, where DOT did fund a bike path on the shoulders of the road on Coast Guard Road, and it would allow access to the Pointe, it would connect from the Pointe to the Western Regional Ocean Access through the business district and then into Merchant's Park. This is being proposed because a connecting point scores more funding points with DOT. Having the destinations there should help tremendously.

Ms. Sanderson explained the total project is for \$130,200 where 80% would be funded by DOT with 20% being funded by the town and of that \$26,000 plus dollars, she is proposing it come from the Powell Bill Fund.

Commissioner Marks asked if there are any plans to extend the present bike path on Coast Guard Road and Ms. Sanderson's answer was "No" because that was totally a separate project. When DOT put that path on the shoulders, they really did not want to go all the way to the end of Coast Guard Road simply because of the traffic problems would occur from many of the roads coming out and they wanted to move people around through Ring Street, back up by the Coast Guard Station and that was their point in ending it right where it was ended.

Ms. Sanderson informed the board that applications are due by the end of June. There will be a final review process and if DOT had any problems with the application or thought it could be enhanced, they would return it and ask for additional information or tweak it to that degree and return the application by August 30th with a decision coming sometime in late October.

Commissioner Farmer noted that she was sorry to see DOT requires stripping down the middle of the paths. Ms. Sanderson replied that stripping down the middle is not required but it is recommended. That is simply to allow for two-way traffic.

Ms. Sanderson also said she feels it is necessary to stripe horizontally at the intersections to let people know there is a street coming up and they will have to stop at those intersections.

Commissioner Farmer said the bike lane on Coast Guard Road is 2 feet and now we have a 10-foot path. Ms. Sanderson said “off-street” is the difference and which is a much safer alternative than what is considered the widened shoulders.

Commissioner Marks asked about using pervious asphalt and Ms. Sanderson indicated it could be considered but the cost would be elevated from there because that is a more expensive surface.

Commissioner Farmer made a motion to approve the Resolution Authorizing the Town Manager to Submit the DOT Transportation Enhancement Grant Application and the board’s vote was unanimous with a vote of 5-0.

Ms. Sanderson asked if this allows for adjustment if the town chooses to go with pervious surface. She needs to know because the board is approving a dollar amount right now.

Commissioner McElraft indicated she would have to come back to the board and Ms. Sanderson replied she does not have time.

Mr. Rush made note that the Resolution as it is written sets out a dollar limits that are consistent with what Ms. Sanderson has described and the board could amend its action to make that amount to say i.e. \$150,000 or \$160,000 maximum grant request with a 20 per-cent local match recognizing that any additional cost would come out of the Powell Bill Funds.

Commissioner McElraft wants to be very careful with Powell Bill Funds because it might be needed to take care of the streets. She is very hesitant to agree to raise it much higher.

Commissioner Eckhardt indicated he would rather go with the asphalt as it was looking better all the time.

REQUEST FROM SOUND OF THE SEA OWNERS’ ASSOCIATION TO AMEND THE BOUNDARIES OF THE PRIMARY BENEFIT MUNICIPAL SERVICE DISTRICT

BACKGROUND: A request has been received from the Sound of the Sea Property Owners Association, Inc. to amend the boundaries of the Primary Benefit District. Specifically, the Association is requesting that 4 townhouse units in a row of 11 connected townhouse units be removed from the Primary Benefit District (48 cent tax rate) and added to the Secondary Benefit District (3 cent tax rate).

The process for an amendment to the district boundaries is spelled out in the NC General Statutes. Essentially, the Town would have to go through the same procedure to amend the

boundaries as was used to create the districts. The Board would need to approve a resolution of intent, a public hearing would be advertised, notices would be mailed to the affected property owners at least 28 days in advance, a public hearing would be conducted, and the Board would vote on a formal resolution. Because this amendment only involves 4 property owners, the process would not be difficult or require significant staff resources.

The Sound of the Sea Property Owners Association's rationale for this request is that these townhouse units are perpendicular to the oceanfront, and that the last 4 units are separated by a firewall. A detailed drawing and photo of these townhouse units is attached. If the Board grants this request, the financial implications are insignificant, however, there is a potential for similar requests from other condominium complexes. There is a wide range of opinions in the community on the optimal tax structure for the beach nourishment project.

The determination of the boundary between the Primary Benefit and Secondary Benefit district in condominium complexes was difficult when the districts were formally established in September 2001. I recommended the boundaries, and the Board adopted my recommendation. All oceanfront condominium buildings are in the Primary Benefit District, while all other condominium buildings within the same complex are included in the Secondary Benefit District. The boundary was drawn this way for two main reasons. One was because only the oceanfront building in the condominium complex faces a direct threat from erosion, and the owners of oceanfront units have the greatest risk if a nourishment project is not implemented, as is the case when comparing an oceanfront single-family home with a second-row single-family home. The second reason was to insure equity between a condominium owner who lives in a building 1/8 mile from the oceanfront, at the equivalent of the 7th row, and a single-family homeowner who lives on the 2nd or 4th row, for example. It did not seem right to charge a condo owner who was farther away from the ocean a 48 cent tax rate while a 2nd or 4th row property owner of a single family home would be charged 3 cents. For this reason, only the oceanfront condominium buildings were included in the Primary Benefit District.

There are six condominium complexes along the oceanfront that are divided in the manner described above. In Ocean Reef and Pier Pointe, the boundary between the Primary Benefit District and the Secondary Benefit District was fairly straightforward, as the site layout is somewhat comparable to the layout of single-family home lots. In the case of the towers in Sound of the Sea, Queens Court, and Point Emerald Villas, the oceanfront buildings are parallel to the ocean, and it was also fairly straightforward to place these buildings in the Primary Benefit District. In the case of Pebble Beach, the two oceanfront buildings are actually diagonal to the ocean, but both buildings were placed in the Primary Benefit District because they were all believed to have unobstructed oceanfront views and were considered oceanfront buildings. The Pebble Beach oceanfront buildings are also on separate oceanfront parcels. In the case of the townhouses at Sound of the Sea, the row is actually directly perpendicular to the ocean, and because the row is connected and appears as one building with multiple units, all of the units in the row of townhouses were included in the Primary Benefit District.

The boundary between the Primary Benefit District and the Secondary Benefit District in condominium complexes is somewhat of a judgment call. The Board will need to consider overall project benefits and overall equity among oceanfront property owners, both single-

family and condominium / townhouse owners, in making a decision. I think the Board will also need to carefully consider if the granting of the Sound of the Sea request will lead to other similar requests from other complexes that may be justified by the decision on this request.

If the Board grants Sound of the Sea's request, a resolution of intent will be prepared for the Board to consider at your July meeting. A public hearing will be scheduled for August and notify the 4 property owners that are affected. The Board could make a final decision as early as August. Please note that it is too late to change the boundaries for FY 02-03, due to public notification requirements and deadlines. Any change would take effect in FY 03-04.

Commissioner McElraft does not want to change anything since the people voted on it and the districts have already been set up. She feels that a "can of worms" will be opened if the board allows the change. She would not support it.

Commissioner Farmer agreed with Commissioner McElraft. There are other condominiums in the same situation.

Commissioner McElraft made a motion to deny Sound of The Sea Condominium's request and the board voted unanimously, with a vote of 5-0.

COMMENTS FROM TOWN CLERK, TOWN ATTORNEY, AND TOWN MANAGER

There were no comments from the Town Clerk.

Attorney Taylor commented relative to beach nourishment and release of easements that we are waiting for the Legislatures reaction. Mr. Rush said Representative Preston informed him today that there was a technical correction Bill introduced in the Legislature last December that did add Emerald Isle, Atlantic Beach and Holden Beach to that Statute. However, that Statute has not been updated on the Web Site and no one else was aware of it until today.

Reading through the Statutes of the Municipal Digest, it showed that it had been approved for Emerald Isle but Attorney Taylor could not find it anywhere else. He said he is working on that part of it. At some point in time, he will present to the board a list of those people who have not been heard from and whom easements have not been received on and ask for authority and direction on how the board would like to proceed with those folks. His recommendation would be that a second notice be provided outlining the procedures that would be followed for purposes of condemnation if necessary and then following that, whatever action the board directed to be followed would be done.

Commissioner McElraft asked if the process of condemnation could be placed on the Web Site to let people know that if they do not get the easements in that will probably the process that will be taken since the town has authority to do that. Mr. Rush said it could be.

Attorney Taylor stated for the record that he has had people ask him "What if you don't get a Federal Beach Maintenance Program from the Federal Government? Are you going to release these easements from your permit steps?" His answer has been it is a matter of policy for the board to determine when that determination will be made so it will remain an open issue as far as we are concerned waiting to see what happens. His explanation is that a lot of wording

in that easement is required for the town to have any chance at all of getting a maintenance program in play. He has told these folks that we don't know. Just because we get rejected this year doesn't mean that next year or next administration, any factor could change which will allow us to apply for that maintenance program and maybe get it under circumstances different. Attorney Taylor said he does not know that this board will ever have a black and white line that it can point to and says OK, I give up. Release the easements. Attorney Taylor has no portrayal of that every happening but he also made it clear that it would be up to the board to make that determination. Attorney Taylor is talking about the beach maintenance plan and the 50-year plan and not beach maintenance and FEMA plan.

Mr. Rush informed the board that CSE has done an additional 30 bores at this point. They are finding the areas to be very favorable. They have still got a lot to do. There have been some areas where they have tried to go down between the 4 and 8-foot levels and they have run into hard bottom. They are hoping to finalize their strategy by the end of June and we should have a better idea of where we are going at that time, as they will have all analyses done on the samples.

Commissioner Farmer questioned if they could go ahead and get the permit modification but Mr. Rush said they needed the results before that could be done.

Commissioner Eckhardt asked about CSE appearing to be well outside of Area "A", in any of the B1-B2 areas. He asked if there is additional permitting that has to be done? They are sampling quite a way beyond that. They are coming down toward the West a lot further than Area "A" or "B". Mr. Rush replied it is his understanding that they are only sampling in "A" and "B-2". If they are beyond those areas, he would suspect a permit modification is needed but it is his understanding they are working within the permitted areas and trying to refine samples and look for additional depth.

Mr. Rush said he would ask tomorrow to see exactly where they are working.

COMMENTS FROM BOARD OF COMMISSIONERS AND MAYOR

No Comments came from Commissioner Messer, Commissioner Marks, Commissioner Farmer, Commissioner McElraft and Commissioner Eckhardt.

Mayor Schools also had no comments.

ADJOURN

Commissioner Farmer made a motion to adjourn and the board's vote was unanimous, with a vote of 5-0.

Meeting was adjourned at 9:10 P.M.

Respectfully submitted,

Carolyn K. Custy, CMC