

**MINUTES OF SPECIAL MEETING
OF EMERALD ISLE BOARD OF COMMISSIONERS
SEPTEMBER 27, 2002 9:00 AM**

Mayor Schools called the meeting to order at 9:00 A.M. Board members present were Mayor Art Schools, Commissioners McElraft, Farmer, Marks, Messer and Eckhardt. Staff members present were Town Manager Frank Rush and Asst. Manager Mitsy Overman and Town Attorney Derek Taylor.

The purpose of the meeting was to discuss the Eastern Phase of the proposed Beach Nourishment Project, including review of bids received at a bid opening on September 27, 2002 at 8:30 A.M.

Mr. Rush told the Board that item number 13, Closed Session, would be moved to open session. This item refers to the condemnation process for all owners that have not signed the perpetual easement for beach nourishment.

Mr. Rush stated that a bid opening was held at 8:30 this morning on the beach nourishment project. Mr. Tim Kana, Tom White, and Bill Foreman with Coastal Science and Engineering opened bids on the eastern phase of the beach nourishment project. Mr. White and Mr. Foreman are presently reviewing those bids and will bring the bid tabulation to the Board shortly. Mr. Kana said he would rather wait for them to complete a few telephone calls and do the bid tabulation sheet before making any remarks about the results of those bids.

The Board decided to continue on with item number 13, discussion of condemnation procedures, while the engineers finished the bid tabulations.

Attorney Taylor said he has given the Board a Resolution of Intent to Condemn Beach Front Easements. The resolution reads as follows:

RESOLUTION -2-09-27

**A RESOLUTION OF INTENT TO CONDEMN
BEACH FRONT EASEMENTS**

WHEREAS, the registered voters of the Town of Emerald Isle have approved a bond referendum for the financing of beach nourishment along the shore of the Atlantic Ocean which is located within the Town's jurisdiction; and

WHEREAS, the Town is required to obtain easements over certain portions of all properties located along the Atlantic Ocean which are to be nourished; and

WHEREAS, the beach nourishment is to begin on or about November 15, 2002; and

WHEREAS, North Carolina provides a means of condemning an easement over the relevant properties along the Atlantic Ocean after having first given at least 30 days prior notice;

NOW, THEREFORE, the Emerald Isle Town Board of Commissioners does hereby order the Town Attorney, pursuant to North Carolina law, to give notice to all beach front property owners within the nourishment project area to begin on or about November 15, 2002 that the Town intends to file condemnation proceedings against them for an easement over and upon the required portions of their property. Furthermore, the Town Attorney is ordered to take all necessary action and to file all necessary litigation required to obtain the easements necessary for the nourishment project to be completed.

Resolved and adopted this the **27th** day of **September, 2002**, by the votes of Commissioner(s) _____ voting for, Commissioner(s)

_____ voting against and Commissioner(s)
_____ absent.

Attorney Taylor also referred the Board to a letter to be sent to the oceanfront property owners affected by the condemnation. Attorney Taylor said this letter could certainly be changed if the Board chooses.

Attorney Taylor went over the number of property owners that have signed, etc. There are 373 property owners that have signed easements and been recorded. Eight more owners have returned easements that were altered in some way and nine have sent letters refusing to sign. We

have approximately seventy one with problems, either another owner needs to sign, missing notary seals, etc. Attorney Taylor said we have approximately 102 at this moment that may need condemning, but easements are coming in every day so hopefully that number will drop by filing time.

Mr. Rush said the easement area was previously defined from the eastern end to 7313 Ocean. That area has been altered to the 6800 block, so the ones that have not signed from the 6800 block west to 7313 will reduce the number slightly.

Attorney Taylor said the property owners have 120 days from the notice of filing to answer the complaint. He said that some individuals he has talked to refer to the taking of property and want compensation. Attorney Taylor's view was the Town was adding to the value of the property, not decreasing the value.

Commissioner Farmer wanted to know if the agencies require all easements before the project begins. Bill Foreman with Coastal Science said a letter from the attorney saying the easements for the project area were in hand would be sufficient.

Commissioner McElraft made a motion to approve Resolution 02-09-27, Intent to Condemn Beach Front Easements, and to change the date to the November 16th. The Board voted unanimously in favor of the motion.

Review of Eastern Phase Beach Nourishment Bids – Mr. Tim Kana told the Board that four bids were received. Great Lakes Dredge & Dock Company, Oak Brook, Illinois, submitted a bid for the cutter dredge and the hopper dredge. Weeks Marine submitted a bid for the cutter and hopper dredge as well. Mr. Tom White said it appears that Weeks Marine, Inc., based out of St Rose, Louisiana, is the apparent low bidder for a hopper dredge in the amount of \$10,550,000. Great Lakes was the low bidder on the cutter dredge in the amount of \$13,903,500. (see copy of bid tabulation sheet attached) This amount does not include turtle/tire issues. Mr. Rush said we could add roughly \$200,000 to the bid to cover these issues. Mr. Tim Kana said the request for bids were detailed and the bids ranged from 10-17 million dollars. He further stated that we were in no position to award bids at this time. The bids will be gone over thoroughly and will be brought back to the Board.

Commissioner McElraft commented she thought cutter head projects were cheaper than hopper projects. Mr. White said the dredgers gave two reasons. 1) If we had the permit modification in hand, and 2) if bids could have gone out earlier the bids may have come in cheaper. These companies already have their equipment scheduled. He continued by saying there is still a possibility, especially for the project in 2003. Mr. White told the Board if they wanted to do the cutter head project in the near future, then bids could be secured early and the Town might see bids comparable to the hopper bid.

Mr. Rush said he thought the Board needed to continue with the permit modification. Mr. Rush said there were different aspects of the permit modification. One was to make a deeper cut, one to shift the borrow area 400 feet, and to "tidy" up the boundaries of the project. In terms of the deeper cut, the only benefit in pursuing that would be if the Board wants to delay the project for one year and re-bid the project. It was the consensus of the Board they would not delay the project.

The Board briefly discussed the turtle and tire issues. Commissioner Marks mentioned the temperature of the water and asked what happens if on November 16th the water is still too

warm. Mr. Tom White said the pumping would not begin exactly on the 15th. There is set up time and getting equipment in place. Mr. Rush wanted to know if the Town had the right to secure another contractor for turtle trawling. The answer was yes. Commissioner Eckhardt asked why the wide range of bids, and he thought the general consensus from Pine Knoll Shores was the trawling was not effective. Mr. White said the trawling was later in their project. He said when the water temperature is cold trawling will not be necessary.

Commissioner Farmer said her concern was the type of material the permit modification is calling for. From what she can see, the material is worse or equivalent to the two-mile area of Pine Knoll Shores. Mr. Rush said some of that impact in PKS was because of the deeper cuts. Commissioner Farmer said there were two concerns with this project. 1) Absolute protection of property, and 2) Beach also provides Emerald Isle and people that visit here with more than property protection, it's a recreation. She continued by saying to have what happened in Pine Knoll Shore happen here, is not acceptable. Commissioner Farmer said she was much happier with the quality of material the EIS was based on than what the permit is based on.

The Board briefly discussed sediment characteristics. Mr. Kana gave the Board a copy of a summary of sediment characteristics and briefly discussed each item. The mean grain size overall is .300. There is a range of grain size. Borrow area A tested out, on average, significantly coarser than B1 & B2. The material needs some shell base, otherwise it will not last. Commissioner Marks asked if Borrow area A was the area used for Pine Knoll Shores. Tim Kana said yes and they used A and B1. Tom White said they would like the flexibility to use Borrow area A. Commissioner Farmer said she did not have a problem with that as long as we are being as consistent as we can with the material that ends up on the beach. Commissioner Eckhardt said he assumed the screening for the hopper was in the contract. Tom White said no, the Board decided they did not want to pay the additional 10-30% increase in price.

Commissioner Farmer stated again that the figures are different. She said what the EIS was permitted for and what the permit modification is for. Commissioner McElraft said everyone needs to understand the tourist need something nice to walk on, but we need a beach to walk on. There is no beach from 1st to 30th streets. Houses are unprotected; tourists will not come back to that area because there is no beach. It's not going to be perfect. Commissioner Eckhardt said some areas of Pine Knoll Shores are not acceptable.

Mr. Rush said Mr. Sugg with the Corps of Engineers just called, and he has verbal confirmation from Fish and Wildlife that the permit modification has been approved. This is the federal level, not the state. Bill Foreman commented, on the state level, there were a couple of agencies dragging their feet. The Division of Water Quality and Wildlife Resources Commission. The Wildlife Resources Commission are concerned with endangered species on the beach.

Commissioner Farmer said again that she does not support using the permit modification unless we are shown a shallower cut has better material. Tom White said if it is a hopper project, it doesn't matter what the permit says, if you don't want to cut to six feet then we won't cut to six feet. Commissioner Farmer said she would like to go back to the EIS the permit is based on, which is better material. She continued by saying we have an EIS, and according to that EIS, the mean grain size is about 0.30, the percent of mud is 4.1, and the calcium carbonate is 22. Somehow the Corps is allowing 35, and would actually know where that figure came from, since she doesn't have a copy of the Corps permit, and the percent greater than 2 mm is 7.5. This was

accepted by all the federal and state agencies. She does not want the first two miles of Pine Knoll Shores on Emerald Isles beach.

The Board briefly discussed the monitoring procedures and criteria for relocation of dredges resulting from dissatisfaction with sediment quality.

Mr. Rush said it is obvious that more time is needed to evaluate the bids to make sure it is a responsive bid, make some assumptions for down time for turtle and tires and adjust the budget accordingly. Mr. Rush said the Town as set to sell the bonds on October 8th, and by Monday, the OS (Official Statement), which is the document provided to the institutional investors, would be wired to them. If for some reason we are not going forward with the project, the he needs to know that. The Board agreed to move forward with the project. Tom White said he is not anticipating any fatal flaws with the bids received. Commissioner Marks said there was never any question about moving forward. She said every ones concern is that structures are protected, and the three of us have a real concern with the quality of material. Mr. Rush said the awarding of the contract most likely would be on the October 8th agenda.

Attorney Taylor recommended if the Board wants to continue with the permit modification or make some other recommendations, then a motion to that affect need to be made. Commissioner McElraft made a motion to continue with the permit modification. Commissioner McElraft and Messer voted in favor. Commissioners Eckhardt and Farmer voted against. Commissioner Marks did not vote, therefore, her vote is an affirmative vote. Motion carried.

The Board recessed for a field trip to PKS, Indian Beach and Atlantic Beach.

The Board returned at 3:45 P.M. and Commissioner Eckhardt made a motion to adjourn.

Respectfully Submitted

Mitsy Overman
Asst. Town Manager